

IN THE COURT OF APPEAL OF ZAMBIA

APPEAL NO. 186 OF 2022

HOLDEN AT LUSAKA

(Civil Jurisdiction)

01 AUG 2024

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

AND

IN THE MATTER OF: A REPORT OF THE DISCIPLINARY COMMITTEE

AND

IN THE MATTER OF: A COMPLAINT AGAINST A LEGAL PRACTITIONER

BETWEEN:

ARNOLD CHIKOLI

APPELLANT

AND

THE LAW ASSOCIATION OF ZAMBIA

RESPONDENT

CORAM: Chashi, Sichinga and Sharpe-Phiri, JJA

ON: 19th June and 1st August 2024

For the Appellant: N. Okware, Messrs Okware and Associates

***For the Respondent: S.M Lungu, SC. Messrs Shamwana and
Company✓***

JUDGMENT

CHASHI JA, delivered the Judgment of the Court.

Cases referred to:

- 1. Zamguard Security Services Limited v Darson Chitembo
and Others - CAZ Appeal No. 216 of 2020, ZMCA (2022) 93
(15 December 2022)***

2. ***Nickson Chilangwa (Suing as Secretary General of the Patriotic Front Party) v The Attorney General - CAZ Appeal No. 216 of 2022, ZMCA (2024) 98 (3 May 2024)***
3. ***Barclays Bank (Zambia) Limited v Walisko and Company & Another (1980) ZR,9 (HC)***
4. ***Sithole v The State Lotteries Board (1975) ZR, 106***
5. ***Robson Malipenga v The Law Association of Zambia (2018) 1, ZR, 102***
6. ***Bhandari v Advocates Committee (1956) 3 All ER, 742***
7. ***Mususu Kalenga Building Limited and Another v Richman's Money Lenders Enterprises (1999) ZR, 27***

Legislation referred to:

1. ***The Legal Practitioners Act, Chapter 30 of the Laws of Zambia***
2. ***The Law Association of Zambia (Amendment) Act, No 16 of 2006***
3. ***The Evidence Act, Chapter 43 of the Laws of Zambia***

Rules referred to:

1. ***The Legal Practitioners Practice Rules, 2002***
2. ***The High Court Rules, Chapter 27 of the Laws of Zambia***
3. ***The Court of Appeal Rules, Statutory Instrument No. 65 of 2016***

1.0 INTRODUCTION

1.1 This is an appeal against the Judgment of Honourable Lady Justice M. Mapani-Kawimbe and R. Chibbabbuka (Divisional Court of the High Court) delivered on 24th May 2022.

1.2 In the said Judgment, the court upheld the decision of the Law Association of Zambia, (LAZ) Disciplinary Committee (LDC) and ordered that the Appellant's name, be struck off the Roll of practitioners (the Roll) forthwith.

2.0 BACKGROUND

2.1 The background to this matter was well expounded in both the LDC report, dated 1st September 2020, appearing at pages 71-77 of the record of appeal (*the record*) and the Judgment being impugned. However, for ease of reference and clarity, we will recapitulate the necessary background information.

2.2 The Appellant, a legal Practitioner then, running a firm under the name and style, A. Chikuli and Partners, in December 2013, received monies from a client, Steve B. Carriers (the client). The monies were paid to the firm on the instructions of the Appellant, that they be paid

towards liquidation of a debt to Finance Bank Zambia Limited. The monies were held by the firm and not paid to the bank.

- 2.3 The client reported the matter to the police and in addition, lodged a complaint with LAZ - Legal Practitioners Committee (LPC) *vide* a letter dated 20th February 2015. LPC found the Appellant wanting for failure to account and directed that he pays the whole amount of K 111,000.00 within sixty (60) days, failure to which his practicing certificate was to stand suspended and the matter referred to LDC.
- 2.4 The monies were not paid and consequently on 17th April 2018, LPC filed an application before LDC for the Appellant to be struck off the Roll. The application was made by notice accompanied by an affidavit, pursuant to Section 22 (1) (B) of **The Legal Practitioners Act**¹ (*the Act*).
- 2.5 According to the affidavit, it was asserted that the matter came up for hearing on two occasions before LPC, but the Appellant failed to attend both hearings, prompting the committee to proceed in his absence. That upon hearing

the complaint, LPC decided to suspend the Appellant's practicing certificate and referred the matter to LDC.

2.6 At the LDC hearing on 29th November 2019, both LAZ and the Appellant were present. After analyzing the evidence and the submissions, LDC made a finding that the Appellant failed to render an account, which was a clear case of misconduct. They agreed with LPC that, the subsequent making of amends by refunding the money to the client did not exonerate the practitioner. According to LDC, the nature of the proceedings were not to decide on the dispute between the parties, which in this case was resolved amicably, but to consider the allegation of misconduct regarding a failure of a practitioner to account for client's money.

2.7 In arriving at its conclusion, LDC further relied on statutory authorities which outline the need to uphold the dignity and integrity of the profession. Amongst them was Rule 32 (i) (a) (ii) of **The Legal Practitioners' Practice Rules**¹ which provides as follows:

"A practitioner shall not

(a) Engage in conduct whether in pursuit of the profession or otherwise which is

- (i) Dishonest or otherwise discreditable to a practitioner*
- (ii) Prejudicial to administration of justice*
- (iii) Likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.”*

3.0 MATTER BEFORE THE DIVISIONAL COURT

3.1 The Appellant did not challenge the decision of LDC. On 28th October 2021, LAZ filed a notice of motion pursuant to Order 30/15 of **The High Court Rules² (HCR)**, seeking an Order to strike out the Appellant’s name from the Roll.

3.2 After considering the application, the affidavit evidence, the arguments and authorities, the court formulated three (3) issues for determination as follows:

- (i) Whether the Respondent was given an opportunity to be heard by the LPC and LDC;*
- (ii) Whether the disciplinary process under The Legal Practitioners Act may be used when a complaint has been withdrawn;*
- (iii) Whether the court should grant the order striking off the Respondent’s name from the Roll of Practitioners.*

- 3.3 As regards the first issue, the court made a finding that LDC is not an appellate body of LPC. That what the court was concerned with, is whether the Appellant was given an opportunity to appear before LDC, furnished with the complaint and supporting evidence. The court was of the view that the Appellant was given a right to a fair hearing, as he had filed an affidavit in opposition to the complaint and appeared before LDC and was given an opportunity to present his case.
- 3.4 On the second issue, the court considered Section 52 and 53 of the Act and opined that practitioners are prohibited from engaging in behaviour that would amount to professional misconduct towards their clients, the court and their peers. Where they are found liable, they will be subjected to disciplinary action under Section 53. That overall the purpose of Sections 52 and 53 of the Act is to protect members of the public against advocates who take advantage of them or abuse court process without any lawful justification.
- 3.5 The court found that from the date of the complaint, that is 20th February 2015 and the date the client wrote to

withdraw the complaint on 17th April 2018, a period of over three (3) years had elapsed. That though there was an amicable settlement reached between the Appellant and the client, no explanation on why the client's funds were withheld was ever provided. The court made a finding that the Appellant's action amounted to professional misconduct which is prohibited by Section 52, which is cast in non permissible terms and therefore an amicable settlement could not have been used to circumvent the process.

3.6 On the third issue, the court was of the view that cases of professional misconduct against advocates are not similar in circumstances and will differ from one to another. That therefore the decisions can never be uniform and will depend on individual cases. The court was of the view that LDC's ruling serves to instill discipline among advocates while maintaining the principles of the legal profession, that is integrity, honesty, dignity, probity, loyalty and diligence. For that reason, the court refused to interfere with the decision.

4.0 THE APPEAL

4.1 Disenchanted with the Judgment, the Appellant appealed to this Court advancing twelve (12) grounds of appeal couched as follows:

- (i) The learned High Court Judges below erred in law and fact when they totally failed or omitted to pronounce themselves as to whether or not Section 68 of the Legal Practitioner Act was appropriately applicable to the facts of this case in which the only allegation was that of "failure to render an account for cheques" allegedly received by the Appellant and which allegation bordered on insinuations of dishonesty and breach of trust by the Appellant. This was despite alluding to the said Section 68 on page J14 of their Judgment;*
- (ii) The learned High Court Judges below erred in law and fact when they totally failed to make any pronouncement as to whether or not an Accountant's Report pursuant to the said Section 68 was applicable in this case;*

- (iii) *The learned High Court Judges below erred in law and fact when they failed to appreciate the legal fact that failure by the Respondent to call any witness including the original complainant to testify, adduce fresh evidence during the Disciplinary Committee hearing, was fatal to the whole proceedings because the original letter of complaint and the contents of the Respondents affidavit filed thereat were nothing but hearsay evidence since the Respondent alleges that the matter thereat commences de novo;*
- (iv) *The learned High Court Judges below erred in law and fact when they held on page J18 that "we are therefore satisfied from the evidence that the Respondent never wound up his office and as such the LPC could not be faulted for failing to serve notices on the Respondent since he was still at the law firm" and on page J19 where the court held that "It is rather our view that the Respondent who was available at his law firm did not want to be located. Hence, we*

hold that the issue of service of notices by the LPC and notice of suspension is immaterial and hereby dismissed.” When the evidence on record does not suggest that the Respondent was evading service, but that the Respondent had difficulties in locating the physical location of the Appellant’s office and when the law in any case provides for an alternative service in such instances as per Appellants evidence and submission.

- (v) The learned High Court Judges below erred in law and fact when they failed or omitted to take note, on the basis of the record, that the Appellant had actually rendered an account in 2015, and the court consequently failed to apply the Contra Proferentum Rule in favour of the Appellant in relation to the fact that although the Disciplinary Committee alleged “failure to render an account” on page 7 of its final ruling dated 1st September 2020, as the main reason for recommending the Appellant for striking off;*

the Respondent actually admitted and confirmed, in exoneration of the Appellant, on page 5 of its ruling that the complainant had confirmed that the Appellant had actually rendered an account in 2015.

- (vi) The learned High Court Judges below erred in law and fact when they held on Page J24 of their Judgment that "in the language of Section 52 of the Legal Practitioners Act, we find that the Respondents action amounted to professional misconduct and is prohibited by that Section, which is cast in non permissible terms" but failed to specify the exact Rule under Section 52 of the Legal Practitioner Act which the Appellant allegedly violated to warrant the invoking of Section 53 and they instead just reproduced the whole section without specifying the actual rule actually violated and despite the fact that the alleged offence of failure to render an account is not listed under the said Section 52 and or anywhere under the Legal Practitioners Act.*

- (vii) The learned High Court Judges below erred in law and fact when they failed to appreciate the legal fact that an allegation of failure to “render an account for cheques and or money” Imputed fraud on the part of the Appellant and the Respondent should have been subjected to a higher standard of proof than mere balance of probability and the court irregularly ignored the Appellants evidence and submission to that effect.*
- (viii) The learned High Court Judges erred in law and fact when they failed to adjudicate on some key issues presented for their consideration, such as whether or not the Legal Practitioners Committee and the Disciplinary Committee of the Respondent are legally mandated to suspend legal practitioners indefinitely without specifying the duration of such suspension.*
- (ix) The learned High Court Judges below erred in law and fact when they confused the date of withdrawal to be the date of amicable settlement*

and held on page J24 of their Judgment that “after evaluating evidence, we find that from the date of complaint, that is 20th February 2015 and withdrawal on 17th April 2018, a period of 3 years had lapsed. Thereafter, an amicable settlement was reached between the complainant and the Respondent’ when in fact the evidence on record clearly shows that the matter ended in 2015 itself as between the complainant and the Respondent and that the complainant was not aware that his lawyer (the Respondent) was on suspension.

- (x) The learned High Court Judges below erred in law and fact when they held on Page J19 of the Judgment herein that “We concur with State Counsel that the LDC is not an appellate body of the LPC” and when the court held that “we find that the Respondent’s grievance concerning the LPC minutes and transmission of the record to the LDC are inconsequential because the LDC is not appellant body,” when this particular case,*

the Disciplinary Committee of the Respondent acted as a de facto appellate body and its ruling is exclusively premised on the minutes and findings of the legal practitioners committee since no fresh evidence was adduced at the disciplinary committee hearing.

- (xi) The learned High Court Judges below erred in law and fact when they held on page J25 that “thus far, we have established that the evidence adduced yields to the fact that the LDC acted in accordance with the law and subsequently delivered a ruling on 1st September 2020” when the record clearly shows that the Respondent never adduced any evidence to prove the allegation of failure to render an account” to the required standard and also failed to comply with the provisions of not only the Evidence Act and the Law Association of Zambia Act, but also Section 68 of the Legal Practitioners Act.*
- (xii) The learned High Court Judges below erred in law and fact when they held on page J26 that*

“in concluding, we order Mr. Arnold Chikoli’s name to be struck off the Roll of practitioners forthwith” without following legal principles that are applicable when determining matters of professional misconduct by lawyers and when deciding the type of punishment to impose on a practitioner alleged to have committed an offence of professional misconduct and or without following principles of sentencing”

5.0 ARGUMENTS IN SUPPORT OF THE APPEAL

5.1 The Appellant filed heads of argument together with the record of appeal on 19th August 2022, consisting of sixty-two (62) pages which in our view were unnecessarily copious and prolix. We have also noted that most of the grounds of appeal are narrative and argumentative and ought to be expunged as they are in contravention of Order 10/9 (2) of **The Court of Appeal Rules³ (CAR)**.

5.2 The grounds affected are grounds four, five, six, nine, ten and eleven. These grounds are accordingly expunged and shall not be considered. This is in line with our decisions in a number of previous appeals amongst them the cases

of **Zamguard Security Services Limited v Darson Chitembo & Others¹** and **Nickson Chilangwa** (*Suing as Secretary General of the Patriotic Front Party*) **v The Attorney General²**

- 5.3 The surviving grounds are one, two, three, seven, eight, ten and twelve, which we are of the view will adequately deal with the Judgment being impugned, despite the expunged grounds.
- 5.4 In arguing the first and second grounds, it was submitted that the allegation of “failure to render an account for postdated cheques and money”, which was the only allegation before LDC and the High Court, squarely falls under Part VIII of the Act. That under Section 68 (3) of the Act, there is a requirement for the appointment of a person publicly carrying on the profession of accountant in Zambia, who shall enquire into the financial affairs of the practitioner and prepare an Accountants Report. That the Report should then be presented before LDC together with an application for striking off. According to the Appellant, the Report constitutes a key piece of evidence admissible against a practitioner.

- 5.5 It was submitted that the omission to ensure that the Accountant's report was on record was legally fatal to the proceedings. That consequently, the Judgment of the court ordering the immediate striking off of the Appellant should be quashed off for illegality
- 5.6 According to the Appellant, despite the fact that the court at page J14 of the Judgment made reference to Section 68, the court failed to pronounce itself on its applicability. That as such the laid-out procedure was not followed. It was submitted that the failure to comply with Section 68 (3) of the Act, amounts to procedural unfairness and warrants the quashing of the Judgment. Reliance was placed on the case of **Barclays bank (Zambia) Limited v Walisko and Company & Another**³ where it was held as follows:

“Where an Act of parliament has specifically laid down the method by which proceedings must be begun, there is no option as to which procedure to adopt. The plaintiff is bound to commence his action by the procedure laid down by the Act.”

- 5.7 In arguing the third ground, it was submitted that, the court failed to appreciate that matters before LDC

commence *de novo* and as such, LDC should have called for fresh evidence to prove the allegations as provided for under Section 28 of the Act. The Appellant then went on to draw our attention to the provisions of **The Evidence Act**² which in our view was not necessary.

- 5.8 In arguing the seventh ground, it was submitted that the allegation against the Appellant, imputes fraud and dishonesty on the part of the Appellant and therefore a higher standard of proof than ordinary balance of probabilities, needed to be applied. The case of **Sithole v The State Lotteries Board**⁴, was cited where it was held that:

“If a party alleges fraud, the extent of the onus on the party alleging is greater than simple balance of probabilities.”

- 5.9 We were urged to quash the Judgment as according to the Appellant, it failed to meet the standard of proof required where the allegations border on fraud.

- 5.10 In respect to the eighth ground, it was submitted that the issue relating to whether or not the Respondent has power to suspend practitioners indefinitely was brought to the attention of the court in the affidavit in opposition. The

Appellant drew our attention to pages 82-100 of the record of appeal (the record) and submitted that the court failed to make any pronouncement on the issue.

5.11 According to the Appellant, LPC and LDC, have no legal mandate to issue indefinite suspension Orders, as the same are illegal and unconstitutional. It was further submitted that the LAZ Council as the Supreme governing body is only mandated to suspend a Practitioner for a period not exceeding beyond the next annual general meeting (**Rule 6 of the Law Association of Zambia (General Rules)**), and as such no inferior organ of the Respondent has such arbitrary powers.

5.12 In arguing ground ten, the Appellant repeated his arguments under the third ground and reiterated that LDC conducted itself as a *de facto* appellate body. It was submitted that the Judgment of the court should be quashed or reversed because it is not only based on illegality but also on hearsay evidence, just like the ruling of LDC.

5.13 As regards the twelveth ground, it was submitted that it is not every allegation or finding of professional misconduct

which should lead to striking off the Roll. That for the court to adopt disbarment as the most appropriate sanction or punishment, the court should consider both aggravating and mitigating factors, and that after such evaluation, justifiably conclude that there are more aggravating circumstances than mitigating factors, for it to go for the most severe punishment.

5.14 It was contended that in the instant matter, the court ignored the relevant legal rules governing how a court should decide matters involving allegation of professional misconduct by a practitioner before imposing a very inappropriate, harsh and oppressive punishment.

6.0 RESPONDENTS ARGUMENTS

6.1 In response to the first and second grounds, it was submitted that Section 68, which falls under Part VIII of the Act, deals with keeping of accounts by practitioners. That it dictates how practitioners are supposed to maintain accounts in the practice of law in Zambia.

6.2 According to the Respondent, the complaint against the Appellant was not that he had failed to maintain his

accounts, but that he had failed to account for money that had been deposited with him by his client.

- 6.3 In response to the third ground, it was highlighted that the Appellant is attempting to convince the court that there were procedural errors in the manner the complaint was handled before the LPC and LDC. It was submitted that LPC was within its mandate to impose the sanction of suspension as provided for under Section 22 A (2) of the Act.
- 6.4 That similarly proceedings before LDC show that the Appellant appeared before LDC and made submissions in addition to the affidavit in opposition.
- 6.5 It was further submitted that an application made to LDC pursuant to Section 22 (1) of the Act is not an appeal, but an application to determine whether a practitioner should be struck off the roll.
- 6.6 According to the Respondent, the Appellant was not precluded from adducing evidence to defend himself. As regards proceedings before the High Court, it was submitted that the provision under which the application was made, does not provide for calling of fresh evidence.

Our attention was drawn to Section 28 of the Act, which sets out the process to be followed by the court when considering the application.

- 6.7 In response to the seventh ground, it was submitted that there was no claim for fraud against the Appellant. It was further submitted that the decision of the court was based on the evidence before it and the proceedings were done in accordance with the provisions of the Act.
- 6.8 As regards the eighth ground, the Respondent submitted that the matter which was before the court was to determine whether or not to uphold the decision of LDC to strike the Appellant off the Roll. That the question of the lawfulness of the suspension was not an issue before the court. That however, from the provisions of Section 22 A (1) and (2) of the Act, it is very clear that the preserve of suspending a practitioner lies with LPC and not LAZ Council.
- 6.9 In response to the tenth ground, it was submitted that the ground replicates the third ground. Our attention was drawn to rule 42 of **The Legal Practitioners Practice Rules**¹ on the powers of LPC to suspend, where it

considers fit and refer matters to LDC pursuant to Section 22 of the Act.

6.10 It was further submitted that the aforestated provisions clearly shows that the disciplinary procedure against a practitioner is a continuous process and it is therefore not correct to allege that the Appellant was prosecuted twice.

6.11 In response to ground twelve, it was submitted that the governing law in Zambia in matters relating to disciplinary proceedings against practitioners is the Act. The court in hearing the matter relied on the provisions of the Act. It followed the procedure prescribed in the Act, in arriving at its conclusion and recommended that the Appellant be struck off the Roll.

6.12 According to the Respondent, it cannot be argued that the court failed to consider aggravating and mitigating circumstances in the matter, more so that the Appellant did accept the fact that he had misconducted himself.

7.0 ANALYSIS AND DECISION

7.1 We have contemplated the arguments by the parties and the Judgment being impugned.

- 7.2 The first and second grounds attacks the courts failure to pronounce itself on Section 68 of the Act, which the Appellant claims was applicable to the case. It is the Appellant's argument that the allegation against him of "failure to account for postdated cheques and money" squarely falls under Part VIII of the Act, in particular Section 68 (3), which demands that, where there is a complaint, LAZ shall appoint a person publicly carrying on the profession of accountant in Zambia, to inquire into and report on the allegations made.
- 7.3 According to the Appellant, although the court at page J14 made reference to Section 68, it failed to pronounce itself on the same and no reason was advanced by the court.
- 7.4 We note from the onset that the issue of the originating process and the applicability of Section 68 was neither raised before LDC, nor was this raised in the Appellant's skeleton arguments and list of authorities in the court below. The issue was only raised in the Appellant's *viva voce* arguments, in his augmenting of the skeleton arguments. We however note that, the court in summing

up the Appellant's arguments at page J14, line 25 (page 29 of the record) did state as follows:

“He went on to contend that since Section 68 (3) (4) and (5) of the Legal Practitioners Act, on firms accounts was not followed, the applicant’s decision against him was defective. Since Mr. Chikoli was alleged to have misappropriated funds, an accountants report was required. He argued that in the absence of the accountants report, the applicant had no right to proceed against him.”

7.5 Having alluded to Section 68 of the Act, we agree with the Appellant that the court needed to have pronounced itself on its applicability to the matter. Section 68 appears under Part VIII of the Act. Sections 56-61 speaks to what books and accounts shall be kept by a practitioner and keeping of a client's account separately from the business account. It further speaks to what money should be paid into clients account and when it can be withdrawn. Section 62 provides for any person aggrieved by the failure of a practitioner to comply with the keeping of accounts to lodge a complaint with LDC. In that respect, Order 68 (3) requires for the appointment of an accountant who should

prepare a report which should accompany the application to LDC for striking the name of the practitioner off the Roll.

In the case of **Robson Malipenga v The Law Association of Zambia**⁵, the Supreme Court held as follows:

“Section 68 (3) of The Legal Practitioners Act, regulates the manner in which legal practitioners maintain accounts. The power given to the Respondent under Section 68 is generally to conduct preliminary investigations in order to determine whether there is a case of professional misconduct to forward to the disciplinary committee established under the Act.”

- 7.6 It is succinct that the Appellant was not charged under Part VIII of the Act, but under Sections 52 and 53 of the Act as supplemented by **The Legal Practitioners Practice Rules**¹. The application before LDC was correctly brought under Section 22 of the Act. The application was made by notice, accompanied by an affidavit which was the correct mode as required under Section 22 (3) (a) of the Act.
- 7.7 In view of the aforestated, grounds one and two lacks merit and are dismissed.

- 7.8 Ground three, attacks the court's failure to appreciate the legal fact that the failure by LAZ to call any witness, including the original complainant (the client) to testify and adduce fresh evidence was fatal to the whole proceedings.
- 7.9 The court in our view correctly noted that the matter before LDC was not an appeal from the decision of LPC. At LDC, LAZ had stepped into the client's shoes and was now the complainant and applicant before LDC and not the client. At the LDC hearing, the practitioner is furnished with the complainants affidavit and is given an opportunity of inspecting any relevant documents and thereafter a date of hearing is fixed as provided for under Section 22 (3) of the Act. Although not specifically spelt out under the Act, a hearing at LDC, apart from affidavit evidence entails calling of witnesses to adduce oral evidence if necessary. It is therefore an evidentiary hearing.
- 7.10 It will however be noted that at the LDC hearing, the Appellant was represented by Mr Okware from Messrs Okware and Associates, whilst the Respondent was

represented by Mr Mambwe, from LPC, as appears at page 66 of the record (transcript of LDC proceedings). It is evident that the parties agreed with the permission of LDC, to proceed by way of arguments and reliance on the documents before LDC. They agreed to dispense with the calling of witnesses. It is therefore startling how this issue now arises after the court's hearing. In our view, this was a complete afterthought. This ground has no merit and is accordingly dismissed.

7.11 The seventh ground alleges that the court failed to appreciate the fact that an allegation of failure to render an account for money imputes fraud on the part of the Appellant and therefore he should have been subjected to a higher standard of proof. That he was instead subjected to a mere balance of probability and the court irregularly ignored the Appellant's evidence and submissions to that effect.

7.12 It is difficult to comprehend this allegation especially in view of the fact that the Appellant did not address the misconduct before LDC as to why the money was withheld from 2013, when it was entrusted with the practitioner.

As correctly observed by LDC, the Appellant failed to address the substantive complaint that he was paid money by the client to repay a mortgage to the bank, but instead concentrated on highlighting procedural issues before LPC. Although we are of the view that most of the offences leading to suspension, a higher standard of proof should apply. We are guided by the case of **Bhandari v Advocates Committee**⁶, where it was stated as follows:

“in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in Judgment on a colleague who would be content to condemn him on a mere balance of probabilities.”

7.13 The eighth ground alleges that the court erred in not adjudicating on key issues, such as whether or not LPC and LDC are legally mandated to suspend legal practitioners indefinitely without specifying the duration of such suspension.

7.14 A perusal of the affidavit in opposition at page 81-99 of the record and the skeleton arguments at pages 101-116, does

not show that this issue was ever raised before the court. Indeed, a matter not raised in the court below cannot be raised on appeal as ably guided by the Supreme Court in the case of *Mususu Kalenga Building Limited and Another v Richman's Money Lenders Enterprises*⁷. In any case, we are at a loss as to how this will assist the Appellant in his appeal. That notwithstanding, we feel compelled to comment on the powers of LPC and LDC to suspend legal practitioners.

7.15 Both LPC and LDC derive their powers to suspend a legal practitioner from practice from Section 22 A of the Act as amended under **The Legal Practitioners (Amendment) Act**. Section 22 A provides as follows:

“22 A (1) Where an application under paragraph (6) of subsection (1) of Section Twenty-Two discloses a prima facie case of misconduct, the Disciplinary Committee may advise the Practitioners Committee appointed under Section thirteen of the Law Association of Zambia Act, to suspend the practicing certificate of the practitioner to whom the application relates, for such period as the

practitioners committee may determine pending the determination of the case, if the Disciplinary Committee is satisfied that such suspension is necessary in order to safeguard the interest of the public;

(2) Notwithstanding subsection (1) the Legal Practitioners Committee may on its own volition, where it considers it fit, suspend, for such period as the committee may determine, the practicing certificate of a practitioner against whom disciplinary proceedings have been instituted for misconduct and shall submit the matter to the Disciplinary Committee.”

7.16 The aforestated provision is complimented by Section 13A

- **The Law Association of Zambia (Amendment) Act³,**

which provides as follows:

“13 A. The Legal Practitioners’ Committee may, on its own volition or, on the advice of the Disciplinary Committee established pursuant to Section four of the Legal Practitioners’ Act, suspend, for such period as the Legal

Practitioner Committee may determine, the practicing certificate of a practitioner to whom an application under paragraph (b) of subsection (1) of Section twenty-two of that Act, relates, pending the outcome of the case by the Disciplinary Committee.”

7.17 The power to suspend a practitioner is discretionary. It is noted that no time frames have been stipulated under this provision. We do however take judicial notice that most of the suspensions by LPC have been meted out after establishing a *prima facie* case and pending the outcome of the matter and determination of the same by LDC. We can only urge LPC to be diligent and expeditious in referring of the matters to LDC and LDC in disposing of cases, so as to ease the anxiety experienced by practitioners whilst on suspension. All these should be done within reasonable time.

7.18 We note that in this case, the Appellant was found with a *prima facie* case and was suspended by LPC in September 2015, the application by LPC to LDC was only made on 17th April 2018. This conduct by LPC should be condemned. We also note that the matter was only heard

by LDC on 29th November 2019 and the report was only rendered on 1st September 2020.

7.19 Ground twelve attacks the holding by the court and ordering that the Appellant's name be struck off the Roll. According to the Appellant, the court did not follow the legal principles applicable in determining matters of professional misconduct by lawyers, when deciding the type of punishment to impose and/or without following principles of sentencing.

7.20 According to the Appellant, he had an unblemished practice of fourteen (14) years which should have been taken into consideration, coupled with the fact that he had been on suspension for six (6) years. His argument was that the court should have imposed any other punishment apart from striking the name from the Roll as there were no aggravating factors.

7.21 Our view is that, the Appellant does not seem to acknowledge the gravity of the professional misconduct he was charged with. The Appellant's own conduct also added a damning complexion to his case. This case involved client's money. The client had a loan with the bank and

the client had challenges liquidating the loan. The bank took out a mortgage action in court. In an effort to liquidate the loan, the client paid to the Appellant as its lawyer the sum of K 111,000.00 in December 2013. This money was neither paid to the bank nor into court. The complaint was only made by the client nearly two years later on 20th February 2015.

7.22 From the client's letter of withdrawal at page 121 of the record and the letter at page 128 of the record from the Appellant to LAZ, it can be discerned that the refund to the client was only made in the first quarter of 2018. The Appellant endangered the client's property. In addition, as earlier alluded to, the Appellant has never proffered a sufficient explanation as to why he withheld the money for nearly five (5) years.

7.23 We further note that after the determination of the matter by LDC, the Appellant left his fate in the hands of LAZ and the court. Section 22 (4) of the Act provides as follows:

“(4) The practitioner to whom the application relates may, within thirty days of the notification to him of the decision, appeal to the court against any

decision of the Disciplinary Committee under sub paragraph (ii) of paragraph (c) of subsection (3).”

7.24 From the date of the determination by LDC, LPC only moved the court on 28th October 2021, after a year and in the meantime, the Appellant did not appeal. We see no basis on which to fault the court.

8.0 CONCLUSION

8.1 The appeal lacks merit and we accordingly dismiss it with costs to the Respondent. Such costs to be limited to out of pocket expenses.



J. CHASHI
COURT OF APPEAL JUDGE



D.L.Y SICHINGA, SC
COURT OF APPEAL JUDGE



N.A. SHARPE-PHIRI
COURT OF APPEAL JUDGE

