

Malawi Judiciary

Library



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MISC.CIVIL CAUSE NO. 82 OF 2015**

**IN THE MATTER OF THE RENEWAL OF PRACTICING  
LICENCE FOR DAVIDIA NOEL NYASULU**

**CORAM : HONOURABLE CHIEF JUSTICE NYIRENDA, SC**

Gondwe, Counsel for the Petitioner

Kumichongwe (Mrs.) Counsel for the Attorney General

Caetano, Counsel for the Malawi Law Society

Mthunzi (Mrs.), Recording Officer

Mwafulirwa (Mrs.), Principal Personal Secretary

**RULING**

Before me is an application pursuant to section 23 of the Legal Education and Legal Practitioners Act Cap 3:04 for late renewal of the applicant's annual licence, a period of six months having lapsed after the expiry of his last licence.

The application comes with all relevant documents as to the applicant's tax obligation and membership fee payment to the Malawi Law Society.

Ordinarily the application should readily be allowed but the Attorney General and the Malawi Law Society have raised objection mainly on the ground that the applicant continued to practice after his annual licence had expired.

By the affidavit of Suzi Banda, Chairman of the Malawi Law Society, it is deponed that the applicant is not a fit and proper person to be issued with a practicing licence because he went on to practice without a licence against the express provisions of law regulating practice.



Both the Attorney General and the Malawi Law Society urge that if the application were to be granted then it must be upon strong admonition of the applicant and or imposing a penalty under section 24 of the Act.

I have two difficulties with the position by the Attorney General and the Malawi Law Society. The first one is that section 24 of the Act is penal. By section 24(2) thereof it is clear that a prosecution must be undertaken with the consent of the Director of Public Prosecutions upon which a penalty might be imposed.

Secondly, it is on record that the Malawi Law Society received from the applicant membership fee, in a way acquiescing and facilitating the applicant's application for renewal of his licence. It would not lie in the Malawi Law Society, in that event, to then object to the application for renewal of licence.


I can well understand the dilemma of the Malawi Law Society in that it would not have the capacity of disciplining someone who is not their member after the expiry of a practicing licence. But surely the Attorney General would prosecute for violation of section 24 generally and prevent instances of practicing without licence.

It is urgent that we look at the regulating framework and put in place more stringent measures against those that practice without licences because that is obviously a disgrace to the profession apart from such lawyers being a danger to those they purport to represent.

My discretion in the matter before me and in the nature of the application and the provisions of section 23, unfortunately, is restricted to the reasons why the licence was not timely renewed. Reluctant as I might be, I would allow this application. While I cannot impose a penalty under section 24 without a prosecution, I believe that it is within a courts inherent authority, in an attempt to preserve professional integrity, that the applicant be strongly admonished for conduct that is glaringly unprofessional.

I would hence strongly admonish the applicant and warn of the possibility of prosecution if his unprofessional misconduct became a habit.

**MADE** in Chambers this 9<sup>th</sup> day of August, 2016, at Blantyre.



Andrew K. C. Nyirenda, SC  
**CHIEF JUSTICE**