



JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 2124 OF 2007**

BETWEEN:

RUSK H. MKWAPATIRAPLAINTIFF

- AND -

**MALAWI BROADCASTING CORPORATION.....1ST DEFENDANT
EUNICE CHIPANGULA.....2ND DEFENDANT**

CORAM: THE HONOURABLE JUSTICE E B TWEA
Mr Kwakwala, of the Counsel for the Plaintiff
Mr Ngutwa, of the Counsel for the Defendant
Mrs V Nkhoma – Official Interpreter

RULING

Twea, J

The plaintiff filed an inter – parte summons for an injunction against the first defendant, Malawi Broadcasting Corporation and the second defendant, Ms Eunice Chipangula. When the case was called counsel for plaintiff raised an objection against the appearance of Mr Ngutwa of counsel, for the second defendant. It was submitted that Mr Ngutwa was at that time Counsel General for the first defendant and that the second defendant was its Deputy Director General. He submitted that Mr Ngutwa was aware of the issues

concerning the case. The plaintiff was pending re instatement by the first defendant and had applied to buy the institutional house in issue, as a sitting tenant. He was ignored and house was, instead, sold to the second defendant as Deputy Director General without following the laid down corporate procedures. He referred this court to a letter Exhibited as Ex RHM2, that was written by Mr Ngutwa. It was his submission that Mr Ngutwa, therefore is not qualified to act for the second defendant.

Mr Ngutwa submitted that there was no conflict of interest. He referred this court to the case of *Ngilazi V Chimbende (t/a Tithokoze Transport) 10 MLR (M) 354.* He contended that at the time he joined the first defendant, a decision had already been made. Further that he only acted for first defendant and not the second defendant. He submitted that in this respect there is no conflict of interests.

This case raises a lot of questions. However, my view is clearly that, as Skinner C. J. said in the case of *Ngilazi (Supra)* following the dictum of Lord Hewart C. J. in *R. V. Sussex, ex p. McCarthy (1) [1924] UK.. B. 259.* “justice should not only be done, but should manifestly and undoubtedly be seen to be done.” It is not disputed that Mr Ngutwa was Counsel General for the first defendant. As a legal person, the first defendant is run by its principal officers, the Director General, the Deputy, who was the second defendant, and other officers at management level. It is also clear, that the control and decision would be made by the Board of Directors to which, Mr Ngutwa acted as the secretary and legal advisor. He was privy to decisions taken at Board and Management level.

In the letter Ex RHM 2, Mr Ngutwa wrote as follows:-

“You are no doubt aware that your continued stay in the house was surrounded by a lot of controversy vis-à-vis the legal issues surrounding your employment with the Corporation up and until the same are fully determined by the court we cannot make any decision in respect to that property.”

He issued this letter in his capacity as Corporate Secretary. Clearly, he was aware of the legal issues and the goings on in respect of the matters in issue. This is also clear from the objections he raised to submissions by plaintiffs counsel as to status of the second defendants appointment and when what decisions were made.

True he was an employee of first defendant, but it is irrefutable that in the ordinary course of his duty he had dealings with both the first defendant Management and Board of which the second defendant was part, and to be fair, he was part of the Management and Board of first defendant.

This case involves the first defendant, the second defendant, as its Deputy Director and the plaintiff as its employee, notwithstanding the legal issues that remain to be resolved. Can it, seriously, be said that Mr Ngutwa is an unconcerned party? The answer, is No. He was in the thick of things, both at Management and Board level. It would be not be proper for the Court to adopt a wait and see approach and analyse what he said in individual letters

or Board minutes. As I had said earlier, justice must be seen to be done. As Skinner, C. J. said in *Ngilazi's case (supra)* that:

“Applying such a principle, I would hold that a legal practitioner must decline or cease to act not only where the interest of a client are prejudiced if the legal practitioner continues to act for the other client but also where the clients interest appear to be prejudiced.”

In this case he was Corporate Secretary for first defendant, of which second defendant was the Deputy Director General and the plaintiff its employee. He cannot choose whose interest he should represent as this would be prejudicial to the others.

I therefore uphold the objection raised and hold that defence counsel for second defendant should cease to act for the second defendant or any of the other two in this case. The case is adjourned generally with leave to restore it to the list to allow the second defendant to engage another counsel.

Costs to the plaintiff.

Pronounced in Chambers this 23rd day of January 2008 at Blantyre.

E. B. Twea
JUDGE