

**IN THE HIGH COURT OF ZAMBIA**

**2021/HP/1317**

**AT THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**BETWEEN:**

**IN THE MATTER OF: THE LEGAL PRACTITIONERS ACT  
CHAPTER 30 OF THE LAWS OF  
ZAMBIA.**

**IN THE MATTER OF: SECTION 22(3)(B)**

**IN THE MATTER OF: A REPORT OF THE DISCIPLINARY  
COMMITTEE**

**IN THE MATTER OF: A COMPLAINT AGAINST A LEGAL  
PRACTITIONER**

**BETWEEN:**

**THE LAW ASSOCIATION OF ZAMBIA**

**APPLICANT**

**AND**

**JOYCE CHAAZE MULUNGA**

**RESPONDENT**

**BEFORE THE HONOURABLE LADY JUSTICE P. K. YANGAILO AND  
MR. JUSTICE C. KAFUNDA, IN CHAMBERS, ON THE 16<sup>TH</sup> DAY OF  
JUNE, 2023.**

*For the Applicant: Mr. S. Lungu, SC. – Law Association of Zambia.*

*For the Respondent: Mr. K. F. Bwalya – Messrs. KBF and Partners.*

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## JUDGMENT

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**DELIVERED BY P. K. YANGAILO, J.**

**CASES REFERRED TO:**

1. *George Nalachi Imbewe v The Council of Legal Education* (1985) ZR 10; and
2. *Law Association of Zambia v Gideon Mwewa* – 2007/HP/2002.

**LEGISLATION REFERRED TO:**

1. *The Legal Practitioners Act, Chapter 30, Volume 4 of the Laws of Zambia;*
2. *The High Court Act, Chapter 27, Volume 3 of the Laws of Zambia; and*
3. *The Legal Practitioners (Disciplinary Proceedings) Rules, Chapter 30, Volume 4 of the Laws of Zambia.*

### **1 INTRODUCTION**

1.1 This action was launched by the Applicant, Law Association of Zambia ("LAZ"). The action is against the Respondent, one Joyce ChaaZe Mulunga, who is its member and legal practitioner. The Disciplinary Committee of LAZ, which is established in terms of **Section 4 of *The Legal Practitioners Act*<sup>1</sup>**, found the Defendant guilty of failure to account for money which came into her possession as Counsel, which amounts to misconduct that warrants a practitioner to be struck off the Roll of Practitioners. Accordingly, the Disciplinary Committee recommended that the Respondent should be struck off from the Roll of Legal Practitioners. In terms of **Section 28 (1) of *The Legal Practitioners Act*<sup>1</sup>**, the High

Court of Zambia has the jurisdiction to strike off legal practitioners from the roll and hence, the matter was placed before this Court. Accordingly, this Judgment is in respect of the relief sought by the Applicant that the Respondent be struck from the Roll of Legal Practitioners.

## **2     BACKGROUND**

- 2.1 The genesis of this matter is that the Respondent was a legal practitioner practicing under the name and style of JC Mulunga & Company. The Respondent's client, one Kafwimbi Katongo, who was aggrieved with the Respondent's conduct, lodged a written complaint with LAZ against the Respondent alleging that the Respondent had failed to account for funds amounting to K741,000.00. The Respondent denied the allegations and stated that she had not misappropriated any funds. The complaint was initially heard by the Legal Practitioners' Committee ("LPC") of LAZ, which gave the Respondent several opportunities to appear before it. The Respondent did not appear as requested and the LPC proceeded to consider the complaint in the absence of the Respondent, resulting in the suspension of the Respondent.
- 2.2 Thereafter, the matter was referred to the LAZ Disciplinary Committee ("LDC") and on the date of hearing, the Respondent was again absent. LDC proceeded to hear the complainant's testimony and rendered its Ruling on 27<sup>th</sup>

April, 2018, wherein it established that the Respondent had failed to account for money which came in her possession as Counsel which amounts to misconduct. The misconduct was considered to be so severe as to warrant the Respondent to be struck off the Roll of Legal Practitioners and LDC recommended accordingly.

- 2.3 Consequently, LAZ filed into the High Court a Notice of Motion pursuant to **Order XXX, Rule 15 of The High Court Rules**<sup>2</sup>, on 28<sup>th</sup> October, 2021, seeking an Order to strike out the Respondent's name from the Roll of Legal Practitioners. The Notice was supported by an Affidavit.

### **3 AFFIDAVIT EVIDENCE**

- 3.1 On behalf of the Applicant, Mr. Martin Muyayi Lukwasa, Secretary of the LDC, deposed the Affidavit dated 28<sup>th</sup> October, 2021, whose gist is that Kafwimbi Katongo lodged a complaint against the Respondent before the LPC. At the time, the Respondent was practicing as a legal practitioner in the firm styled JC Mulunga and Company. The complaint is exhibited marked "MML 7". It is to the effect that the Respondent had failed to release funds/proceeds from the sale of Lindex Building, on Plot 8611 Lupenga Road, Lusaka. It was alleged that despite the client providing instructions for the release of the funds two months prior, the Respondent had been very evasive and unprofessional in her conduct and that she provided false

information and excuses as to why she has not released funds per instructions.

- 3.2 In response to the complaint, the Respondent wrote a letter dated 17<sup>th</sup> February, 2016, wherein she indicated that she had been unwell at the time. She stated that the property was being paid for in instalments by the purchaser and that the complainant, who is her client, gave various instructions regarding who to pay the money to, which included children of the family, terminal benefits to former employees and legal fees for other files. She further stated that the exercise was still on going and that there had been some miscalculations in some instances as payments were collected in cash from the Respondent's office and other payments were made into bank accounts. She also stated that as soon as she had recovered she would reconcile her client's account and that there had been no misappropriation of any kind.
- 3.3 After hearing the complaint, the LPC suspended the Respondent from practice and on 25<sup>th</sup> August, 2017, referred her case to the LDC, which consequently heard and determined the matter and rendered a Ruling on 27<sup>th</sup> April, 2018. Therein, it decided that the Respondent had failed to account for money, which had come into her possession as Counsel, which amounts to misconduct. It went on to recommend for the Respondent's name to be



struck off the Roll of Legal Practitioners. The report of the proceedings, evidence and relevant documents were produced in the exhibits marked “MML 1 to 34”.

- 3.4 In response to this application, the Respondent filed herein an Affidavit in Opposition on 16<sup>th</sup> November, 2022, in which she conceded that Kafwimbi Katongo lodged a complaint against her but that it was heard by the LPC in her absence. She averred, *inter alia*, that it was noted that she had deducted her full legal fees for the conveyance when the purchaser made the first payment and since then, she had been very professional in her conduct. She further noted that it was alleged that she had misappropriated her client’s money from the said sale based on her failure to provide an account or report.
- 3.5 The Respondent deposed that when the matter was referred to the LDC, she was not made aware of the proceedings as the LDC did not personally serve her a notice of hearing to enable her attend the disciplinary hearing and present her defence despite her being of fixed abode within Zambia. She stated that her contact details were known by LAZ as they are provided at subscription every year.
- 3.6 It was deposed that despite the LDC hearing the matter *de novo*, neither the Respondent nor the complainant were served with a notice of hearing to enable them present the

case afresh before the LDC. Consequently, the decision was reached without her knowledge.

- 3.7 The Respondent deposed that the finding of the LDC that she had failed to account for money which had come in her possession was based on a report of the LPC and not by way of hearing the complaint afresh.
- 3.8 It was further deposed that contrary to the finding that the Respondent had failed to account for money which came in her possession, she has since reconciled and accounted for the money, which came in her possession and to that effect signed a Memorandum of Understanding with the complainant, dated 27<sup>th</sup> March, 2020. A copy of the said Memorandum of Understanding was produced as "JCM 1". Based on the said reconciliation, it was deposed that this application has become nugatory.
- 3.9 On account of the foregoing, the Respondent stated that all outstanding matters relating to the complaint against her had been resolved and accounts properly reconciled. She stated that had she and the complainant been served with the notice of hearing and given an opportunity to be heard, the said Memorandum of Understanding, "JCM 1", would have been brought to the attention of the LDC.
- 3.10 The Respondent deposed that the proceedings were irregular for failure by the Applicant to personally serve on

the complainant and herself and to hear the matter *de novo*. It was also deposed that there is no basis upon which this Court can rely on to grant the order sought by the Applicant.

#### **4     HEARING**

- 4.1 When the matter came up for hearing on 17<sup>th</sup> March, 2023, learned Counsel for the Applicant, Mr. S. M. Lungu S.C., entirely relied on the Notice of Motion and Affidavit that had been filed in support of his client's case.
- 4.2 The learned Counsel for the Respondent also relied on the Respondent's Affidavit in Opposition, which he augmented orally by submitting, *inter alia*, that since the Respondent's suspension, she has not been engaged in any legal practice. It was submitted that having been suspended for close to 5 years and having reconciled the figures with the complainant, there has been restitution and accountability on the Respondent's part.
- 4.3 It was further submitted that striking the Respondent off the Roll of Legal Practitioners would be too steep a penalty and that the Court should consider other penalties considering that the complaints leading to the Respondent's suspension no longer exist. The holding in case of ***George Nalachi Imbewe v The Council of Legal***



**Education**<sup>1</sup>, was cited in support of the foregoing submission.

4.4 Furthermore, it was submitted that the age of the Respondent and her standing suggest that she has reflected on the seriousness of the matter and is remorseful. It was also submitted that having been a single partner in the firm, she has no other source of income and has engaged herself in the work of Non-Governmental Organisations, helping women between Lusaka and Mongu. Counsel prayed that the Respondent be given a second chance as he believed her character is not the same as it was five years ago.

4.5 In response to these submissions, the Applicant's Counsel acknowledged the case cited and invited the Court to pronounce itself on the issue.

## **5 CONSIDERATION AND DECISION OF THE COURT**

5.1 We have considered the application, the Affidavit evidence, the oral submissions of the parties and the authorities cited.

5.2 The facts in this case are that the Respondent is an advocate practicing under the name and style of JC Mulunga and Company. On 9<sup>th</sup> December, 2015, her client, Kafwimbi Katongo, lodged a complaint against her to the LPC alleging that she had failed to release the

proceeds from the sale of the client's property and that on several occasions she had stated that she had transferred the money when in fact not.

- 5.3 The LPC convened a hearing after receiving the complaint and after the hearing, the LPC requested the Respondent to refund the sum of K741,000.00 to her client within 21 days or suffer suspension. Subsequently, the LPC suspended the Respondent's practising certificate and referred the matter to the LDC.
- 5.4 The matter was determined by the LDC and a ruling rendered on 27<sup>th</sup> April, 2018, in which the LDC recommended the Respondent to be struck off the Roll of Legal Practitioners for misconduct.
- 5.5 From our analysis of the evidence on record, the following are the issues for determination: -
  1. Whether the Respondent was sufficiently notified of the hearing by the LAZ Disciplinary Committee (LDC);
  2. Whether this application has been rendered nugatory by the Respondent's reconciliation of the clients account; and
  3. Whether the Court should grant the order striking off the Respondent's name from the Roll of Practitioners.

5.6 We shall address the issues for determination in the manner they have been identified starting with whether the Respondent was sufficiently notified of the hearing by the LDC. By the Respondent's Affidavit in opposition to the application, she contends that the LDC did not personally serve the notice of hearing on her to enable her attend the disciplinary hearing and present her defence, despite the fact that she was of fixed abode and that her contact details were well known by LAZ.

5.7 **Section 22 (3) (a) of *The Legal Practitioners Act*<sup>1</sup>** provides as follows on the notification to a practitioner of a hearing by the LDC: -

*"The Disciplinary Committee shall give the practitioner whose conduct is the subject-matter of the application an opportunity to appear before it, and shall furnish him with a copy of any affidavit made in support of the application, and shall give him an opportunity of inspecting any other relevant document not less than seven days before the date fixed for the hearing."*  
(Court's emphasis)

5.8 Additionally, ***The Legal Practitioner's (Disciplinary Proceedings) Rules*<sup>3</sup>** provides as follows: -

*"In the case of an application against a practitioner in which, in the opinion of the Committee, a prima facie case is shown in favour of the application, the Committee shall fix a day for the hearing, and the*

***Secretary shall serve notice thereof on each party to the proceedings and shall serve on each party, other than the applicant, a copy of the application and affidavit. There shall be at least twenty-one days between the service of any such notice and the day fixed therein for the hearing.” (Court’s emphasis)***

5.9 From the foregoing, it is clear that the LDC was required to notify the Respondent herein of the date of the hearing to enable her attend it and present her defence. From our analysis of the LDC report, particularly the Ruling of the LDC, it is clear that attempts were made by the LPC to personally serve the notice of hearing on the Respondent. From the Ruling on record, it is clear that the hearing of the complaint was first listed for 25<sup>th</sup> August, 2017, but she did not attend it. Further, in an effort to notify her of the hearing, the LPC served the Respondent by substituted service by advertising in the Zambia Daily Mail Newspaper on 3<sup>rd</sup> and 28<sup>th</sup> March, 2018, but the Respondent still did not attend the hearing.

5.10 Based on the foregoing, it is our view that the LPC, which had notified the Respondent of the hearing, gave sufficient notice of the hearing to the Respondent and as such, the LDC cannot be faulted for proceeding to determine the complaint in the absence of the Respondent. Our finding is further fortified by **Rule 9 of *The Legal Practitioners***

***(Disciplinary Proceedings) Rules***<sup>3</sup>, which provides as follows: -

***"If any party fails to appear at the hearing, the Committee may, upon proof of service on such party of the notice of hearing, proceed to hear and determine the application in his absence."***

5.11 We further note that the Respondent contends that the complainant was not notified of the hearing and that therefore, the LDC relied on the report of the LPC to determine the matter and as such, it did not hear the matter *de novo*. On our analysis of the evidence on record, particularly the Report on the Disciplinary Committee Proceedings, we find that the complainant was present at the hearing and testified as a witness. In our view, the presence of the complainant at the hearing is an indication that the complainant was notified of the hearing and that the LDC heard the matter *de novo* contrary to the Respondent's assertion in her Affidavit in Opposition.

5.12 Based on the foregoing and the fact that there was sufficient proof of service on the Respondent, the Respondent's contention that she was not served with the notice of hearing and that the LDC did not hear her testimony *de novo* lacks merit and is accordingly dismissed.



5.13 We now turn to consider the second issue for determination of whether this application has been rendered nugatory by the Respondent's reconciliation of her client's account. The Respondent, by her Affidavit in Opposition to the application, contends that she has since reconciled her client's account on which the complaint was based and as such, this application to have her name struck off the Roll of Practitioners has become nugatory.

5.14 To support her assertion, the Respondent produced a copy of the Memorandum of Understanding, dated 27<sup>th</sup> March, 2020, executed by the Respondent, on one hand and Muchinga Katongo and Mwaba Katongo, on the other hand, wherein the Respondent and the said Muchinga Katongo and Mwaba Katongo indicated that they had reconciled and resolved the accounts on which the claims were based and that the complainants have no further claims against the Respondent.

5.15 In determining this issue, it becomes necessary to point out that advocates are accountable to high standards of integrity and are prohibited from engaging in behaviour that would amount to professional misconduct towards their clients, the Court and peers. The foregoing position is emphasised in the provisions of **Section 52 of The Legal Practitioners Act<sup>1</sup>**, which provides as follows: -

***"No practitioner shall***

- a) take instructions in any case except from the party on whose behalf he is retained or some person who is the recognised agent of such party, or some servant, relation or friend authorised by the party to give such instructions; or*
- (b) mislead or allow any court to be misled, so that such court makes an order which such practitioner knows to be wrong or improper; or*
- (c) tender, or give or consent to the retention out of any fee paid or payable to him for his services of any gratuity for procuring or having procured the employment in any legal business of himself or any other practitioner; or*
- (d) directly or indirectly procure or attempt to procure the employment of himself or his partner or assistant as a practitioner, through or by the intervention of any person to whom remuneration for obtaining such employment has been given by him, or agreed or promised to be so given; or*
- e) directly or indirectly hold himself out or permit himself to be held out, whether by name or otherwise, as being prepared to undertake professional business for any fee or consideration which shall be less than the scale of charges (if any) for the time being prescribed or approved by the Remuneration Committee; or*
- (f) agree with his client either before, during or after the conduct of any non-contentious professional*

*business to undertake such business for any fee or consideration whatsoever that shall be less than that set out in the scale of charges (if any) for the time being prescribed or approved by the Remuneration Committee; or*

*(g) commit any breach of any of the provisions of Part VIII; or deceive or mislead any client or allow him to be deceived or misled in any respect material to such client; or*

*(i) commit any contempt of court; or*

*(j) contravene the provisions of section fifty-five.”  
(Court’s emphasis)*

5.16 The underlined part VIII in the provision of the law cited above, refers to the responsibility of legal practitioners to keep account of their clients’ accounts. **Section 58** and **Section 60**, which fall under part VIII of **The Legal Practitioners Act**<sup>1</sup> provides as follows: -

*“58. Every practitioner who holds or receives money on account of a client (save money hereinafter expressly exempted from the application of this section), shall without undue delay pay such money into a current or deposit account at a bank or into a deposit account at a building society, to be kept in the name of the practitioner in the title of which the word “client” shall appear (hereinafter referred to as “a client account”). Any*

*practitioner may keep one client account or as many such accounts as he thinks fit:*

*Provided that, when a practitioner receives a cheque or draft representing in part money belonging to the client and in part money due to the practitioner, he may, where practicable, divide the amount of the cheque or draft and pay to the client account that part only which represents money belonging to the client. In any other case he shall pay the whole of such cheque or draft into the client account.*

**60.** *No money shall be drawn from a client account other than-*

*(a) money properly required for payment to or on behalf of a client or for or towards payment of a debt due to the practitioner from a client or money drawn on the client's authority, or money in respect of which there is a liability of the client to the practitioner provided that the money so drawn shall not in any case exceed the total of the money so held for the time being for such client;*

*(b) such money belonging to the practitioner as may have been paid into the account under paragraph (b) or (d) of section fifty-nine;*

*(c) money which may by mistake or accident have been paid into such account in contravention of section fifty-nine."*

5.17 Additionally, **Section 53** of **The Legal Practitioners Act<sup>1</sup>** provides as follows: -

*“Any practitioner who contravenes any of the provisions of section fifty-two shall be deemed to be guilty of professional misconduct, and the Court may, in its discretion, either admonish such practitioner, or suspend him from practice, or cause his name to be struck off the Roll pursuant to section twenty-eight:*

*Provided that-*

- (i) nothing in this section or in section fifty-two contained shall supersede, lessen or interfere with the powers vested in the Court, under or by virtue of section twenty-eight or otherwise, to deal with misconduct or offences by practitioners of whatsoever nature or kind, whether mentioned in section fifty-two or otherwise;*
- (ii) nothing in section fifty-two shall restrict the powers of the Disciplinary Committee under section twenty-two to inquire into or deal with misconduct by practitioners of whatsoever nature or kind, whether mentioned in section fifty-two or otherwise.”*

5.18 From the foregoing provisions, it is clear that legal practitioners have a responsibility to act with honesty, integrity and diligence in dealing with their client's accounts and funds. Any misapplication of clients' money amounts to professional misconduct. In the event that a



legal practitioner is found liable for conduct amounting to professional misconduct, the practitioner would be subjected to discipline. The essence of the foregoing **Sections 52 and 53 of *The Legal Practitioners Act*<sup>1</sup>** is to protect members of the public against advocates who may want to take advantage of them.

- 5.19 In the case before us, a complaint was made against the Respondent that she had failed to account for her client's funds in the sum of K741,000.00, being a portion of the amount that she had received on behalf of her clients from the purchasers of her clients' property. The Respondent failed to account for the said sum notwithstanding that she was requested to do so by her clients on numerous occasions.
- 5.20 From the evidence in support of the allegations, it is clear that through a letter addressed to the Respondent dated 26<sup>th</sup> November, 2015, her client demanded an account of the sums received by the Respondent. Subsequently, the Respondent's client wrote a letter of complaint to the LPC on 8<sup>th</sup> December, 2015 and in response, the LPC notified the Respondent of the complaint.
- 5.21 Approximately a year later, the Respondent in a letter dated, 17<sup>th</sup> February 2016 addressed to the LPC indicated that she was in the process of reconciling her client's account. On 27<sup>th</sup> March, 2020, a Memorandum of

Understanding was signed between Muchinga Katongo and Mwaba Katongo and the Respondent indicating that they had reconciled the account and that her client, the complainant had no further claim.

5.22 In our view, the period of time between the complainant's letter requesting an account from the Respondent, dated 26<sup>th</sup> November, 2015 and the Memorandum of Understanding dated 27<sup>th</sup> March, 2020, shows that it had taken the Respondent approximately four years and eight months to reconcile her client's account.

5.23 We note further that the Respondent's evidence did not provide a satisfactory explanation as to why she had withheld and failed to account for her client's funds. Based on the foregoing, we find that the Respondent's action amounted to professional misconduct, which is prohibited under **Section 52 of *The Legal Practitioners Act*<sup>1</sup>** and entitled the LDC to take action.

5.24 Further, we find that the fact that the Respondent has reconciled her client's account does not exonerate the Respondent from the allegations of misconduct as by this application, this Court has been tasked to consider whether there were any short comings in the disciplinary process of the applicant and whether the finding of professional misconduct against the Respondent in the Report of the LDC warrants her to be struck off the Roll of

Legal Practitioners. Therefore, this application cannot be rendered nugatory by the Respondent's subsequent reconciliation of her client's account. We are persuaded in the position we take by the case of ***Law Association of Zambia v Gideon Mwewa***<sup>2</sup>, where the Court held that no mitigation could dilute a serious offence of misconduct committed by a legal practitioner, since honesty and integrity are at the heart of the legal profession.

5.25 Accordingly, the Respondent's contention that this application has been rendered nugatory by her subsequent reconciliation of her client's accounts lacks merit and is accordingly dismissed.

5.26 We now turn to consider the third legal issue of whether the Court should grant the order striking off the Respondent's name from the Roll of Practitioners. From our analysis of the disciplinary process culminating in the Ruling dated 27<sup>th</sup> April, 2018, in which the LDC recommended that the Respondent be struck off the Roll of Legal Practitioners, we find that the LDC acted in accordance with the law.

5.27 Further, we have not been persuaded by the Respondent's contention that she was not accorded an opportunity to be heard by the LDC and that her subsequent reconciliation of her client's account renders this application nugatory. In our view, the LDC Ruling is sound and serves to uphold

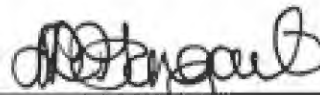
the principles of integrity and honesty that are at the heart of the legal profession. For this reason, we have no intention to interfere with the recommendation.

5.28 Accordingly, we order Ms. Joyce Chaaze Mulunga's name to be struck off from the Roll of Legal Practitioners, forthwith.

5.29 The parties shall bear their own costs.

5.30 Leave to appeal is granted.

**SIGNED, SEALED AND DELIVERED AT LUSAKA THIS 16<sup>TH</sup> DAY  
OF JUNE, 2023.**



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**P. K. YANGAILO  
HIGH COURT JUDGE**



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**C. KAFUNDA**

**HIGH COURT JUDGE**