



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY**

JUDICIAL REVIEW CAUSE NO. 3 OF 2019

THE STATE

AND

INSPECTOR GENERAL OF POLICE 1ST DEFENDANT

THE COMMISSIONER GENERAL

OF THE MALAWI REVENUE AUTHORITY 2ND DEFENDANT

***EX-PARTE*: MUKHTAR KHAN CLAIMANT**

CORAM: HON. JUSTICE R. MBVUNDULA

Jumbe, Counsel for the Claimant

Kambumwa, Counsel for the 2nd Respondent

Chimang'anga, Official Interpreter

RULING

Scope of the present application

An application was set down before me on 17th July 2019 whereby the 2nd defendant sought an order to discharge and/or vacate an order earlier on granted to the claimant to apply for judicial review and a consequential order staying a decision by the 2nd defendant demanding customs and excise duty and penalties for a motor vehicle the claimant bought from a third party, in respect of which the 2nd defendant alleges duty evasion.

The 2nd defendant then filed a notice of preliminary objection against the appearance of Mrs Violet Jumbe and/or her legal firm, Maganga & Company, on the ground that

Mrs Jumbe who filed the documents in the present proceedings and whose appearance in the court at the granting of the permission to apply for judicial review and the consequential order did not have a valid legal practitioner's licence for the practice year 2019 to 2020.

Submissions

a) for the 2nd defendant

Counsel for the 2nd defendant cited section 31 of the Legal Education and Legal Practitioners Act submitting that the same restricts persons entitled to practice as legal practitioners to those holding a current legal practitioner's licence, and that any person not having such a licence is not entitled to act as a legal practitioner. Counsel further mentioned that the section makes it an offence for anyone not so entitled to act as such.

Counsel informed this court that he carried out a due diligence exercise by inquiring with the Malawi Law Society as to whether Mrs Jumbe was duly licenced to practice during the year under reference and the response from the Malawi Law Society was in the negative. Counsel said that he further checked whether Violet Jumbe's name appeared on the list of currently licenced legal practitioners which was published on 10th May 2019 but it did not appear.

b) response

Mrs Jumbe's response was that the issue of the practice licence had been submitted to the Honourable the Chief Justice and, in her own words, "the process had been complied with". She went on to state that at the time the orders were being made in May 2019 what remained was a letter from the Malawi Law Society "as the necessary process had been completed in May and April". Her application to the Chief Justice, she said, was made in April, but because the application was made *ex parte*, the Honourable the Chief Justice ordered that it be made *inter partes*, which she had since done.

The legal position and court's determination

Section 30 (4) of the Legal Education and Legal Practitioners Act No 31 of 2018 stipulates that a legal practitioner shall not be entitled to practice unless he has had issued to him a valid licence to practice. Section 31 of the Act declares it an offence punishable by a fine and imprisonment for one who is not entitled to practice as a legal practitioner to act as such. The acts which such a person is specifically

prohibited to do include the commencement, carrying on or defending an action, suit or other proceedings in the name of any person or in his own name, or doing any act required by law to be done by a legal practitioner in a court: s 31 (1) (a).

Under section 30 (6) it is provided that where a legal practitioner does not renew his licence within six months after its expiry, the licence shall only be renewed with the consent of the Chief Justice, upon application for renewal by the legal practitioner giving reasons, by an affidavit, why the licence was not renewed on time. It is, presumably, though not expressly stated, under this provision that the application to the Chief Justice alluded to by Mrs Jumbe was made.

In the case *T A Kilipula v H Mwantende & 4 Others* [2007] MLR 401 the principle appears that where a non-holder of a current legal practitioner's licence commences an action, the action is not voidable if the litigant somehow knew or had reason to believe that the lawyer was without a current licence to practice. Having noted that in that case there was no suggestion that the respondent knew that his lawyer had no current practicing licence, the court held that the action should not be avoided. More recently, in *Haji Abdul Wahab Jagot and 2 others v OG Plastics Industries (2008) Limited and another* Commercial Cause No 64 of 2019 (in the Commercial Division Blantyre Registry) where the 2nd defendants were represented by a legal practitioner who had no current practice licence, the court granted, inter alia, an order that the 2nd defendant's defence and all process taken out by that legal practitioner and/or her firm or any of her agents on behalf of the 2nd defendant to be struck out with costs and that judgment be entered for the claimants in default of defence as against the 2nd defendant whom the legal practitioner purported to represent in that action.

I am of the opinion that the principle in *Kilipula's case* ought to be considered alongside a further principle which counsel for the 2nd defendant herein touched upon in reply to Mrs Jumbe's response. Counsel submitted that the claimant ought to have exercised due diligence in his selection of a legal practitioner to represent him, who must have had a current practice licence, by consulting the official list which gets published by the Malawi Law Society in local newspapers. Counsel's submission here touches upon the requirements of section 34 (1) of the Legal Education and Legal Practitioners Act requiring the Malawi Law Society to publish each year in the *Gazette* and in at least two newspapers with the widest circulation a list of all legal practitioners licenced to practice the profession of the law during that year. I take judicial notice that in the year under reference the Malawi Law Society did publish such a list. The relevant principle which, in my view, must also be taken

into account is that a notice published in the Gazette or a newspaper is a notice to the world: *In the matter of Cromington Clothing & Textile Co Ltd* [2000-2001] MLR 157; *Mtambo v Nation Newspapers Limited* [1999] MLR 256. In other words the contents of such a notice is deemed at law to have come to the notice of all persons. In view thereof, coupled with the principle that an action may be avoided if the litigant represented by a legal practitioner without a valid licence knew or, ought to have known, that the lawyer was without a current licence to practice, I am the view that where the list of licenced legal practitioners was, as in the present case, duly published under section 34 (1) of the Legal Education and Legal Practitioners Act such knowledge is imputed upon any and all persons. Therefore, in my view, a person seeking the services of a legal practitioner must consult the published list, or fail or neglect to dos so at his own peril.

I have accorded due consideration to the submission by Mrs Jumbe that the issue of the renewal of the practice licence was submitted to the Honourable the Chief Justice, as well as her assertion that “the process had been complied with”. In my reading of the relevant provision of the Legal Education and Legal Practitioners Act, namely, section 30 (6), however, I find nothing to the effect that the mere submission of an application to the Chief Justice authorises one to resume practice. In my understanding, it is only when the licence is “renewed with the consent of the Chief Justice”, which is still outstanding, that one may resume to practice.

I am, in the circumstances of this case, inclined to follow the approach taken in the *Haji Abdul Wahab Jagot case* and order that all the processes undertaken on behalf of the claimant herein by Mrs Jumbe and/or her legal firm, Maganga & Maganga be struck out, and consequently that the permission to apply for judicial review and the consequential order of stay be and are hereby discharged and/or vacated with costs.

Made in chambers at Blantyre this 13th day of August 2019.


R Mbvundula
JUDGE