

DNC INTER-UNIVERSITY MOOT COURT COMPETITION

HYPOTHETICAL MOOT COURT CASE

CONSTITUTIONAL CAUSE NUMBER 07 OF 2023

BETWEEN:

ZIONE KABICHI.....1st CLAIMANT

BEN MASHA.....2nd CLAIMANT

-AND-

THE ANTI-CORRUPTION OFFICE.....DEFENDANT

1. Zione Kabichi has recently been suspended as Minister of Technology and Innovation by the President of the Republic of Malawi, Professor Kachile. Zione was appointed Minister of Technology and Innovation in February 2022. Just after her appointment, she posted a status on her Facebook page stating that, *“The introduction of the Ministry of Technology and Innovation is proof that our President is visionary and that we need to use technology and innovation in order to achieve economic growth and reduce poverty. I am honoured that I have been tasked with overseeing this Ministry. I will not let you down my fellow Malawians”*. Shortly after her appointment, the Government launched a “Digital Acceleration Project”. The aim of the project is to expand digital adoption, bring more Malawians online by addressing the major barriers and spearhead a series of interventions that promote digital inclusion. The project is also aimed at leveraging critical enabling digital platforms and data-driven solutions to improve the efficiency of public service delivery and expand the adoption of digitally-enabled services. Finally, the project is aimed at increasing Malawi’s capacity to support digitally-enabled innovation and productivity-gains, by strengthening the local digital innovation and entrepreneurship ecosystem, supporting tech firms to move from start-ups to growth and the adoption of digital technologies in key sectors.
2. Under the Digital Acceleration Project, the Ministry of Technology and Innovation had to run a basic digital literacy initiative. The Ministry did not have the capacity to run the initiative and therefore had to engage private service providers. Under the Public Procurement and Disposal of Assets Act, the Ministry was required to identify the service provider by open tender. Exceptionally, the Ministry can utilise the Single-Source Method under the said Act, if only one supplier has the technical capacity to provide the service, subject to vetting by the Anti-Corruption Office.

3. In view of the above Project, Zione became extremely busy and was constantly traveling within and outside of Malawi. Zione is married to Petro Kabichi, an equally busy businessman. As both Zione and Petro were busy, they barely had time to spend together and they were increasingly growing apart. On one occasion as Zione was travelling to South Africa, she met Ben Masha, a 35year old handsome man with a Bachelor's Degree in ICT who was going to South Africa to attend a training which his employer, Z Bank, had paid for. Zione and Ben exchanged numbers and quickly became too familiar.
4. When Zione and Ben returned to Malawi, they met several times and, within a short period, they started a sexual relationship. They would usually meet by Lilongwe Shopping Mall then Zione would get into Ben's car and then they would go to a lodge on the outskirts of Lilongwe. In no time, Zione started confiding in Ben and told him about the basic digital literacy initiative which had a budget of K2.2 billion. One day, Ben made a phone call to Zione and, among others, suggested to Zione that he could set up a company quickly and put together a team which could provide basic digital literacy trainings under the Ministry's project. Zione laughed it off. However, Ben told her that he was serious and Zione just had to find a way to make it happen. Zione stated that, *"the only way to do that would be to use the Single-Source Method of procurement. But that shouldn't be a problem. As the Minister, I have all the power to decide and no one will question me. Let us discuss in detail in the evening as I am out of town so I will be free to talk"*. In the evening, Zione and Ben discussed in detail over the phone about how they were going to ensure that Ben would start a company quickly, the Ministry would give the contract to his company and Ben would be paid the K2.2 billion meant for the project. Ben asked Zione how she was going to get the approval of the Anti-Corruption Office for single sourcing and Zione laughed and stated that *"we have connections there. We will do this right so that, if anyone tries to investigate us, they will find everything in order and there will be no proof against us"*. Zione told Ben to ensure that, after he gets the money, he *"gives a little something to all crucial people. I will point you to everyone crucial. As for me, you can simply give me K20 million"*.
5. Petro noted that Zione had changed her behaviour and attitude towards him. Unknown to Zione, Petro installed a car tracker in Zione's vehicle when she was out of the country. Petro then noted, using the car tracker, that Zione was constantly parking at the Lilongwe Shopping Mall for hours. One day, when Petro noted that Zione's car was parked at Lilongwe Shopping Mall for hours, he called Zione to find out where she was and Zione told him that she was at her office and was about to get into a meeting. Petro immediately went to Lilongwe Shopping Mall and to his luck, the security supervisor was his old-time friend, Mateyu. Petro noted the days that Zione was parked at the mall using the car tracker and asked Mateyu that he should see the footage for the days that Zione's car was at the Mall. Petro saw the footage and clearly saw that, on all occasions, Zione would park her car then get into Ben's car then they would drive off together. Footage of 17th February 2023 showed that Zione did not ride Ben's car but Ben came out of his car with a briefcase and gave it to Zione. Then Zione got out of the car and

went into Natam Bank, which is located at the mall. Petro was given the footage in a flash disk.

6. Petro was extremely angry but decided not to confront Zione until he found more evidence of an affair. Petro was almost certain that if he had a chance to see what was in her phone, he would find evidence of the affair. One morning, Petro took Zione's phone without her permission as she was in the shower and then he left the house. Petro met a man who specialises in unlocking phones and retrieving data therefrom. Zione's phone was unlocked and Petro found various explicit conversations between Zione and Ben, nude pictures of Zione and Ben in some room, voice notes, and telephone recordings as Zione's phone automatically records all conversations. However, Petro also stumbled upon a telephone conversation where Zione and Ben were discussing the basic digital literacy project and how they were going to flout procedures to ensure that the business is given to Ben. Petro also found Whatsapp messages where Ben informed Zione that he had registered a company for purposes of the project and Zione responded that, "*for all that you do for me, I will see to it that you get this project*". Petro copied all the messages and recordings into a flash disk.
7. Petro filed for divorce against Zione. Further, he went to the Anti-Corruption Office and reported that the Minister of Technology and Innovation, Zione, had committed corrupt practices with Ben in relation to the basic digital literacy initiative. Petro gave the Anti-Corruption Office all the evidence that he found of the affair and discussions regarding the basic digital literacy initiative, that is, information obtained from the car tracker, video footage from Lilongwe Shopping Mall, WhatsApp messages, nude pictures of Zione while with Ben and recordings of telephone conversations. Petro also leaked all these to the public. As the public was outraged, the President suspended the Minister from office and directed the Anti-Corruption Office to prosecute Zione for corrupt practices and "*ensure that she pays for it*". The Anti-Corruption Office quickly arrested Zione and charged her with the offence of corrupt practices by public officer contrary to section 24(1) of the Corrupt Practices Act. The Anti-Corruption Office conducted some investigations, and found evidence that Ben got awarded the contract under Single-Sourcing, provided the services and was paid. The evidence showed that, on 17th February 2023, Ben withdrew K20 million from his bank account and on the same day, Zione deposited K20 million into her account. The investigations however showed that all documents related to the transaction were in order and all officials interviewed confirmed that the contract was awarded to Ben in accordance with the law. When Zione was asked about the K20 million Kwacha deposit into her account, she stated that Ben was repaying a loan to her which he had obtained some time back.
8. In an effort to find direct evidence to be relied on by the prosecution of the case, the Anti-Corruption Office arrested Ben Masha and charged him with the offence of corrupt practices with public officer contrary to section 24(2) of the Corrupt Practices Act. Ben refused any wrongdoing in his first interrogation. Following this, Ben who, unlike his co-accused, was not granted bail, was transferred to Mchinji Police station,

110 Km away from his home (Lilongwe). For four days, Ben had no visitors which resulted in deprivation of food. Due to the conditions in the holding cell invested with bugs, lice and pungent smell, he could not sleep for 3 nights straight. Again, as a result of the Cyclone that had hit the country, there was total darkness in the cells and the taps had run dry hence no drinking water was provided for 2 nights. Ben Masha stated that it was during this period that he endured panga knife slaps, beatings with sticks and long hours of standing while being told that the ‘interrogation’ would stop if he confessed. It was at that point that Ben signed a statement confessing that he gave Zione K20 Million for being awarded the project to provide the digital literacy trainings under the Ministry of Technology and Innovation.

9. In the case by the Anti-Corruption Office against Zione and Ben, the Anti-Corruption Office used the evidence provided to it by Petro and the confession statement made by Ben. The Magistrate Court sitting has found the two with a case to answer, following the Anti-Corruption Office closing its case.
10. Zione and Ben challenge the constitutionality of the Anti-Corruption Office arresting and prosecuting them on the basis of the information provided by Petro, which she argues was obtained in violation of her constitutional right to privacy. Further, she challenges the Court’s admission of evidence obtained under torture (forced confession) and the President’s call to the Anti-Corruption Office to prosecute her and make her pay as a desecration of the right to a fair trial. Zione and Ben successfully obtained the Chief Justice’s certification of the matter as a constitutional matter to be heard before high court judges sitting as a constitutional court.
11. The matter is coming up for hearing before the “Constitutional Court” with Counsel for Zione and Ben arguing that their rights have been infringed and their prosecution based on the evidence available to the Anti-Corruption Office would be unconstitutional. The Anti-Corruption Office opposes their arguments and argue that, in any event, constitutional rights are not absolute. The Anti-Corruption Office submits that two must be prosecuted as corruption must be rooted out of Malawi.

Prepare memorials and make an oral presentation before the bench. In accordance with the directions of the Constitutional Court, the parties should focus their arguments on the Constitutionality of using the evidence that the Anti-Corruption Office obtained from Petro and the Court’s admission of Ben’s forced confession under Section 176 (3) of the Criminal Procedure and Evidence Code.