



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

**IN THE MATTER OF SECTION 21 (1) AND SECTION 21 (1)(I) OF THE
LEGAL EDUCATION AND LEGAL PRACTITIONERS ACT AND**

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

Victor Jere, Counsel for Mr Christopher Chiphwanya
Mankhambera, Court Clerk

ORDER

1. This is the order of this Court rejecting to entertain Mr. Christopher Chiphwanya's application filed on 3rd February, 2022 seeking to set aside the order of this Court made way back on 20th September, 2016 barring Mr. Christopher Chiphwanya from practicing the law in Malawi on account of his unprofessional conduct, namely, jeopardizing his clients' legal rights by his

departure from this jurisdiction and abandoning his clients without making any arrangements relating to his clients' legal representation in this and other matters.

2. Counsel Victor Jere for Mr. Chiphwanya filed the application with notice seeking that this Court set aside its order of 20th September, 2016. It is not indicated on the application as to whom the notice is intended. The application is supported by the sworn statement of Counsel Victor Jere.
3. The case of the Mr. Chiphwanya is that he was never given a reasonable opportunity to be heard before being disbarred from practice. He asserts that he was outside the jurisdiction then. He asserts further that the several publications in the national newspapers, in 2016, of the hearing of the notice to him to show cause why he should not be disbarred for abandoning his clients herein which preceded the disbarment did not amount to him being given a reasonable opportunity to be heard.
4. He also asserts that this Court had no jurisdiction to discipline him and that such jurisdiction rests with the Chief Justice.
5. This Court will not entertain the application on account of the fact that it performed its duty in this matter and it is now *functus officio*. Having taken note of the unprofessional conduct of Mr. Christopher Chiphwanya in 2016. And having heard the Malawi Law Society on the unprofessional conduct of Mr. Christopher Chiphwanya in 2016. And also having published this Court's notice to Mr. Christopher Chiphwanya in both the Daily Times and the Nation Newspapers in 2016, this Court was left in no doubt that it had done all it could to bring the matters to the attention of Mr. Christopher Chiphwanya given that he had left this country without making any arrangements and this Court had to deal with him at his last known address being this jurisdiction.
6. This Court did not hold the view that in the foregoing circumstances it had to venture on the errand of tracking down Mr. Christopher Chiphwanya beyond this jurisdiction. It was reasonable to presume that he had to have knowledge of the matters herein after publication of such matters nationwide in this jurisdiction.
7. This Court was then also satisfied that it had jurisdiction to entertain the disciplining of Mr. Christopher Chiphwanya as provided for under section 21 of the Legal Education and Legal Practitioners Act. In fact, it is only when an application to discipline a legal practitioner is made that the Chief Justice has

to sit. There was no such application before this Court in view of the fact that this Court was dealing with the matter of discipline of its own motion.

8. The relevant provision under which this Court acted in 2016 is reproduced being section 21 of the Legal Education and Legal Practitioners Act:

(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.

9. This Court therefore properly exercised its statutory function in this matter after hearing the Malawi Law Society. It also gave a reasonable opportunity to Mr. Christopher Chiphwanya to be heard in 2016. This Court then considered the grave professional misconduct in question and made its determination herein resulting in the disbarment of Mr. Christopher Chiphwanya.

10. In the foregoing circumstances, this Court performed its function in 2016 and cannot now in 2022 be called upon on an application to reopen the matters it dealt with to finality in 2016. Once a matter is heard and a final decision is made in a matter the Court becomes *functus officio* meaning that it has done what it was supposed to do and cannot be called upon to reconsider the same issues a second time. See *Rep v Mphande* [1995] 2 MLR 586 [HC] at 588.

11. For the foregoing reasons, this Court cannot entertain the application filed by Counsel Victor Jere on behalf of Mr. Christopher Chiphwanya herein. The application is rejected accordingly and cannot be entertained.

12. For the application herein to be filed in 2022 for matters dealt with to finality in 2016 appears to be an abuse of the process of this Court and is an absurdity that would make a mockery of our already overstressed justice system.

Made in chambers at Blantyre this 8th February, 2022.

M.A. Tembo
JUDGE