

IN THE HIGH COURT OF MALAWI, BLANTYRE
PRINCIPAL REGISTRY

CIVIL CAUSE NO.177 OF 1984

BETWEEN:

THE ATTORNEY GENERAL APPLICANT

and

HARRY MEDSON MGOROZERA CHIUME RESPONDENT

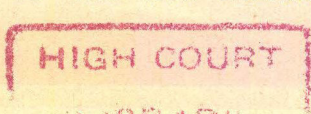
Coram: The Hon. The Chief Justice

Jere, Counsel for the Applicant
Respondent present, unrepresented
Namvenya, Clerk
Phiri, Court Reporter

ORDER

This is an application brought by the Attorney General under the provisions of the Legal Education and Legal Practitioners Act, 1965 (Cap. 3:04) for an order to admonish the respondent on the ground that he has contravened section 21(1)(d) of the Act, and for an order that the respondent pay the costs of the inquiry before the Disciplinary Committee of the Law Society of Malawi of this application.

The circumstances leading to this application are that in 1979 Messrs Wilford Eneya Saidi and Godfrey Govati Banda formed a company called CODCO company which was engaged in debt collection and conveyancing. The company was registered under the Business Names Registration Act (Cap. 46:02) and it had its registered office in Lilongwe. After registration it was realised by the Registrar of Business Names that he had registered CODCO in error because the proprietors were not legally qualified. He therefore had to cancel the registration of the company. After the cancellation the proprietors made arrangements with the respondent, who was operating Mgorozera and Company in Blantyre, to buy the assets and goodwill of CODCO and to open a branch of Mgorozera and Company and further agreed to employ Mr. Saidi and Mr. Banda and pay them salaries. It is alleged that the respondent did not have money with which to buy the business and he therefore arranged that he should clothe the business with his firm's name - Mgorozera and Company and that Mr. Saidi and Mr. Banda would continue to operate as before and would pay themselves salaries and overheads from the proceeds of the new business. It is further



alleged that the respondent arranged with Mr. Saidi and Mr. Banda that they would procure work for his firm and that they would pay him a share of the proceeds of the business. Mr. Saidi and Mr. Banda proceeded on the basis of these arrangements.

In May, 1981 Mr. Saidi and Mr. Banda were brought before the Chief Resident Magistrate's Court, Lilongwe, on a criminal charge of Theft by Servant contrary to section 286(1) of the Penal Code alleging that they had stolen two typewriters valued at K187.00 and K4,059.00, the property of the respondent. They were convicted and sentenced to four years imprisonment with hard labour. On appeal to the High Court the convictions and sentences were set aside.

The respondent has denied that he ever agreed to buy the assets and goodwill of CODCO because there were no assets to be bought. The office and furniture which were used by CODCO belonged to one Issa Hassam. There was no goodwill to be bought because the company had closed. The respondent has stressed the fact that Mr. Saidi and Mr. Banda were employees of Mgorozera and Company and had the High Court which heard the appeal been possessed of the facts, the appeal would not have succeeded on the basis that Mr. Saidi and Mr. Banda were not employees of Mgorozera and Company. The present action is not concerned with the criminal proceedings.

The Legal Education and Legal Practitioners Act under which these proceedings are brought provide as follows:

21(1) The High Court, either of its own motion and after such inquiry as it thinks fit, or on an application made by the Attorney General, may make an order suspending any legal practitioner, or striking any legal practitioner off the Roll, or may admonish any legal practitioner in any of the following circumstances:

- (a) -
- (b) -
- (c) -
- (d) if he directly or indirectly has procured or attempted to procure the employment of himself as a legal practitioner through or by intervention of any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given.

The respondent has admitted in paragraphs 4 and 5 of his affidavit that Mr. Saidi and Mr. Banda had suggested

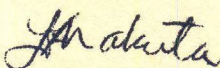
that they should hand over their clients to him but he refused and advised them to return the files to the owners who would decide where to take them. They took the files back to Lilongwe and later most of their clients agreed to come to him. Subsequently Mr. Saidi and Mr. Banda suggested to him that as most of the clients who had decided to come to him were in Lilongwe, he should open up an office in Lilongwe. He agreed to do so after ascertaining that the office and furniture which were used by CODCO belonged to one Issa Hassam and the respondent would be allowed to use them.

It is clear from the above that most of the clients decided to go to the respondent after they were talked to by Mr. Saidi and Mr. Banda. It was, to say the least, at the intervention of the two that the clients made the decision. It would also appear that this was before the question of employing Mr. Saidi and Mr. Banda was agreed upon. I say this because according to paragraph 7 of the respondent's affidavit he decided to employ the two after ascertaining that he would be allowed to use the office and furniture by Issa Hassam.

It is not just a matter of curiosity that after Mr. Saidi and Mr. Banda had been stopped from doing conveyancing and debt collecting that the respondent decided to take them on and continue with what they were doing. He certainly wanted to use their knowledge and have their intervention to procure employment for himself. I am of the view that this is what is envisaged in section 21(1)(d) of the Act. I therefore find the allegations proved.

The Attorney General does not seek the suspension or striking off of the respondent. Perhaps it is because the conduct is not of a criminal nature. It is, nevertheless, clear that the conduct cannot be condoned or overlooked. He is accordingly admonished. The respondent will pay costs of the inquiry by the Disciplinary Committee of the Law Society and also the costs of this application.

DELIVERED in open Court this 1st day of September, 1986 at Blantyre.


F. L. Makuta
CHIEF JUSTICE