

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MISCELLANEOUS CIVIL CAUSE NO. 23 OF 1994



BETWEEN:

THE ATTORNEY GENERAL PLAINTIFF

- and -

H. M. M. CHIUME DEFENDANT

CORAM: THE HON. THE CHIEF JUSTICE

T. Chirwa, Counsel for the Defendant
Mkwepu, Official Interpreter

R U L I N G

This is an application to set aside judgment which was entered on 9th of June, 1994 barring the applicant from practising as a legal practitioner. That order was made on the application by the Attorney General. The applicant did not appear at the hearing but this Court was satisfied that the applicant was aware of these proceedings which had earlier on been adjourned at his instance.

Mr. Chirwa for the applicant now contends that the Order should be set aside because there are good reasons why the applicant failed to attend the hearing of the application by the Attorney General. He has submitted that the applicant was out of the country and that he had informed the Attorney General of his absence and that it was therefore surprising that the Attorney General prosecuted the application when he knew that the applicant was outside the country. The reasons why the applicant failed to attend the original application are fully set out in the Affidavit in support of this application.

The general principle is that the rules of the Supreme Court as to time must be observed and if substantial delay occurs without any explanation being offered the court is entitled, in the exercise of its discretion, to refuse extension of time. Before a court can extend time it would need to be satisfied that there was an acceptable explanation for the delay. If there is no acceptable explanation the court must consider the issue of whether prejudice was unlikely to occur.



Mr. Chirwa concedes that this application comes well after the seven days which Order 35 Rule 2 stipulates. He has submitted however that the Court has a discretion to grant the order even if the application was brought outside the seven days laid down by the Order.

I have considered the submissions which Mr. Chirwa has made on behalf of the applicant and I have also carefully studied what the applicant has stated in his affidavit in support of the application. I am satisfied that the explanation given is not a reasonable one. The applicant was well aware that proceedings had been instituted against him and he should have made enquiries when those proceedings were coming to Court and what had come of them. Furthermore, this application is being brought to court almost a year after the Order barring the applicant was made. There is no explanation for that delay to bring this application other than saying that the applicant was outside the country. The rule requires that an application must be made within 7 days of the trial. There was substantial delay to bring this application to court and there is no acceptable explanation for the delay to bring this application a year after the original order was made. Although prejudice is unlikely to occur if I granted the application the provisions of the Supreme Court as to time must be observed where, as it is here, no acceptable explanation is given. I would therefore dismiss this application.

MADE in Chambers this 26th day of September, 1996, at Blantyre.



R. A. Banda
CHIEF JUSTICE