IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 444 OF 1985

BETWEEN:

THE ATTORNEY GENERAL ..... APPLICANT

- and -

O. E. CHIRAMBO ..... RESPONDENT

Coram:

The Hon. Mr F. L. Makuta, C.J.
The Hon. Mr Justice Unyolo
Jere of Counsel for the Applicant
Chirambo Respondent - Present
Mkumbira - Official Interpreter
Manda - Court Reporter

J U D G M E N T

This is an application made under the provisions of Section 21 of the Legal Education and Legal Practitioners Act by the Attorney General seeking an order that one, O. E. Chirambo, hereinafter referred to as "the legal practitioner", be suspended or struck off the roll of legal practitioners.

At the outset of the hearing the legal practitioner said that he admitted the allegations contained in the application but that he wanted to give an explanation. However, when the court sought clarification from him it appeared that he was in fact denying the matters which constituted the gravamen of the complaints against him.

Before proceeding further, it is pertinent to point out that the application originally came before the former Chief Justice sitting with Unyolo J. and after hearing the witnesses for the applicant and the respondent the case was adjourned, the respondent having said that he wanted to call a witness who was then away to the Northern Region. Further there were some documents the respondent was to produce in evidence. It was agreed the case would resume in September on a date to be fixed by the Registrar. However in the interim the former Chief Justice relinquished his post following the appointment of a new Chief Justice. Subsequently an application was filed by the applicant for an order (a) that the application should

be reheard de novo by the new Chief Justice and (b) that the evidence already given earlier be simply read at the resumed hearing without requiring the witnesses to be recalled. Further the applicant sought directions as to whether Unyolo, J. could advise the new Chief Justice on his impressions as regards the evidence already adduced including the demeanour of the witnesses. The Court was on this aspect referred to two cases namely, The Forest Lake (1968) P. 270 and Joseph Magombo v. Attorney General Civil Cause No. 332 of 1982 (unreported). In the end, it was by consent ordered that the case proceed before the new Chief Justice sitting with Unyolo, J. on the evidence already adduced and any further evidence which would be adduced subsequently. It was also agreed that the learned judge be at liberty to advise the Court on his impressions of the evidence and the demeanour of the earlier witnesses. The hearing then resumed on the 30th June 1986 when the respondent called his witness and closed his case.

The allegations against the legal practitioner fall under three heads. Firstly overcharging a client, secondly deceiving the client and thirdly, misappropriating the client's money. We are satisfied that if a legal practitioner overcharges his client such will amount to conduct tending to bring the profession of the law into disrepute where this constitutes taking unfair advantage of the client. This is not a case where the legal practitioner is said to have agreed an excessive fee with the client prior to the commencement of the proceedings; the allegation is that he charged a grossly excessive fee without any agreement with the client. Agreeing a fee substantially larger than the fee which would be allowed on taxation may or may not be unprofessional conduct, it depends on all the circumstances; but to charge a grossly excessive fee without any agreement is without doubt conduct which tends to bring the profession of the law into disrepute. Secondly, for a legal practitioner to deliberately hide from his client the amount of damages which he received on behalf of the client as a result of negotiations is deception. Thirdly, where a legal practitioner misappropriates his client's money such would be professional misconduct of a gross nature.

We have borne in mind throughout that a high standard of proof is called for where the allegations, as in the instant case, involve an element of deceit or moral turpitude and that it would not be right to condemn the legal practitioner on a mere balance of probabilities. When considering this application we have applied both the onus and the standard of proof applicable to criminal proceedings.

The history of the case is that on or about the 27th November, 1982, a Mr Sili Msamu of Mangochi who we hereinafter refer to as "the client", was struck by a motor vehicle, the property of the Malawi Government and sustained several compound fractures of both legs and of the collar bone. The legal practitioner was instructed on or about

the 20th January, 1983. He entered into negotiations with the National Insurance Company who are Government's insurers, but he was unable to obtain a sufficiently attractive offer from that company upon which the case could be settled. On the 21st October, 1983, the legal practitioner commenced proceedings in the High Court on behalf of the client against the Attorney General under the provisions of the Civil Procedure (Suits by or against the Government or Public Officers) Act and after the writ had been issued the negotiations still continued with the National Insurance Company. These came to finality on the 27th January, 1984 when the Registrar of the High Court by consent entered judgment against the Attorney General for the sum of K12,000 and costs to be taxed or agreed. On the 7th February, 1984, the legal practitioner's clerk collected a cheque for K12,000 from Messrs Savjani and Company who acted on behalf of the Insurance Company. On or about the 14th February, 1984, the legal practitioner travelled to Mangochi and a cheque for K5,000 was given to the client. There is a conflict as regards how the delivery was made. The case for the Attorney General being that there was an interview between the legal practitioner and the client, the case for the legal practitioner is that he left a letter at Mankhwala and Sons' Garage for delivery to the client. A Mr Bakali, a nephew of the client - we hereinafter refer to him as "the nephew" - and the person who on many occasions negotiated with the legal practitioner on behalf of the client, discovered in late May or early June 1984 that the amount paid to the legal practitioner was K12,000. He had interviews with the legal practitioner relating to this. On the 17th July, the legal practitioner wrote to the client enclosing a cheque for a further K3,000 as a final payment. He informed him that the total figure paid had been K12,000 and that he was retaining K4,000 as his costs. No detailed bill was attached - indeed the legal practitioner said in evidence that he had not prepared a detailed account of his solicitor and own client costs and disbursements even for his own information - but it was said that the disbursements were fairly heavy because of numerous journeys between Blantyre and Mangochi. The legal practitioner said that at that time he transferred the K4,000 to his office account and took it as costs. A complaint had been made to the Registrar of High Court and later to the Disciplinary Committee of the Law Society. The Registrar wrote to the legal practitioner on the 31st July and the legal practitioner first knew on the 12th September, 1984 of the complaint to the Disciplinary Committee of the Law Society. The parties in the action were unable to agree the costs awarded by the Registrar and a bill of costs was taxed on a party and party basis on the 10th August, 1984 at K994.50. The certificate of taxation was dated the 7th September and these costs were paid to the legal practitioner by Savjani and Company on the 12th September, 1984. The legal practitioner has said in evidence, and this is materially borne out by the correspondence in particular see exhibit D18 and the annexure thereto, that

the Disciplinary Committee and indeed the law officers intimated to him that he would hear no more about the matter if he paid a further K3,000 to the client. Indeed he says that one of the members of the Committee telephoned him to say that he should pay by instalments if he was unable to pay in one lump sum. His evidence is that he was unable to find the money within the time specified and he says that he sent a cheque to the client in July last year which has not been presented to the bank. The Disciplinary Committee and the law officers can only have made the suggestion that the legal practitioner would hear nothing more about the matter if they thought his conduct was limited to overcharging only - it is inconceivable that the Law Society and the law officers would have been prepared to countenance such a course if they thought the legal practitioner had misappropriated the money.

There has been considerable conflict of evidence as to what happened in February 1984 at Mangochi and as to how the cheque for K5,000 was delivered to the client. It is common case that the legal practitioner travelled to Mangochi. The client in evidence said that the cheque was handed to him personally and that he was told at that time that this was the only money which had been recovered and that because the legal practitioner was sorry for him he was going to make no charge for his services. The legal practitioner's version is that he went to Mangochi with the cheque in a letter. He was unable to find the client at his house and he left the letter with a receptionist at Mankhwala's garage which was the place to where he addressed letters for the client. The legal practitioner called a witness. This witness, one Arthur George Mvula, testified that he accompanied the legal practitioner on the material day to Mangochi. It was, however, the witness' evidence that the legal practitioner handed the cheque to the client's son at the client's house. To that extent, the witness clearly contradicted the legal practitioner's assertion that he left the cheque at Mankhwala's garage with a receptionist. On the other hand, the Court got the impression that the client's recollection on the K5,000 may, to some extent have been confused with what had happened earlier on when there was an offer by NICO to settle at K5,000. Be that as it may, the letter, exhibit D9, which the legal practitioner said accompanied the cheque is a very strange one. We set it out:

Mr Sili Msamu
Mankhwala & Sons Garage
P.O. Box 66
Mangochi

14th February 1984

Dear Mr Msamu,

YOURSELF V. A.G.

We refer to the meeting we had with you at your house when we informed you that the insurers offer was too little to be accepted. The summons

to assess damages has not been heard because we have compromised with insurers lawyers.

We have not considered the effects of the settlement in details. Since you told us on many occasions that you need the money desperately we attach a cheque for K5,000. Some more money will be coming after we have assessed all our fees and costs.

Yours faithfully,

(Signed)

O. E. Chirambo

It seems to us an evasive letter. It is extraordinary that the legal practitioner did not say that he had settled the case at K12,000 and costs to be taxed. We think that the purpose of the letter was to keep the client in ignorance, for the time being in any event, of the amount paid in settlement of his claim and that costs were to be paid by the other side. It is to be noted that the client was not informed of the true position until five months later (see exhibit D12) and then only after the nephew had taken up the question of the payment with the legal practitioner. The nephew, in evidence said that the legal practitioner told him in May or June that he had recovered K5,000 only. The legal practitioner says that such did not happen and that he explained to him that the delay was caused by the necessity to finalise costs. If the legal practitioner had told the nephew that only K5,000 had been recovered, then the deception would have been so positive and gross that we would be inclined to think that he was hiding very guilty conduct. However, there were material discrepancies between the nephew's evidence in chief and that given in cross examination on this very point. In his evidence in chief he said that he did not disclose to the legal practitioner that he knew the K12,000 had been recovered but in cross examination his story was that he taxed the legal practitioner with having recovered K12,000. We think it would be unsafe to accept the version of events given by the nephew.

Having reviewed all the evidence before us we are however satisfied that the legal practitioner deceived the client by deliberately not disclosing to him the actual amount of the settlement. He deliberately wanted to keep the client in the dark yet this was the client's money. This conduct was reprehensible and in our opinion was such as to bring the profession of the law into disrepute.

We now turn to the complaint that the legal practitioner overcharged the client. The evidence is that the client was charged K4,000 in addition to the K994.50 which the legal practitioner received on the taxed bill of costs. The legal practitioner has tried to justify before us his charges

on the basis that his disbursements were heavy, in particular the disbursements incurred in visiting Mangochi and Lilongwe. He said that he made over five journeys to Mangochi but he was only able to give us particulars of five. Firstly, a visit to take instructions, secondly, a journey to take the client to the hospital at Zomba, thirdly to get a police report, fourthly, to get a certificate of conviction from the Magistrate's Court and fifthly, to deliver the cheque in February to the client. It seems to us that two of these journeys were entirely unnecessary as he could have obtained the Police report by writing and the same applies to the certificate of conviction. Indeed one wonders whether these were really necessary as liability was admitted at a vey early stage and the issue was one of damages. Again in evidence the legal practitioner admitted that he visited Mangochi in February because he was travelling on his holidays. We would again disregard this journey. It is also of significance that the legal practitioner was unable to produce to us any detailed bill delivered to the client specifying his charges and disbursements or even any calculations from his own records made in respect of these. The Disciplinary Committee was of the opinion that he should be allowed to retain K1,000 pending taxation of a solicitor and client bill. We also think that such a figure would be sufficient to cover solicitor and own client's costs and disbursements. The legal practitioner recovered K994.50 for party and party costs and the charge of K4,000 on top of this bringing his total costs to almost K5,000 was in our view not justified and the legal practitioner knew or ought to have known that he could not justify such sum. In our judgment the taking of such an unjustified grossly excessive fee and without any agreement with the client was conduct tending to bring the profession of the law into disrepute.

We now turn to the most serious allegation namely, that the legal practitioner misappropriated the client's money. Unfortunately, no books of accounts or other documents relating to the legal practitioner's accounts were, so it seems, produced before the Disciplinary Committee. It would have been open to the Disciplinary Committee to have utilised rule 12 of the Legal Practitioners' Accounts Rules with a view to investigating what was paid into the client's accounts and what was withdrawn therefrom. There was no other evidence on this aspect. The Court was interested to see the said books of accounts and the relevant bank documents, but the legal practitioner gave us the impression that he deliberately did not wish to have the documents in question before the court and that there was something he wanted to hide by keeping the said documents away from the court. He may not have deposited the K12,000 into the client's account at all. To make a long story short, the legal practitioner's conduct on this aspect gives rise to suspicion that he may have misappropriated the money. However, the burden was on the applicant to prove his case beyond a reasonable doubt. Mere suspicion is not enough. We regret, therefore, that the allegation here has not been made out.

In the end, we find the legal practitioner guilty, firstly, of overcharging a client and secondly, of deceiving the client, both of which are, as we have already indicated, conduct tending to bring the profession of the law into disrepute, within the provisions of Section 21(1)(i) of the Legal Education and Legal Practitioners Act.

The applicant seeks the striking off or the suspension or the admonishing of the legal practitioner. In our judgment, an order striking the legal practitioner off the roll would have been justified if it had been proved that he misappropriated the money. Such has not been proved. However, we are satisfied on the facts that what has been proved is nonetheless a serious matter. In our view, the legal practitioner's conduct was highly reprehensible. We cannot condone it. Indeed this court places high importance on the dignity of the legal profession in this country. Accordingly, we order that the legal practitioner be suspended from practising in the country for a period of three years from the date hereof.

Further, we are satisfied that the ruling of the Disciplinary Committee requiring the legal practitioner to pay a further sum of K3,000 to the client and to retain K1,000 only for clients own solicitor costs was reasonable and we order that the legal practitioner do pay the said sum of K3,000 to the client within fourteen days of the date hereof.

Finally, the applicant seeks an order that the legal practitioner pay first the costs of the inquiry before the Disciplinary Committee of the Malawi Law Society and secondly, the costs of this application in this court. Dealing with the first point, it is noted that the proceedings there dragged and some of the meetings were cancelled or postponed without consulting with or informing the legal practitioner. Having considered all the facts we regret we are unable to find any justification for ordering the legal practitioner to pay the costs of the said inquiry. We are, however, satisfied that there is merit in the other request that the legal practitioner should pay the costs of the application before this court. Accordingly, it is ordered that he pays the same, to be taxed if not agreed.

PRONOUNCED in open court this 14th day of July, 1986 at Blantyre.

F. L. Makuta
CHIEF JUSTICE

L. E. Unyolo
JUDGE