



## PRESS RELEASE

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### MOTION TO IMPEACH PRESIDENT EDGAR CHAGWA LUNGU

The National Assembly of Zambia wishes to inform the general public, and the media on the status of the request by Mr Gary G Nkombo, MP, to move a Motion to impeach President Edgar Chagwa Lungu, lodged in the Clerk's Office on Thursday, 22<sup>nd</sup> March, 2018, by Mr Gary Nkombo, MP.

It will be recalled that on 28<sup>th</sup> March, 2018, Mr Jack J Mwiimbu, MP, Leader of the Opposition raised a Point of Order enquiring on the status of the Impeachment Motion.

In her immediate response, Madam First Deputy Speaker, Honourable Catherine Namugala, MP, construed Article 108 of the Constitution of Zambia, Chapter 1 of the Laws of Zambia, and Standing Order 37 of the National Assembly of Zambia Standing Orders, 2016, and ruled, *inter alia*, as follows:

*"Hon Members, in terms of whether or not the process or the Motion that is being proposed has complied with the Constitutional provisions, yes, it is within these provisions. Therefore, it is in compliance with the provisions of our Constitution. So, in as far that is concerned, it has been complied with. However, this Constitution does not give a time frame within which an Impeachment Motion must be tabled..."*

*Further, the Standing Orders, as provided, do not compel the Speaker to Table the Motion within three days. Therefore, in response to this point of order, I wish to state that there is nothing irregular or illegal that has happened, or that the Speaker's Office has done to undermine the Motion. The Point of Order is, therefore, inadmissible."*

The foregoing ruling by the First Deputy Speaker, in essence, found that the motion complied with the Constitution and, therefore, could be Tabled before the House. As a result of the Ruling by the First Deputy Speaker; four days later, on Wednesday, 3<sup>rd</sup> April, 2018, Mr Robert Chabinga and Mr Henry Mulenga, commenced an action for judicial review in the High Court; in the matter of *Robert Chabinga (As First Applicant) and Henry Mulenga (Second Applicant) v Attorney-General; under cause number 2018/HP/0650.*

In this action, the applicants essentially sought a court order of *certiorari* to quash the decision of the Speaker of the National Assembly, that the Motion before the House was properly before it. The Applicants also sought a declaration that the decision of the Speaker of the National Assembly dated on or about 28<sup>th</sup> March, 2018, to accept the Tabling of the Notice of Motion dated 22<sup>nd</sup> March, 2018, to impeach the Republican President was unconstitutional, and unlawful.

It must be noted here that at the time the First Deputy Speaker made the Ruling referred to above, the Motion to impeach the President had not been placed on the Order Paper. At any rate, it is the same Ruling to the effect that the Impeachment Motion had complied with the Constitutional provisions (governing the impeachment of the Republican President), that prompted the initiation of the case of *Robert Chabinga (As First Applicant) and Henry Mulenga (Second Applicant) v Attorney-General*. Therefore, since there was no Motion placed on the Order Paper for debate, it cannot be a subject of restoration to the Order Paper.

The public may wish to note that Mr G G Nkombo's request raises three pertinent doctrines, namely: exclusive cognisance, judicial review, and sub judice.

(i) **Exclusive Cognisance**

Exclusive cognisance is a doctrine that gives the National Assembly, the power to regulate its own internal affairs, as encapsulated by Article 77 (1) of the Constitution, and section 34 of the National Assembly (Powers and Privileges) Act, Chapter 12 of the Laws of Zambia.

Article 77 (1) of the Constitution provides as follows:

*"77. (1) Subject to this Article and Article 78, the National Assembly shall regulate its own procedure, and make Standing Orders for the conduct of its business."*

Further, section 34 of the National Assembly (Powers and Privileges) Act, provides as follows:

*"34. Neither the Assembly, the Speaker nor any officer shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Assembly, the Speaker, or such officer by or under the Constitution, the Standing Orders, and this Act."*

The preceding provisions mean that, as regard its internal processes, or proceedings, the National Assembly has jurisdiction or power to conduct its proceedings. In the Zambian context, the doctrine of exclusive cognisance was first applied in the case of **Re Nalumino Mundia (1971) Z.R. 70**; in which Hughes, J, observed as follows:

*"The solution gradually marked out by the courts is to insist on their right in principle to decide all questions of privilege arising in litigation before them with certain large exceptions in favour of parliamentary jurisdiction. Two of these which are supported by a great weight of authority are the exclusive jurisdiction of such House over its own internal proceedings and the right of either House to commit and punish for contempt."*

Hughes, J, in the end, concluded that the High Court has no power to interfere with the exclusive jurisdiction of the National Assembly in the conduct of its internal proceedings.

More recently, the doctrine of exclusive cognisance was affirmed in the case of *Chishimba Kambwili v Attorney General 2019/CC/009*, and followed in the case of *Jack Jacob Mwiimbu v Attorney General CAZ/08/271/2020*. In the *Kambwili* case, the Constitutional Court observed, at page J31, as follows:

*"We also note that by virtue of Article 77 (1) of the Constitution, as read together with section 34 of the National Assembly (Powers and Privileges) Act, which we quoted earlier, the National Assembly has exclusive power, and jurisdiction over the conduct of its internal affairs."*

**(ii) Judicial Review**

The doctrine of judicial review gives power to superior courts, to review decisions or actions of a public officer or public body, by examining, in the main, the decision-making process. Two decided cases, namely; the case of *the Attorney General and Speaker of the National Assembly v Ludwig Sondashi (2003) Z.R. 42*, and *Attorney General and Speaker of the National Assembly v The People (1999) Z.R. 186*, demonstrate that, the decisions or actions of the National Assembly, the Speaker, other Presiding officers, and officers of the National Assembly, are amenable to judicial review. It is important, however, to note that, no action can be commenced to challenge a process of the National Assembly, before it is completed, and a decision is made. Thus any challenge, must come after the decision is made or action taken, as the case may be.

**(iii) Sub Judice**

The *sub judice* doctrine literally means: "under judicial consideration". The *sub judice* doctrine is aligned to the law relating to contempt of court. This doctrine relates to public statements that are made in relation to ongoing legal proceedings. The rationale for the *sub judice* doctrine, is to protect the courts from external influence when dealing with legal issues that are before it.

The *sub judice* doctrine, complements the doctrine of separation of powers, which entails that the three arms of government; the legislature, judiciary and executive institutions, function separately or independently; subject of course, to the exercise of checks and balances.

A search conducted by the Office of the Clerk of the National Assembly on Thursday, 10<sup>th</sup> December, 2020, revealed that the *Chabinga* case is still active before the High Court and is, therefore, yet to be determined.

The *sub judice* doctrine, therefore, allows the courts of law to function independently, in much the same way as the doctrine of exclusive cognisance protects the Legislature from interference in the conduct of its internal proceedings. However, whether or not a matter is *sub judice*, is solely at the discretion of the Speaker, and that discretion is exercised according to the merits or demerits, as the case may be, of a particular case.

Thus, it will be recalled that in the Ruling by the Speaker on Hon G G Nkombo's Point of Order on Bill 10, the Hon Mr Speaker stated as follows, at pages 72-73:

*"Finally, to revert to the case of Robert Chabinga and Henry Mulenga v Attorney-General (supra) which I introduced and discussed, in the first part of this Ruling, Hon Members, the House has been unable to consider the Impeachment Motion, because the Motion became sub judice, the moment Mr Robert Chabinga and Mr Henry Mulenga, commenced court action to challenge the Ruling of the Hon First Deputy Speaker, that the Impeachment Motion complied with the relevant constitutional provisions.*

*Hon Members, granted the various authorities that have been considered hitherto, and the precedents set or laid down by the House, it is clear that there is no hard and fast rule regarding the application of the doctrine of sub judice. Each case has to be considered on the basis of its peculiar facts, and merits."*

Accordingly, the Hon Mr Speaker exercised his discretion not to place the Motion on the Order Paper, because the matter had become *sub judice*. In any event, if the National Assembly proceeded to deliberate the Impeachment Motion now, before conclusion of the *Chabinga* case, by the courts of law, there is a potential risk of two conflicting decisions resulting, from the courts of law, and the National Assembly, on the Impeachment Motion.

In view of the foregoing, until the judicial proceedings in the *Chabinga* case are concluded, the intended Impeachment Motion remains *sub judice*. Therefore, the request to restore the Impeachment Motion on the Order Paper, has been declined by the Speaker.



Cecilia N Mbewe (Mrs)

**CLERK OF THE NATIONAL ASSEMBLY**

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National Assembly of Zambia,  
Parliament Road, Olympia Park,  
P O Box 31299,  
**LUSAKA**

Tel: +260211292425-36

Web: [www.parliament.gov.zm](http://www.parliament.gov.zm)

Email: [info@parliament.gov.zm](mailto:info@parliament.gov.zm)