IN THE HIGH COURT FOR ZAMBIA **2021/HP/121**
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CIVIL JURISDICTION)

BETWEEN:

KAINDU NATURAL RESOURCES TRUST	**1st PLAINTIFF**
DENWELL CHIBUNDA	**2ND PLAINTIFF**
JEY KABALUKILA	**3RD PLAINTIFF**
FRAZER CHILIMBOYI	**4TH PLAINTIFF**
COSTER MUSHINA	**5TH PLAINTIFF**
GEHAS KAYOMBO CHIWALA	**6TH PLAINTIFF**
VICTOR NYAMBE SIMASIKU	**7TH PLAINTIFF**
GIDEON MWEPU	**8TH PLAINTIFF**
PETER KANYEMBE	**9TH PLAINTIFF**
DIVAISON MBANGE	**10THPLAINTIFF**

AND

AARON MULAMFU	**1ST DEFENDANT**
PATSON CHIFUPA	**2ND DEFENDANT**
GRACIOUS HAMALAMBO	**3RD DEFENDANT**
JOHN CHIMALILO	**4TH DEFENDANT**
BONIFACE CHISOSHI	**5TH DEFENDANT**
HUMPHREY KABINDA	**6TH DEFENDANT**
MWAMBA CHITI	**7TH DEFENDANT**
ISAAC KALUSA	**8TH DEFENDANT**
MATTHEWS KAPESHI	**9TH DEFENDANT**
KASHIKOTO CONSERVANCY LIMITED	**INTERVENER**

Before: ***The Hon. Mr. Justice Charles Zulu.***

For the Plaintiffs: Mr. H. P. Hantumbu, Messrs Muleza Mwiimbu & Company.

For the 1st,3rd, 4th, 5th, 6th, 7th & 9th Defendants:	Mr. A. Kombe and Mrs L. C. Chirwa, Messrs Andrew & Partners.
The 2nd& 8th Defendants:	No Appearance.
For the Intervener:	Mr. Y. Yosa, Messrs Musa Dudhia & Company.

RULING

Cases referred to:

1. ***Hotelier Limited & Ody's Works Limited v. Finsbury Investment Limited (2012/HP/260)***
2. ***Dipak Parmar and Another v. Radian Stores Limited and Another (2015) Z.R. Vol. 1 228.***
3. ***Access Financial Services Limited and Another v. Bank of Zambia (SCZ No. Appeal No. 104 of 2013).***
4. ***R v. Horsham District Council and Another, ex parte Wenman and Others [1994] 4 ALL E.R. 703.***
5. ***Prince Jefri Bolkiah v. K.P.M.G (A Firm) [1999] 1 All E.R. 517.***
6. ***Seager v. Copydex Limited [1967] 2 ALL E.R 415.***

Legislation and other materials referred to:

1. ***The Land (Perpetual Succession) Act Chapter 186 of the Laws of Zambia.***
2. ***The Legal Practitioners' Practice Rules, 2002, Statutory Instrument No. 59 of 2002.***
3. *Charles Hollander Q.C. and Simon Salzedo,* ***"Conflict of Interest" Third Edition (London: Sweet & Maxwell, 2008).***

INTRODUCTION

This ruling is in respect of an application at the instance of the Plaintiffs, for an order for the Court to exercise its inherent supervisory role over legal practitioner to disqualify the Defendants' Advocates, Messrs Andrew & Partners (the firm) from representing their clients on account that, the firm is professionally conflicted, having previously represented the first Plaintiff, Kaindu Natural Resources Trusts (KNRT), a body corporate registered in June 2004 under the ***Land (Perpetual Succession) Act Chapter 186 of the Laws of Zambia***. The application for disqualification or recusal was made pursuant to rule 33 of the ***Legal Practitioners' Practice Rules, 2002, Statutory Instrument No. 51 of 2002***. Messrs Andrew and Partners in the present action represents the first, third, fourth, fifth, sixth, seventh and ninth Defendant (hereinafter called the Defendants).

BACKGROUND

The alleged conflict of interest or conflict of duty on the part of the firm emanates from three previous matters, in which KNRT and the firm had a lawyer-client relationship, otherwise called a retainer. The first case involved *Borniface Shantebe and Two Others v. Kaindu Natural Resources Trust and Royal Kafue Limited* under Cause No. 2017/HP/1082. In this case, KNRT and Royal Kafue Limited, (RKL) were represented by Mr. K. Kombe and another from Messrs Andrew & Partners. The facts and issues decipherable from the judgment are that, the case involved a land dispute relating to Farm No. 10415. It

was alleged that KNRT had no right or title to carry out its game ranch activities on the said farm, and to lease out the same to RKL. A claim was also pursued by the plaintiffs in that matter for damages in tort, alleging that an employee of RKF had unlawfully shot one of the plaintiffs' son, and that the plaintiffs in that matter were harassed and prevented from carrying out their farming activities on the said farm. The plaintiffs' claims in a judgment dated February 26, 2018, were entirely dismissed.

The second matter involved *Kaindu Natural Resources Trust, Royal Kafue Limited v. Humphery Kabinda and Two Others,* under Cause No. 2017/HP/ 1638. KNRT and RKL were represented by Messrs Andrew & Partners. KNRT and RKL were seeking an order that the purported election of Humprey Kabinda (the 6th Defendant) as chairman of KNRT be declared null and void. However, this case was discontinued on May 7, 2018.

The third action involved *Kaindu Natural Resources Trust v. Kashikoto Conservancy Limited*, under Cause No. 2019/HP/0715. KNRT was represented by Messrs Andrew and Partners. The matter was resolved by consent order dated June 1, 2020. It appears the dispute related to construction of an animal sanctuary on Farm No. 8594.

The fourth case, involves the present action, taken out on February 9, 2021. The Defendants as well filed a counter-claim. The main action was taken out in the name of KNRT and ten other Plaintiffs against the Defendants. Whereas, the second Plaintiff to the tenth

Plaintiff allege that that they are the rightful board of trustees of KRNT as from March 25, 2020, the Defendants allege otherwise, that they are the rightful board of trustees of KNRT, having been duly elected on July 20, 2020 and January 2021. According to the Plaintiffs, the dissolution of their board by the Department of National Parks and Wildlife was illegal. And on the part of the Defendants, it was alleged that, the unilateral selection of the second to the tenth Plaintiff as office bearers of KNRT by a group of headmen while an incumbent board of trustee was still serving, before its term expired, and thus creating a parallel KNRT was illegal.

At the time the present application was filed, the matter had substantially proceeded to trial. And it is worth noting that, on December 10, 2021, Kashikoto Conservancy Limited was joined to the present action as an intervener.

THE PARTIES' AFFIDAVIT EVIDENCE

An affidavit in support was deposed to by Frazer Chilimboyi, the fourth Plaintiff. He stated that the lawyer-client relationship between KNRT and Messrs Andrew and Partners started in 2017, from which the deponent allege that certain privileged information was passed as a result of that relationship. Apparently, he expressed some worries over the witness statement of the Defendants' witness, named Alex Chibangula allegedly disclosing information regarding the conduct of RKL in the affairs of KNRT, and that KNRT and RKL are former clients of the firm.

An affidavit in opposition was deposed to by Kampamba Andrew Kombe, the Managing Partner of Messrs Andrew and Partners. The allegations of conflict of interest were disputed. Suffice to state that, he rejoined that, the first to the ninth Defendant were the legitimate office bearers of KNRT, and that by letter of appointment dated February 24, 2021, KNRT retained the firm to act as its advocates in the present matter. And that the privileged information received from KNRT only relate to the conduct of elections that ushered in the first to ninth Defendant into office of KNRT.

He said in the present matter, the firm was not retained by RKL. He added that the witness statement of Alex Chibangula was not obtained as a result of his interaction with RKL, from the previous retainer. He explained that, he had no information as regards the role RKL played in the selection of the second to the tenth Plaintiff. According to him, the application was an attempt by the fourth Plaintiff, Frazer Chilimboyi, to prevent Alex Chibangula from testifying, because his testimony was disfavourable to Chilimboyi and his team.

ARGUMENTS IN SUPPORT OF THE APPLICATION

The Plaintiffs' Advocate, Mr. Hantumbu, observed that Messrs Andrew and Partners previously acted for KNRT and RKL, and that in the present matter, acts against KNRT. According to him, the retention of the firm by the Defendants raises issues pertaining to a practitioner's independence and professional duty of confidence. Rules 3(2) and 33 (1) (f) (g) of the ***Legal Practitioners' Practice***

Rules, 2002, Statutory Instrument No. 59 of 2002 was cited, and the same provides:

> ***3(4) A practitioner shall not do anything in the course of practice or permit another person to do anything on the practitioner's behalf, which compromises or impairs or likely to compromise or impairs any of the following:***
>
> ***a) The legal practitioners' independence or integrity***

And Rule 33 (1) (f) and (g) provide:

> ***33.(1) A Practitioner shall not accept any brief if to do so would cause the practitioner to be professionally embarrassed under the following circumstances:***
>
> ***(a)...***
>
> ***(b)...***
>
> ***(c)...***
>
> ***(d)...***
>
> ***(e)...***
>
> ***(f) there is or appears to be some conflict or significant risk of some conflict either between the interest of the practitioner, or any partner or other associate of the practitioner and some other person or between the interest of any one or more of their clients; or***
>
> ***g. the matter is one in which there is risk of a breach of confidences entrusted to the practitioner, or to any partner or other associate, by another client or where the knowledge which the practitioner possess of the affairs of another client would give undue advantage to the new client.***

The case of ***Hotelier Limited & Ody's Works Limited v. Finsbury Investment Limited (2012/HP/260*** was vouched, in which Mutuna

J (as he then was) in a ruling is said to have held that a legal practitioner should avoid accepting instructions to act against his former client. Counsel submitted that under Cause No. 2017/HP/1638, which involved the election of the sixth Defendant in KNRT, and the challenge thereof, privileged information, did pass to the firm. Comparatively, it was argued that, the present case also relates to validity of elections. It was thus reasoned that the firm by acting for the Defendants had found themselves in a web of conflict of interest; to defend interests at loggerheads with the interests of its former client, KNRT.

ARGUMENTS OPPOSING THE APPLICATION

It was reiterated by Messrs Andrew and Partners that in the present action, the firm was retained to act for KNRT, and that there was no conflict of interest, because the Defendants were in-charge of KNRT. It was added that no facts were adduced that would cause any advocate in the firm of being divested of his/her professional independence. It was argued that there was no conflict of interest, or significant risk of some breach of confidence, on the part of the firm to act on behalf of the Defendants, or the sixth Defendant, in particular, who was said have had the liberty to choose counsel of his choice. It was submitted that none of the Plaintiffs save for KNRT have been clients of the firm.

The Plaintiffs' application was described as frivolous and vexatious, and I was beseeched to dismiss the application, and personally condemn the Plaintiffs' Counsel to costs.

The Intervener's Counsel, Mr. Yosa, filed submissions concurring with the Messrs Andrew and Partners. In his submission he raised two concise issues for consideration. First, whether a legal practitioner can act for a former client. While raising no quarrels with the provisions of rule 33(1)(f) and (g) of the ***Legal Practitioners' Practice Rules 2002***, it was submitted that, a practitioner can act for a former client, if the practitioner does possess confidential information or, if there is no risk to breach of confidence. Recourse was had to the learned authors, Charles Hollander Q.C. & Simon Salzedo of the book titled: ***"Conflict of Interest*** 3rd Edition at paragraph 1-002, they submit as follows:

> ***The existing client conflict is to be contrasted with the former client conflict. Where the conflict is between the obligation owed to an existing client and the obligation owed to a former client, there are no competing fiduciary duties because there is generally no fiduciary obligation of loyalty to a former client, although there is an obligation to protect confidentiality, breach of this obligation being classified as breach of a fiduciary duty... here therefore the issue is quite different: does the professional have relevant confidential information obtained from the first retainer? If so, he cannot act for another client in an adverse interest unless he can show that there is no risk of disclosure. The risk must be a real one, not merely fanciful or theoretical.***

Further reference was had to the case of ***Dipak Parmar and Another v. Radian Stores Limited and Another (2015) Z.R Vol. 1 228.*** In that case, a former advocate of the appellant joined another firm that was retained to represent the respondent in the same

matter. The respondent raised a preliminary issue, stating that the advocate for the appellant was acting in conflict of interest and was in possession of confidential information gleaned from the previous retainer. And the Supreme Court held:

> ***The issue has been well explained in the landmark case of*** *Rankusen v. Ellis Munday Clarke,* ***(6) which sets out points which a lawyer should look at and these are: (i) there is no rule that a solicitor cannot act against a former client; (ii) the court can restrain a solicitor by way of injunction from acting against a former client; (iii) the court may accept undertaking from solicitors that they will not communicate confidential information.***
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> ****
>
> ***The most important aspect we gather from the*** *Rakusen case* ***is that the court will protect the confidential information that could have passed between the lawyers and his client, but that does not preclude the lawyer from acting against his former client. The most important issue is for the lawyer to make an undertaking that he/she will not communicate the confidential information held.***
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> ***
>
> ***The question then to ask ourselves as regards the case at hand is whether Ms. Essa possess relevant confidential information connected to this case, ...***
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> ***Looking at the pleadings, we do not see anything of a confidential nature which could be said to have been communicated by Ms. Essa to the respondent. There must be something in the communication between a lawyer and a person seeking restraint which gives rise to trust or stamp it with confidentiality. We do not see it in this case. It must be said that the courts will be slow to interfere with prima facie rights of litigants to choose their lawyers by unnecessarily protecting confidentiality which is not there.***

According to Mr. Yosa, the present case and the other matters under Cause Nos. 2019/HP/0715, 2017/HP/1082 and 2017/HP/1638, were very different. And that no confidential information was shown worth of protection under the doctrine of legal profession privilege. It was submitted that the ***Hotelier Limited*** case should be distinguished from the present case. According to Counsel, in that case, the practitioner had previous dealings with the applicant/plaintiff, and that the information obtained from the plaintiff by the defendant's counsel was unfairly used against the plaintiff.

Second, it was argued that Messrs Andrew and Partners did not have a lawyer-client relationship with what he called the "March 2020 Trustees Faction" warranting the claim of legal profession privilege. The case of ***Access Financial Services Limited and Another v. Bank of Zambia (SCZ No. Appeal No. 104 of 2013)*** was vouched wherein the Supreme Court at page 18 of the judgment held as follows:

> ***We have considered a number of authorities on legal profession privilege. Legal profession communication between a lawyer and his client from being disclosed without the authority of the client. The privilege is intended without the fear that the information contained in those instructions may prejudice the client in future. In an old English case of*** *Greenough v. Gaskell (10)****, Lord Brougham stated the rationale for legal professional privilege in the following terms:***
>
> > ***The importance of the legal professional privilege to administration of justice is therefore, undisputable, of course, as Counsel has rightly conceded, legal***

professional privilege is not absolute. It can be displaced in circumstances that have been concisely settled by case law.

It was thus contended that, the Plaintiffs herein could not assert legal professional privilege on behalf of RKL, because that was the preserve of RKL. It was submitted that a claim of legal professional privilege belongs to a client. Reference was made to the case of ***R v. Horsham District Council and Another, ex Parte Wenman and Others [1994] 4 ALL E.R. 703*** wherein it was held:

> ***One further matter must always be remembered before a court makes such an order, and this is the effect of the incidence of legal professional privilege. This belongs to the lay client, and it is for him, and him alone, to waive.... (see Halsbury's Laws (4thedn reissue) para 526.***

I was thus urged to dismiss the application.

DETERMINATION

I have carefully considered the facts of this application and the arguments thereof, for and against the application. The virtues espoused in rule 33(1) of the ***Legal Practitioners' Practice Rules 2002,*** that a practitioner should not accept brief, if doing so would cause the practitioner to be professionally embarrassed is sacrosanct, and essentially forms the bedrock of the rules on disqualification or recusal.

Therefore, it is undesirable for a practitioner to accept instructions that undermines or compromises his or her professional independence, or which places him or her in abject conflict with the

required dignity and integrity of the profession. This is not only ideal for instilling trust and confidence in his or her client regarding a practitioner's ability and competence to discharge his or her assigned professional work to the required standard, but also necessary for the protection of the profession's noble values and for the good of the general public.

Remarkably, issues concerning conflict of interest are issues that are not only akin to the legal profession. They are issues that seriously cut across all spheres of mankind especially in dispute resolution and good governance. And in some cases breach thereof is criminal in nature. Biblically, the gospels are not short of divine counsel in this regard. Accordingly, in the Book of Mathew 6: 24, it is recorded:

> ***No man can serve two masters, for either he will hate the one and love the other; or else he will hold to one, and despise the other.***

And from the legal and professional spectrum, the subject of conflict of interest or conflict of duty may manifest in several modes. Typically, the general categories are: first, there is what is called an "existing client conflict" meaning a practitioner cannot act for two opposing parties in a contentious matter, unless in a non-contentious matter, such as land conveyance; where it is permissible to act for both the vendor and purchaser at the same time. Second, is a "former client conflict", and third, "same matter conflict"; the former entail a situation whereby conflict may arise between the obligations owed to a former client arising from an

obligation on the part of a practitioner to protect confidentiality in view of a new client.

A "same matter conflict" involving two existing clients is an "existing client conflict"... A "same matter conflict" involving an existing and a former client is a confidential information issue: (see Charles Hollander Q.C. & Simon Salzedo, ***"Conflict of Interest"*** 3rd Edition page 3). There is also what is called "personal conflict", whereby a practitioner's personal interests are in conflict with the interest of his/her client.

In England, in the celebrated case of ***Prince Jefri Bolkiah v. K.P.M.G (A Firm) [1999] 1 All E.R. 517,*** the House of Lords had occasion to extensively deal with the subject of conflict of interest. The leading speech of Lord Millet is instructive, by stating that a practitioner owes a fiduciary duty to his/her client, thus, a practitioner must be loyal to his client. However, Lord Millet went further to state that when, a fiduciary relationship of a professional has come to an end, a practitioner has no obligation of loyalty to defend and advance the interests of his former client, except, the duty of protecting and preserving confidentiality survives the termination of the relationship or retainer. As earlier noted, this was aptly reaffirmed by our Supreme Court in the case of ***Dipak Parmar*** (supra).

Likewise, there is no general prohibition for a practitioner to accept instructions from a former client creating a new retainer or even multiple retainers subsisting simultaneously.

Therefore, it is respectively clear and obvious from the ***Bolkiah*** and the ***Dipak Parmar*** cases that, it is the protection of confidence that is fundamental, rather than the mere fact that a legal practitioner is representing interests adverse to his/her former client. And as earlier noted, an application for recusal involving "former client conflict" may in a proper case be denied, if a practitioner makes a personal undertaking to the Court not to misuse information obtained in the course of the expired retainer against the former client.

I am content that Messrs Andrew and Partners in particular Mr. Kombe, previously represented KNRT in three other court cases, but the subject matters in those cases are strikingly different from the present action. The mere fact that the firm represented KNRT in previous matters is not an automatic disqualification to represent a competing faction with interests in KNRT.

It is important to note that, an application for disqualification must be judged on the merits of each case. It should be remembered that, the Plaintiffs, and by Plaintiffs in the strict sense I mean the second to the tenth Plaintiff, applied for an injunction seeking to restrain the Defendants from holding themselves as trustees of KNRT. The application was dismissed. In dismissing the application, I made the following provisional observations:

It is clear for now that there are two irreconcilable groups seeking control of the Trust, on the one hand the Plaintiffs' group (second to tenth Plaintiffs), and on the other hand the Defendants' group. The Plaintiffs' group alleges that they were duly elected as Trustees on March 25, 2020, but the Defendants allege the elections were illegal. According to the Defendants, it was them that were duly elected as Trustees of the Trust in January 2021. The Plaintiffs allege that the Defendants' assumption as Trustees was illegal. However, it is apparent that the Defendants are practically in control of the Trust. If they were not, the Plaintiffs would have not sought for an interlocutory injunction.

And I went further to hold that:

The object of granting an interlocutory injunction is to preserve the status quo. As rightly noted by the Defendant's Counsel, the question that begs is, what is the status quo in the present case? The Plaintiff's Counsel suggested that the status quo was in favour of the Plaintiffs. The meaning of the word, status quo is: "the existing state of things" (see Dunhill (Alfred Ltd) v. Sunoptics (1978) F.S.R 337). The status quo at least from a de facto analysis as to who at present is in-charge of the Trust tilts the balance of convenience in favour of the Defendants, unless and until the matter is effectually and finally determined.

It is unthinkable to suggest that Messrs Andrew and Partners or and Mr. Kombe is conflicted when their clients, the Defendants are at present *prima facie* the alter ego of KNRT. KNRT is at present administered by the Defendants. It is for this reason instructions seeking legal representation to engage the firm were issued in the name of KNRT. In essence, and without prejudice, the firm is defending the interests of KNRT led by the Defendants. The mere fact

that the second to tenth Plaintiff were the first to issue court process and cite the KRNT as part of the Plaintiffs to the suit, when in fact, the Defendants are presently and practically in charge of KNRT, cannot be used by the said Plaintiffs to argue that the firm is now conflicted.

On the other hand, the fact that the firm previously represented KNRT, is no prohibition to represent its members or alleged office bearers of KNRT sued in their individual capacities over a subject unrelated to previous disputes involving KNRT. Ordinarily, the issue that arises in this situation concerns the risk of breach of confidentiality. And that is the argument by Mr. Hantumbu that, there is a serious risk on the part of the firm or/and Mr.Kombe of unceremoniously divulging to the Defendants privileged information obtained from previous retainers, to the detriment of the Plaintiffs.

It is a settled principle of law that, a legal practitioner has a duty of confidence; to protect the confidentiality of information or matters obtained in the course of the retainer. And such information through the doctrine of legal profession privilege is generally protected from disclosure. The rationale for this was ably stated in the case of ***Access Financial Services Limited and Another*** (supra). Thus, to create an enabling ambiance in our adversarial legal system, in which a client is free to make a full and frank disclosure of all materials facts for effectual legal representation, and for proper administration of justice. Additionally, in the case of ***Seager v. Copydex Limited***

[1967] 2 ALL E.R 415, Lord Denning MR added his voice on the duty of confidence, by stating that:

> ***It depends on the broad principle of equity that he who has received information in confidence shall not take unfair advantage of it. He must not make use of it to the prejudice of him who gave it without obtaining his consent.***

Again with recourse to the case of ***Bolkiah***, Lord Millet further stated that:

> ***It follows that in the case of a former client, there is no basis for granting relief if there is no risk of the disclosure or misuse of confidential information.***

The learned authors of ***"Conflict of Interest"*** Charles Hollander Q.C. and Simon Salzedo wisely submit that: *the risk must be a real one, not one that is merely fanciful or theoretical.* The supposed risk of disclosure of information obtained in confidence, as alleged by the Plaintiffs' Counsel appears fanciful and illusionary. Simply put, it is legally and factually unfounded. In any event, it is unthinkable how Messrs Andrew & Partners would misuse information obtained in confidence from KNRT, if any, to the detriment of KNRT, when the firm's clients, the Defendants are the ones running the affairs of KNRT.

Similarly, conflict of interest or the risk of disclosure of privileged information, if any, is inapplicable to the second to the tenth Plaintiff, because these Plaintiffs have never been clients of the firm, both in terms of existing clients or former clients. The duty of confidence is to a client, either existing or former. It does not accrue where there

is no lawyer-client relationship or a retainer. Therefore, the second to the tenth Plaintiff cannot accrue a reward or benefit of legal professional privilege without a retainer; neither by extension does it accrue to the supposed parallel structure of KNRT believed to be under the control of the second to the tenth Plaintiff.

Lastly, I am mindful that RKL was previously a client of the firm, but on a different matter, unrelated to the present dispute, and crucially it is not a party to these proceedings. Additionally, there is no protest whatsoever from RKL against the firm to support the alleged conflict of interest. As earlier noted, the protection of legal professional privilege is for a lay client, hence the Plaintiffs, in particular, the second to tenth Plaintiff, cannot be seen to take shelter under it, without instructions from the RKL to disqualify the firm from appearing as Counsel for the Defendants. Therefore, the alleged risk of breach of confidence in respect of information allegedly passed to the firm by RKL allegedly detrimental to the Plaintiffs if misused, is unfounded.

I desire to reiterate that RKL is not a party to these proceedings, it is inconceivable to suggest that, because of the former retainer, the firm had with the RKL over a different matter, the firm is automatically conflicted. Even assuming that RKL was a party and on the side of the second to the tenth Plaintiff, that alone, is not sufficient to warrant a disqualification for the reasons I have already stated above; in the absence of hard facts to support the real risk of breach of confidence.

CONCLUSION

In the light of the foregoing, the application is without merit, and stands dismissed with costs to be borne by the second to the tenth Plaintiff. For the avoidance of doubt, the order for costs is not against Mr. Hantumbu, because there is nothing to suggest that this application was a frolic of his own and that it was prosecuted without instructions from his clients, or that it was laced with *mala fide*.

Perhaps, it is opportune to say, I see nothing amiss for court officers to genuinely raise these issues, where there is a real or seemingly perceived conflict of interest. This is imperative to guarantee the purity of justice. Therefore, the Court cannot afford to abdicate its supervisory role over its officers, in this case legal practitioners, or *play possum* to impropriety manifest in form of conflict of duty.

All in all, the application is dismissed. And having not found Mr. Kombe and his firm wanting, they retain their seats at the bar to freely continue representing their clients.

Leave to appeal granted.

DATED THE 13TH DAY OF JANUARY 2023

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THE HON. MR. JUSTICE CHARLES ZULU