



Library



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL APPEAL NUMBER 7 OF 2008

(Being Matter No. IRC 154 of 2006 in the Industrial Relations Court)

BETWEEN:

JASSANI AND OTHERS

APPELLANTS

AND

TELEKOM NETWORKS (MW) LIMITED

RESPONDENT

CORAM: JUSTICE M.A. TEMBO,

Chiphwanya, Counsel for the Appellants-absent
Anwar Ameen Mussa Counsel for the Respondent
Suzi-Banda, President of the Malawi Law Society
Chanonga, Official Court Interpreter

ORDER

This is the order of this Court pursuant to this Court's exercise of disciplinary powers on its own motion under section 21 (1) of the Legal Education and Legal Practitioners Act.

The origin of this matter is that the appellants, who were applicants before the Industrial Relations Court, commenced this matter in the lower court on 6th June



2006 for compensation for the unfair dismissal they allegedly suffered at the hands of the respondent.

The record shows that Denning Chambers, where Mr Christopher Chipwanya was the last sole practitioner before its closure, acted as co-counsel for the appellants as early as 7th October 2008 on an appeal to the High Court against the lower court's decision finding that there was no unfair dismissal.

Denning Chambers last filed skeleton arguments for the appellants in this matter on 29th October 2013. Since then, this matter could not be heard on the appeal due to absence of Counsel Chipwanya until the last summons taken out by the respondent, through their lawyers Makiyi, Kanyenda and Associates, seeking to dismiss the appeal herein for want of prosecution. This is what brings us to the matters subject of this order.

Sometime last month, this Court was assigned this matter to hear the summons to dismiss the appeal for want of prosecution and this Court set the hearing date of 1st July 2016.

On 23rd June 2016 this Court received communication from Makiyi, Kanyenda and Associates by letter bearing that same date advising that they had failed to effect service of the respondent's summons on the appellant's legal practitioners Denning Chambers because the offices of Denning Chambers are closed. They further communicated that, they were informed and believed the information to be true, that the sole managing partner for Denning Chambers, Mr Christopher Chipwanya, moved to the Republic of South Africa in December 2013 and that his offices have been closed since. They further advised that the court record and their record indicates that the appellants have not appointed new lawyers to act on their behalf and that Denning Chambers are still the legal practitioners for the appellants on record. In these circumstances Makiyi, Kanyenda and Associates sought the guidance of this Court on how to proceed with this matter. They expressed their desire that this matter should be brought to its logical conclusion as it has over delayed and the appellants have not taken any positive steps for over two years.

This Court agreed with the views expressed by the respondent on the delay and in view of the cause of the want of prosecution decided to exercise its disciplinary

powers under section 21 (1) of the Legal Education and Legal Practitioners Act. It is convenient to reproduce the said section 21 before proceeding any further.

(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) if the legal practitioner has taken instructions in any cause or matter except from the party on whose behalf he is retained, or from some person who is the agent of such party;

(b) if he has been guilty of fraudulent or improper conduct in the discharge of his professional duty or has misled the Court, or allowed it to be misled in such manner as to cause the Court to make an order which he knew or ought to have known to be wrong and improper;

(c) if he has made or agreed to make any payment or has consented to the retention of the whole or any part of any fee paid or payable to him for his services, in consideration of any person procuring or having procured the employment, in any legal business, of himself or any other legal practitioner;

(d) if he directly or indirectly has procured or attempted to procure the employment of himself as a legal practitioner through or by the 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;

(e) if, without the previous written consent of the Malawi Law Society, he has made any charges for professional services (where such are prescribed) other than those which have been prescribed as scale charges, or less than those prescribed as minimum charges;

(f) if he has been adjudicated bankrupt;

(g) if he has practised for one month after having been warned in writing by the Registrar that he has no annual licence to practise;

(h) if he has been convicted of an offence punishable with imprisonment for a term of twelve months or more;

(i) if he has been guilty of conduct tending to bring the profession of the law into disrepute; or

(j) if he has failed to comply with any of the provisions of this Act or of any rules made under section 36 (2) (c) or section 44 (4) (a), (b), (c) or (d).

(2) If the Court, on an application under subsection (1), is satisfied that a legal practitioner has been guilty of dishonesty in connexion with his practice as a legal practitioner or in connexion with any trust of which he is a trustee, the Court may order that no payment shall be made without the leave of a judge by any banker named in the order out of any banking account in the name of the legal practitioner or his firm.

(3) Whenever a legal practitioner is struck off the Roll or suspended under subsection (1) the Court may give such directions as it considers proper regarding the possession and control of deeds, wills, documents evidencing title to any property, books of account, records, vouchers or other documents in the possession or control of that legal practitioner or relating to any trust of which he is a trustee.

(4) Any application to the Court made under this section shall be heard by the Chief Justice sitting alone, or sitting together with such other judge or judges as he may direct, but no order shall be made suspending or striking off the Roll any legal practitioner without his being given reasonable opportunity of being heard and of calling witnesses.

This Court decided to exercise its disciplinary powers in this matter and set the matter down for a hearing to get the views of the Malawi Law Society before proceeding any further bearing in mind that Mr Chiphwanya belonged to the Malawi Law Society at the time he acted in this matter. That hearing was set for today.

This Court records its appreciation to the President of the Malawi Law Society, Mr John Suzi-Banda, for personally appearing in chambers before this Court to provide information before this Court on the conduct of Mr Christopher Chiphwanya and particularly as to what the Malawi Law Society has done to safeguard the affairs of the clients of Mr Christopher Chiphwanya who have been left without any legal representation or necessary arrangements for legal representation in his absence.

The President of the Malawi Law Society advised this Court that Denning Chambers has been closed for a long time. He further advised that his office has, since the time of his predecessor, attempted to get in touch with Mr Christopher Chiphwanya with regard to his management of his firm of Denning Chambers. All these efforts have been futile. He advised that in his personal capacity prior to become President he also was approached by other litigants who sought legal representation but his attempts to get in touch with Mr Chiphwanya in regard to matters of those litigants equally proved futile. He resorted to advising such litigants to personally obtain their case files from Denning Chambers but these litigants were unable to get their case files.

The efforts of the Malawi Law Society went further. They took up the matter of Mr Christopher Chiphwanya's management of his firm Denning Chambers with the Disciplinary Committee of the Malawi Law Society constituted under section 37 of the Legal Education and Legal Practitioners Act comprising the Solicitor General, and two other members of the Malawi Law Society. The President advised that the matter stalled at the said Committee due to the absence of Mr Christopher Chiphwanya.

This Court wishes to note that in view of the stalling of the matter before the Malawi Law Society Disciplinary Committee the remedy of protecting the litigant's legal rights lies in this Court. Consequently, this Court would not request

the Disciplinary Committee of the Malawi Law Society to conduct an inquiry herein under section 37 (2)(a) of the Legal Education and Legal Practitioners Act.

The President added that his office does not know where Mr Chiphwanya is but however that he has not renewed his practicing licence.

The President stated that as matters stand it is not far-fetched to imagine that matters for litigants for whom Mr Chiphwanya last acted may be dismissed for want of prosecution in circumstances similar to those obtaining in the present matter.

The President then added that the Malawi Law Society would support this Court's exercise of disciplinary powers in the circumstances.

The grave concern in this matter is that members of the public litigating in our courts and who were represented by Mr Chiphwanya operating as Denning Chambers are now at peril in so far as to their legal rights are concerned. Their legal affairs have been left without any arrangement by Mr Christopher Chiphwanya at the closure of Denning Chambers. Unfortunately, there also seems to be no arrangement of any kind on the part of the Malawi Law Society to deal with the situation and save the litigants from peril to their legal rights.

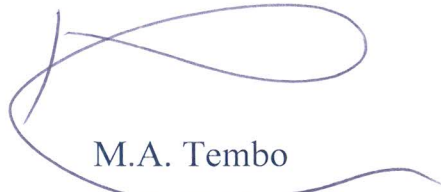
In view of the foregoing, this Court has decided to exercise its powers of its own motion under section 21 (1) of the Legal Education and Legal Practitioners Act to hold an inquiry as to the conduct of Mr Christopher Chiphwanya in the management of his law firm styled Denning Chambers. To that end, it is ordered as follows.

A notice shall issue for Mr Christopher Chiphwanya to show cause why disciplinary action should not be taken against him for having conducted himself in a manner tending to bring the profession of the law into disrepute namely by closing his legal firm of Denning Chambers without making any arrangements for the affairs of his clients in this matter contrary to section 21 (1)(i) of the Legal Education and Legal Practitioners Act. The notice shall be carried once in the Daily Times and Nation Newspaper at the expense of this Court and the Registrar shall arrange for the same.

The Malawi Law Society shall submit on the notice too which is set for hearing at 9.00 a.m. in open court at Blantyre on 20th September 2016.

Mr Christopher Chipwanya and the President of the Malawi Law Society have up to 30th August 2016 to file affidavits as well as skeleton arguments on the notice. The same applies to filing of any preliminary applications.

Made in chambers at Blantyre this 4th July 2016.

A handwritten signature in blue ink, consisting of a large, stylized loop that starts on the left, goes up and over, then loops back down and to the left, ending with a long horizontal tail that extends to the right.

M.A. Tembo

JUDGE