



**REPUBLIC OF MALAWI**  
**IN THE HIGH COURT OF MALAWI**  
**CIVIL DIVISION-PRINCIPAL REGISTRY**  
**PERSONAL INJURY CAUSE NUMBER 1023 OF 2021**  
**(Before Honourable Justice Tembo)**

**BETWEEN:**

**ABDUL RAHMAN.....CLAIMANT**

**-AND-**

**PETER PATRICK.....1<sup>ST</sup> DEFENDANT**

**COOPERATIVES INSURANCE COMPANY LTD.....2<sup>ND</sup> DEFENDANT**

**CORAM:** His Honour, Elijah Blackboard Dazilikwiza Pachalo Daniels,

Mr. Ameen Anwar. Mussa, Counsel for the claimant,

Counsel for the defendant, Not present

Mr. Mathanda, Court Clerk

Mr. Makombe, Court Official, Present,

**ORDER ON RECUSAL**

1. He walked in the sanctuary of my chambers in fury and unannounced. He refused to calm himself down as he entered the doors of my sacred chambers without indeed a knock. A while later, the learned Counsel Ameen Anwar Mussa, just stood up and essentially intimidated this Court, with a threat that immediately after the sad encounter with him, he was directly going to meet the honourable Registrar about his application which is before me. Clearly, when he uttered these words, the distinguished and learned Counsel, implied that he was going to speak to the "boss". Thus, he stood up without even bowing in respect as is required by the profession or indeed seeking permission to leave. I mean, it was obvious the

Court would be ambitious to think that any permission would be sought to that effect.

I mean, the learned Counsel forcefully banged the door or indeed let the door to so bang uncontrollably as he went out of my chambers. This was witnessed by Mr Mathanda and Mr. Makombe, our Court officials. For a fact, brevity will face severe injuries. But I must say, such injuries inflicted on the spirit of brevity will be necessary ones so that the message is profoundly made clear that when Counsel appears before this Court or indeed any Court, he must reconsider how he should conduct himself.

Suffice it to say that, the learned Counsel was emotionally charged and indeed displeased with what he termed unreasonable delay and non-attendance by this Court on his enforcement application, which he brought under Order 28 of the COURTS (HIGH COURT) (CIVIL PROCEDURE) RULES, 2017 (herein referred to as CPR 17). Ordinarily, the matter is before Honourable Justice Tembo, and it is now before me to consider his without notice enforcement application as Counsel herein applied. I wish to state at the onset that when the enforcement application came, I entertained it and I worked on the application to check whether the application was ready for attendance by the Judge. This I did on the 21<sup>st</sup> October, 2022 the very same date Counsel filed his application. Thus, it is within the powers of this Court to issue several orders of the Court, including but not limited to warrants, which is the subject matter of this ordeal. See section 3(1) of the Courts Act.

2. Again, on the authority of *Elida Liphava & Others vs Prime Insurance and Another Civil Appeal No. 40 of 2019* as read together with Order 25 R 1 of the CPR 17, I referred the issued application to the Honourable Judge, for authority on or about the 21<sup>st</sup> October, 2022. As it were, Mr. Makombe who is a clerk designated for processing warrants took all the issued warrants to the Honourable Justice Tembo's Chambers through his Clerk, Ms Makhambera. In fact, perusing through the file I reckon that the Honourable Judge only gave me the authority to deal which I sought from his Honourable office on or about the 21<sup>st</sup> October, 2022 on 11<sup>th</sup> November, 2022. This is clearly in order considering the fact that the Honourable Judge is on leave and that he only came to his chambers whilst on a deserving leave. Again, the record must reflect that, my office only received the application with the authority of the Honourable Judge attached on 14<sup>th</sup> November, 2022. I am willing to forgive Counsel for he manifestly was ignorant of all this or that perhaps, he chose to be ignorant as it were when he explicitly accused this Court of delaying his file.

In fact, Counsel might wish to know that the only impediment that was between him and his application, was a question of law and not an

architect of the Court intended to delay counsel's application. Again, Counsel must seriously read the Supreme Court decision cited above. When he does that, Counsel will know that this Court only works by the directions of the honourable Judges.

As it were, it must be clear that, when Counsel appeared before me in a rather casual and disrespectful way, my mind lingered in awe and for a minute the Court respectfully thought Counsel was labouring under some strange influence. Clearly, the emotional charge was out of place and unprofessional, I am talking about his uninvited visit of the 18<sup>th</sup> November, 2022. Perhaps, context requires an immediate invitation of the following principle: Counsel is an officer of the Court and that his first duty is public in nature which as it will become apparent, is his core duty which he owes to the spirit of justice and constitutional order. It is not for Counsel to put spanners in the wheels of justice under the guise of being zealous for his client. Perhaps, the meaning of this will become apparent in the recent next. Needless to say, I warned Counsel when he appeared before me in the presence of two Court clerks that whatever Counsel was doing, I would reduce it in writing or put it on record as I hereby do. This I warned Counsel who seemed detached from the consequences of his contemptuous conduct.

Clearly, as earlier pointed, the Court thought that Counsel was under some alien influence, that I say, economically without attributing ill-conduct on Counsel. He with manifest anger said he came to meet the Registrar, meaning this Court even without an invitation. He claimed he was not welcomed as he expected. But all that he said to sanctify himself over his conduct. With greatest respect, the learned Counsel was clearly insolent and that is not befitting of Counsel. I must humbly articulate that I mean the word in its fullest extent. This was not the first time that Counsel simply walked in my chambers without prior invitation. He did the same on 14<sup>th</sup> November, 2022 when I allowed my clerk to let him in without prior appointment. Essentially, Counsel Mussa was pressuring this Court to entertain his application to which I suggestively rebuked Counsel that I would not work at his direction but I would consider doing my work based on first come first serve basis and that I would not attend to his application because Counsel wanted the Court to, because the Court deals with matters of those with and without a voice and the philosophy of this Court is to do justice to all manner of people and the Court works on its schedule and not by the invitation of Counsel. This I say with respect.

3. Further, I indicated to Counsel when he came the first time perceptibly trying to influence the Court to handle his application with speed even though his application was not the first on the tight file traffic of my desk. I respectfully dismissed Counsel who did not even tuck in his shirt, whether by

omission or not, I did not know, but one side of his shirt was protruding and remained unkempt. However, I reserved my reaction on Counsel because I thought for a minute perhaps that was simply an oversight that Counsel did not even see or notice. However, his brutal second coming only confirmed my fears that Counsel nurtures a lacuna of discourtesy and unprofessional conduct. Thus, knowing how this Court conducts its business and unless beyond the control of this Court, ordinarily files do not take time when they land on my desk.

Be that as it is, let me use this opportunity to warn Counsel of any cadre that this Court seriously reveres the oath that it took and the Court will never, and ever be causal with any legal practitioner. The Court will not tolerate any Counsel who might smell a fragrance of the desire to give this Court some advantage so that the Court should expedite his or her files. Any person who will ever dare that will only do that at their peril. I do not or must not be heard to mean that in this case Counsel appeared to so do. However, Counsel was not clear enough on what he wanted when he came for the first time or how and why he wanted the Court to treat his case differently. Indeed, the tradition of this Court is that I do not do Court business with Counsel without a witness. In fact, I told Counsel that the record would reflect all what he did.

4. Assuredly, Counsel noted how particular and resolute the Court was in its directions when he first came. Essentially, he was advised that he would not receive any special treatment or favour. If his application came before others, which it did, then the Court would not stop its usual business because of being intimidated by the availability of Counsel. This was not said verbatim, but that was the essence of my directions to Counsel. I must say that I said that with respect and in the voice deserving of the Court to an officer of the Court. Grudgingly, Counsel went but I had assured Counsel that I would in no time attend to what was before me, which included his application. He then came three clear days later on 18<sup>th</sup> November, 2022. This time he lost it. Nonetheless, in between those days, this Court attended to quite a voluminous number of files and also prepared and attended a Court proceeding with the Honourable the Chief Justice in which proceeding, the Chief Justice sitting in the High Court, sat all day from 9 am to 4:54 pm attending to admissions to practice as a legal practitioner for those that just graduated. All this I say, to put Counsel in context.
5. Again, the record must reflect that when he furiously walked in and found me on the phone as I was addressing many complaints my office is handling and at that particular time, I was respectfully advising and giving Counsel Kadyampakeni directions over a formal complaint his practice brought to the attention of my office. This call was made after I had made similar calls to a number of Court users including Counsel Chipembele. Thus,

when Counsel saw that I was on the phone, he momentarily walked out. A minute later, my two clerks walked in, they both wondered how Counsel behaved. It is at this time that I instructed Mr. Makombe to have Counsel to come in. I have taken the energy to narrate these verifiable facts for the avoidance of doubt.

I must say, in the witness of two clerks Counsel Mussa addressed the Court with manifest anger and disrespect essentially telling the Court to attend to his file there and then. Repeatedly, I reminded Counsel to maintain the decorum and speak with respect. Such wisdom nuggets fell on deaf ears, Counsel spoke not in a rather formal voice, but a commanding one. He pronounced to the hearing of myself and the clerks that, at that time he could not be told what to do essentially. As it were, Counsel wanted to say that he came on an administrative issue, but I was quick to advise him essentially that the Court is not the building but the officer himself. That I say, because I saw his reasoning, in Counsel's mind, he wanted to argue that when it is an administrative issue, then Counsel can address the Court how he deems fit. Well, that is not how Counsel should proceed from henceforth.

I mean Counsel Mussa was brutal in his approach. I must say, the actions of Counsel were intimidating to the security and person of the Court, but the Court was calm spirited and controlled, for within the sanctified thoughts of the Court, the Court thought of the ancient principle of old, that two wrongs maketh no right and the Court throughout treated Counsel with respect and Courtesy. Never a minute did the Court invite its emotions into play. I mean, that would have been too low for the Court. Courts must always remain patient with Counsel as an officer of the Court. I must say, like I will say again later, that anger must not have a place in Court. It must not.

Be that as it is, the Court remained predictably calm and reserved and paused questions to Counsel as to his unbecoming conduct. Counsel started slightly speaking on top of his voice, challenging that he needed to meet the Court there and then, even after being advised through my clerks that the Court was tied on its schedule because at that time there was no prior seeking of audience with the Court. For the record, Counsel ought to know the office of the Registrar receives complaints on conduct of matters and also that Counsel would simply make a follow up through the email hub of the High Court, and indeed Counsel would ordinarily have sought for the office email that this Court uses. This he did not do. He surely would have received the help he wanted and formally advanced his grievances. When quizzed by this Court about the tendency of just forcefully opening the door and walking into my chambers without prior knocking or indeed an invitation made formally, Counsel responded by saying that he knew no law that said he should first formally seek audience with the Court or indeed

formal appointment with the Court on any issues that he might want the Court to address. He appeared innocent with those sentiments, which I refuse to comment on. Nonetheless, gentle as a dove, deeply imagining what would happen if the Court did not maintain the judicial temperament, the Court again reminded Counsel of the necessary professional etiquette and decorum but Counsel did not take it.

6. As I write, I am deeply worried, because I have always known that anger must never find its place in the sacred mind of the Court even where the Court is provoked to anger. As it were, anger is a spirit devoid of reason and one that is an antithesis of judicial temperament. In fact, a judicial officer must be of a calm temperament and must never disrespect Counsel for we take the oath to treat all manner of people with justice as it were. The temperament of this Court as Counsel came with his intimidating attitude remained intact and unshaken not surprised of this because this Court takes its work as a calling and indeed no Counsel senior or otherwise will ever shake the foundations that this Court has built for years and maintains as it grows at the bench. The reason, I have on my own initiative issued this order is so it is made clear that intimidating this Court will not work for anyone. Again, I would not have put all this on record as I hereby do if I was not properly convicted in my deepest of convictions to so write because this would maybe injure the image of Counsel. Well, that is not the intent as it were. In any case, this is for all, Counsel must be reminded to be respectful to any Court of any level. If Counsel is not pleased with the conduct of any Court or orders made by such Courts, the law has remedies and equity suffers no injustice without a remedy.
7. Needless to say, as Counsel spoke in his averments, he challenged that he was okay even if this Court would launch a complaint with the Malawi law Society. He furiously implied that he did not indeed care of that. When he said that, the Court reminded Counsel in the calmest voice to be courteous and respectful to the Court, deeply knowing that it would be a mistake for this Court to follow the anger and the spirit manifest in Counsel's address to the Court. Counsel said, he only came to "push" his file, and that he did not see anything wrong because the delay was unreasonable and defiant of proper Court proceedings. The accusations of Counsel, came barely after this Court attended a complete day in Court from 9:00 am to 4:54 pm sitting with the Honourable the Chief Justice, as earlier stated.
8. Respectfully, let me for now remind Counsel Mussa what is expected of him and any legal practitioner as basic requirements. Firstly, I saw some persuasive wisdom as I read the Supreme Court of Kenya's decision in the matter of Republic v Ahmad Abolfathi Mohammed & another [2019] eKLR which wisdom was couched in the manner herein:

*"It is clear, therefore, that Advocates, while discharging their duties, are under obligation **to observe rules of professionalism**, and in that behalf, they are to be guided by the fundamental values of integrity."*

The Court went on to articulate on what is required of Counsel as an officer of the Court in the manner as follows:

*"...an obligation of conducting themselves with **perceptible decorum**, such as manifests itself in **truly respectful temperament**, as well as language, when they appear before the Court. This is vital for the due administration of justice, to which no option falls due."*

*(Emphasis Added)*

9. Let me pause a minute and say that Counsel Mussa did not conduct himself as highlighted above. Coming from a little experience of practice, I understand that sometimes any delay in Court is costly but the reality is that the judicial officer to case ratio is shockingly unreasonable and impractical. We have cases before us and the honourable judges that even if they would write judgements daily, including weekends, it would in fact take years to finish the work that we or they have. I say, this with direct knowledge which mostly the public hardly understands. This is not to hide situations of manifest delays and all. Even then, the address to such issues must in my view be through the proper channels. If Counsel, thought the Court was delaying, which the Court was not, Counsel ought to have written the office of the Registrar and inquire of the reason as to why his file remained unattended to. This he did not do. What Counsel does not know is that the judge seized of this matter is deservedly on leave. Ironically, when I first attended to the application, I issued the application and referred the application back to the Judge for authority. See *Elida Liphava & Others vs Prime Insurance & Another (Supra) and Order 25 Rule 1 of CPR 17.*
10. As it were, let me warn myself that the Court must really be slow, even as I write to demean the intellectual resource of Counsel and or his unawareness of basic professional etiquette, which is difficult to tell whether it is studious or not. I desist from such a temptation coming with force as I write. I must never permit anger to crowd the judgement of this Court. I repeat, anger must never be anywhere near any judicial officer even as he sleeps, a judicial officer must exercise restraint. The restraint must be in his bones. I mean every part of that. We hold offices of a higher calling and our temperament must exhibit that. For without that, the confidence of the society to the bench erodes to our peril.

11. Again, the Court must be fair to comment that, the spirit of pushing for files until they are considered is commendable, but it must not erode the thought that when we sit, we handle hundreds of files for those people with voice and those without. When Counsel comes to this Court, he must always remember that it is not only his file that the Court is handling. In fact, this Court has spent days unpaid signing hundreds of files from morning on weekends to late night and at times this Court has issued documents throughout the night as Counsel deservedly takes his or her rest. So, to come and disrespectfully and directly tell the Court that it unreasonably handling his file with delay, is insulting on the authority and patience of this Court. But clearly, his ignorance is manifest in that he did not really understand what the Court does.

Thus, we do not just sign applications we engage our judicial furniture of the mind to verify with the law and then proceed to process the documents as it were. If we did not do that, Counsel would also be worried about the competence of the Court. That I shall not do. It is my professional duty to do my work as is required by law, and if that takes time to process documents, then that is a price I must pay. But I refuse to sign documents at the pressure of Counsel because it will be Counsel who will suffer if the Court signs incompetent applications and orders. I do not say the application before me is incompetent, but if I was to consider it, perhaps I would not be afraid to call it by its name if it were such neither would I be economical if it were competent. But that is not what I am inviting myself to do, because I warn myself not to pre-empt the substance of Counsel's application.

As it were, Counsel must be respected and I must warn myself from demeaning Counsel or making insinuations of incompetence. That I shall not do and I refuse to do that because it will soon become apparent that I should recuse myself as it were. But I must say on record that Counsel is manifestly unprofessional and insolent in the plain meaning of the word. He must be cautioned. This Court will not fear contradiction and or rebuke were deserving. But that should only be the case when the issues are with merit. When that happens, the Court must reflect and act with the humility the office commands. Counsel was reminded times and again as he addressed me, that he must be respectful to the Court. He was adamant and even the posture of his sitting as he sat in my chambers was that of a man devoid of professional morals. It was not a conduct for a noble man of the profession. Counsel was disrespectful in his conduct to the bench. I felt sad not for Counsel but for the thought that Counsel did not see that his conduct was suspect and unfit for Counsel. Perhaps, Counsel must be put in context, Chapter 11 Rule 14 of the Malawi Law Society Code of Ethics stipulates as follows:



*“A lawyer's **dealings with the Court must be courteous and respectful**”*

*(Emphasis Added)*

Clearly, the wording of the Code is suggestive of the fact that it is expected from every member of the society being an officer of the Court to deal with the Court in a befitting manner. I mean, the use of the word “*must*” connote a mandatory obligation on Counsel to deal with the Court at all times with respect and courtesy. There must never be a time or indeed a situation in which Counsel’s address to the Court is devoid of courtesy and respect.

Moreover, section 29(1) of the Legal Education and Legal Practitioners Act, provides that:

*“A person who applies to be admitted to practice the profession of law in Malawi, shall before he is admitted take an oath or affirmation prescribed in the Third Schedule, that he **shall:***

- a.) Uphold the Constitution of the Republic of Malawi*
- b.) Uphold the interests of their clients; **and***
- c.) Maintain **the integrity of the profession of law***

The relevant part of the Third Schedule provides as follows:

*“...I shall seek to improve the administration of Justice. I shall champion...I **shall strictly observe and uphold the ethical standards that govern my profession.** I impose upon myself this voluntary obligation without mental reservation or purpose of evasion...”*

*(Emphasis Added)*

It would appear that Counsel perhaps has forgotten what he did on 29<sup>th</sup> January, 2014 the day he got admitted to the bar. In my humble view Counsel must be reminded that such an oath or affirmation whichever he took, but Counsel must seriously and at all the times preserve the integrity of the profession and should desist from addressing the Court in a rather studiously insolent manner. In fact, it is mandatory for Counsel to maintain the integrity of the profession and to desist from any provocative conduct. I mean, that is the last thing this Court would expect from Counsel Mussa. In fact, it is not wrong for Counsel to advance the interests of his client but when at it, Counsel must remember that he is first an officer of the Court before anything and that is the highest calling which in essence is a public duty. Perhaps, the following wisdom from Lord Reid in Rondel v. Worsley [1969] AC 91 might be timely for Counsel:

*“...Implicit trust between Bench and Bar which does so much to promote the smooth and speedy conduct of the administration of justice springs from the **confident expectation of the Bench** that*

where Counsel is in any doubt about some detailed mode of putting his client's case, **he will put his public duty before the apparent interests of his client.**"

(Emphasis Added)

The last Counsel would do is to behave like a party to a proceeding. Ethics requires that Counsel must be courteous and respectful to the Court even where for argument's sake the Court is in the wrong or has misdirected itself, Counsel must respectfully remind the Court and indeed guide the Court as it were. This he did not do. I am sure Counsel was innocently unaware of his duty. This is the more reason on my own initiative I have taken it to remind Counsel that next he appears he must remember that this Court will respect Counsel and expect highest professional conduct from Counsel.

Assuredly, Counsel will receive no less from the Court. But that Counsel can just walk into the sacred chambers of the Court, like he is entering a market place is unbecoming and alien to the sanctity of the office I hold. Counsel Mussa would do better to desist from such. Counsel pushed the advice of the clerks off and invited himself into my chambers. Counsel did not properly act. Like I said and will articulate later, I have alluded to the reasons why I did not want to meet Counsel this time. He did not have prior blessing neither could this Court treat him any different. That did not sit well with Counsel and pushed off the advice from the Court clerk. I have always thought that we from the profession must be slow to be causal and unreasonably friendly with the Court. We must respect the authority of the office any judicial officer holds if we are to maintain the confidence commanded by our offices thereby sustaining the trust of the people in an independent and impartial judiciary. Judicial officers are in my view also under duty to treat Counsel with respect and Courtesy, however, that does not mean that the Court should be causal with Counsel. That is not a place we must be.

12. Additionally, whilst as I take notice that Counsel must be fearless in pursuing the interest of his client, Counsel must respectfully refuse any temptation that comes with the spirit of "pushing" to forget that the Court retains respect and decorum. Counsel must treat the Court, I mean the Court of any cadre, lay and otherwise with respect and he must never be causal in his conduct to the Constitutional authority of the Court. As it were, in articulating similar sentiments on the conduct of Counsel, Justice Kenyatta Nyirenda in the case of George Kainja vs Director of Anti-Corruption Bureau & Others Judicial Review No. 48 of 2022 (Order on stay) (Unreported) had the following wisdom which Counsel Anwar Mussa seems to be devoid of (I use the word advisedly) and might wish to indeed borrow a leaf from:

*“While a **legal practitioner must be fearless in advancing** the cause of his or her client, there are **certainly boundaries**, be it through rules of civil procedure, **the code of professional conduct** or **normative limits which inform legal practitioners** and their role in our system of justice.*

*(Emphasis Added)*

It clearly appears to me that Counsel Mussa is either not aware of these limits or he purposely decided to be ignorant of such limits or such ethical conduct.

Be that as it is, the learned Judge in the afore case, went on and deservedly so in its great wisdom to yet unleash the following which Counsel must always in my view remember as he walks into the corridors of any chamber belonging to any Court, lay or otherwise:

*“...Much as a legal practitioner also owes a duty to his or her client, the duty of a legal practitioner to the Court **is the dominant duty...**”*

*(Emphasis Added)*

To respectfully address Counsel, it seems to me Counsel Mussa is unaware of what is professional conduct and what is not. Again, he seemed innocently ignorant of what is expected of him. Hence, let me further dive deep and extract some more professional wisdom which Hon Justice Kenyatta Nyirenda in the afore case and quoting with approval the wisdom of Lord Denning in the case of Rondel v. Worsley, [1976] 3 All ER 993 had to say:

*“[The advocate] **has a duty to the Court which is paramount**. It is a **mistake to suppose that he is the mouthpiece of his client** to say what he wants: or his tool to do what he directs. **He is none of these things. He owes allegiance to a higher cause...**”*

*(Emphasis Added)*

I was deeply surprised in utter amazement that he chose to see that there was nothing wrong that he did. Whether by plan or genuine unawareness, his conduct remains worrisome for a lawyer who runs his own practice and presumably has or will have other junior lawyers to learn or sit under him. It is a sad situation. Suffice to say that, Counsel is respectfully reminded as above that when he comes to this Court, he must remember that he is ultimately an integral part of the Court. Counsel must never skew his prowess entirely on his client and thereby forgetting the manner in which he should address and or appear before any Court. is unaware of where

he should learn such professional etiquette. I am certain, many a lawyer have not read the Code of Ethics by the Malawi Law Society, perhaps this should ring some bell to the society and if the society considers if fit, the society might even consider enriching the Code with more meat. This I only say in passing.

13. Perhaps, the Court must indeed refrain from mentioning or saying anything, which might in the eyes of reasonable men be interpreted as the Court has taken upon itself to molest Counsel on a platform where Counsel cannot defend himself. That is indeed not the intendment of this Court. Suffice to say that, this Court, warned Counsel that it would put on record his conduct and there were two witnesses to that effect one Mr. Mathanda and one Mr. Makombe. They witnessed to their utter shock the intimidating demeanour of Counsel. Again, let me repeat without fear of contradiction that, I write this so that Counsel must behave himself whenever he appears before any Court. The attitude of treating lower Courts with belittling attitude will not go unnoticed in some of our Courts. We will not allow that from any Counsel. This message has to be made clear as I pronounce it.

14. Again, let me mention that I always think that the Court is the person, and not the building but, it is the office that the Court holds that commands respect. Counsel might have reservations with the person of the Court, but the confidence that our profession has enjoyed over the years hinges on the very idea that those who belong to the profession, must hold the office we occupy with respect, because it is that respect that makes our orders binding and authoritative. Once that is taken away, by the invitation of Counsel, and indeed misconduct on the part of Counsel, not only does the profession stand doomed, but the spirit of justice will remain mocked and in excruciating pains and in the end, justice will hardly be a reality than it is a myth. When that happens, the society will remain unguided because confusion strives when sane men act without a particular order of conduct acceptable by those belonging to a profession noble as ours.

Indeed, that is not what Counsel would want to be a place where he must invite this Court to. It is a place alien to the traditions of our profession. Certainly, that is not the Bar we want ourselves or indeed that which the society demands. Again, mutual respect is important, the Court also has to respect Counsel. That cannot be overemphasized. It is important that even as we address Counsel, Counsel must not be afraid to approach the Court when necessary and deserving. That is not the message intended by this worrisome disposition. In fact, I was at pains to even move myself as I hereby do, but the spirit from within invited me to duty and to respectfully remind Counsel of what is expected of him as he addresses any Court.

15. Furthermore, I have always thought that honourable members of the bench are the gatekeepers of the profession and the reason our profession is seriously eroding is simple, we among other things allow Counsel to be causal with the Court in the manner they prepare their documents or indeed in the manner they relate with the Court. There are boundaries and limits which sadly are not as of common knowledge as they were supposed to be to Counsel. It must start from us, that when Counsel appears before us he must not approach us with an easy attitude. We must maintain the standards because the profession requires that from us. We must always demonstrate to Counsel that we are fit for the office and what it demands as we balance that with respecting and treating Counsel with Courtesy. However, we again must not be arrogant in the process but treat Counsel with the needed respect. That is what this Court did. I refused to meet Counsel because of the manner he was coming and also considering that he was already advised days before that I would work on the application when time for processing his application among the others came. He did not take that well and dismissed the instructions he was given through the clerk.

16. As it were, it would be heavily unfair for this Court, to speak against Counsel with malice considering that Counsel might not be heard or might not have the platform to address the issues as raised. But I have comfort in the fact that I warned Counsel as he was addressing this Court with contempt and an informal demeanour. I have never seen so daring an attitude from Counsel. As he spoke, Counsel stood up in fury, and threatened to meet the Registrar directly at that time. In fact, without even seeking leave or permission, the learned Counsel went out as he came. It was clear, that Counsel spoke suggestively intimidating the Court to act as he would report to the honourable office of the Registrar. The mistake Counsel did was to test the temperament of this Court. He thought for once this Court would be afraid with his threat. Certainly, that was a miscalculated and misguided attempt by Counsel to think that, in the least of its imagination this Court would say, "oh Counsel do not go there let me attend to your application," no, much as this Court highly esteems the senior offices, but this Court is not timid on issues of law and how it conducts itself on issues of its sacred office. I mean, I considered that as a threat because I knew, he did not mean his words. In fact, my office has not received any communication that Counsel addressed the office of the Registrar as he threatened. Perhaps, it might have ordinarily slept the mind of Counsel that he might wish to be reminded of the following:

That under section 2 of the Court Act, the law provides as follows:

*““Registrar” means the Registrar of the High Court and includes a Deputy Registrar and an **Assistant Registrar.**”*

*(Emphasis Added)*

As it were, it would appear that Counsel had forgotten that when I sit, I represent the Honourable office of the Registrar, and that no business of my office goes without the direction and or blessing of the Honourable office of the Registrar and that what kept this Court not in office for almost two weeks in essence, was at the direction of the office of the Registrar. This Counsel did not know. Perhaps, Counsel would also do better not to suggestively demean the authority of any Court. When Counsel reads this provision with the necessary understanding, perhaps Counsel will learn to respect the Court. Like earlier enunciated, what Counsel did he could not have done to the Honourable Judge seized of this matter. What Counsel forgets is that this Court exercises the powers not of a lower Court, it exercises the powers of the High Court with indeed the direction of the Honourable Judge. For the avoidance of doubt, perhaps Counsel Mussa must be reminded that under Order 1 Rule 4 of the CPR 17, when he presents anything or any application before me, he presents that application before the High Court, because the limited powers I have still retains the force of the High Court. Thus, the Order Provides as follows:

*“Unless the context otherwise requires- **“Court”** means the **High Court of Malawi**”*

*(Emphasis Added)*

Certainly, Counsel would not have acted this way if the application he brought was to be attended to by the Honourable Judge. It is that attitude that this Court must rebuke, Counsel must not suppose in his mind that this is a junior Court therefore he can just walk in as though he was appearing before a village meeting in which he chairs. Respectfully, every legal practitioner must understand that, when they respect the Court, it is not because of the person of the judicial officer but rather the office they hold. We must not erode that with the spirit of pushing things as they say to the point that Counsel gives even our clerks unnecessary pressure and would want the Court to stop doing other business and attend to the application of Counsel. That is a recipe for corrupt which this Court abhors sternly. There was no need for Counsel to invite the Registrar on a matter in which this Court would sit and exercise its judicial discretion on. It was common place Counsel wanted this Court to be afraid. Well, that was only a mistake of the mind, because this Court respects superiors and yet within the law, the Court is not a robot it has the intellectual furniture of its own. Again, Counsel must further be reminded, that under section 8 of the Courts Act, when this Court sits, as it were, it does so with the blessing of the Honourable Registrar. Perhaps, Counsel must further receive some respectful reminder that under

Order 25 Rule 1 as read together with section 8 of the Courts Act, this Court is indeed not the High Court, but it exercises the powers of the High Court.

*“Subject to the direction of a Judge, the Registrar may exercise the jurisdiction, **powers and functions of the Court** to make, or refuse to make, an order...”*

*(Emphasis Added)*

Counsel must read this order together with Order 1 Rule 4 of CPR 17 which defines “Court” as the High Court of Malawi, when that happens, respectfully Counsel must accord this Court the necessary respect and decorum it commands. As it were, let me enter a caveat here for the avoidance of doubt that this must not be misconstrued that this Court is simply manifesting ambition before the fullness of the times. Well, in my view, that I exercise the limited powers and functions of the High Court remains the correct position of law as it were. That said, Counsel must in fact, as an officer of all Courts be courteous and respectful in the manner, he does business with the Courts.

17. It is sad that, as far as I can recall, I have only interacted with Counsel twice and in all those encounters he behaved as though he is unaware of the decorum of the Court. Surely, he has made a mistake I am willing to forgive for his conduct clearly informed by ignorance (used advisedly) of the manner in which this Court conducts itself on issues of law. Surely, if Counsel had knowledge he would have acted better. But of course, he did not. If he did, I would have said insinuated any unreasonable delay from the person of this Court. In fact, before his application, this Court signed 408 documents from morning till night over the preceding weekend, and Counsel had the zeal to claim that his application has unreasonably been delayed and he wanted it signed there and then or indeed attended to, that respectfully was insulting. But who does not make a mistake? We all do. Thus, I must be fair to Counsel Mussa. But it was clear that Counsel Mussa was emotionally charged as though he is a party to the proceedings. Perhaps, Counsel Mussa must be invited to appreciate the following wisdom by Justice Katsala (As he was then) in the case of Lingston M. Phekhani v. NBS Bank, Commercial Cause No. 151 of 2014 (Unreported) whose wisdom was quoted with reverence in the George Kainja vs Director of Anti- Corruption Bureau (Supra):

*“This statement, in my view, goes to the root of the duty and responsibility of Counsel as an officer of the Court. Counsel must understand that he “is” a helper in the administration of justice.*

The Learned Justice Katsala as quoted with approval by Kenyatta J, went on to articulate the following:

*"...He must strike a balance between his duty to his client and his duty to the Court. I guess it is not easy especially when **Counsel is emotionally involved and charged** with his client's case, **something which, unfortunately, is becoming more common for lawyers these days**. But I am confident that with experience and **a great measure of maturity**, Counsel should not find this too difficult to embrace."*

*(Emphasis Added)*

I have nothing useful to add, and I must not profess that I could put it any better, perhaps that is what Counsel Mussa should sit and reflect on. Such wisdom by Katsala J, (now JA) is impeccable and timely on Counsel of all cadre. This we must always remember.

Repeating the same, Justice Kenyatta Nyirenda in the George Kainga Vs ACB & Another (Supra) had the following to say:

*"it would appear Counsel Saidi refuses to accept the wise Counsel that **a legal practitioner should not be emotionally involved and charged** with his client's case: see Lingston M. Phekhani v. NBS Bank, Commercial Cause No. 151 of 2014, Commercial Division, Blantyre Registry, at page 9. In the Ruling on Application for Recusal, I quoted at length from this case: see paragraphs 68, 69 and 70 of the said Ruling. It goes without saying that Counsel Saidi is not a party to this case. He is just Counsel to a party to this case, namely, the 1st Defendant. **He cannot, therefore, start behaving as though he is a party to the case.**"*

*(Emphasis Added)*

It was a sad ordeal, but the highlighted wisdom perhaps has come timely on Counsel. In fact, I must admit, when first I read that order, I also took notes as it were.

Similarly, let me also talk on the issue of judicial independence which this Court enjoys as derived from the Constitution of the Republic. Hence, no person can influence the Court with fear or anything be material and otherwise. Perhaps, Counsel must further be reminded for the avoidance of doubt, for assuming a lot might be of detriment to Counsel. Thus, section 103 of the Constitution must be invited to duty as I justify why perhaps Counsel must desist from threatening and intimidating this Court or indeed any Court, thus, section 103(1) provides as follows:

*"**All Courts** and all persons presiding over those Courts **shall** exercise **their functions, powers and duties** independent of **the influence and direction** of any **other person** or authority."*



(Emphasis Added)

For sure, Counsel wanted to influence pressure the Court, for the Court to stop whatever came first and consider his application. I will not allow one incident by Counsel to define the judicial temperament of this Court. Surely, if Counsel had applied his mind to this provision he certainly would have acted with Courtesy and respect for anything devoid of that would be perceived as trying to influence the Court in the manner of conduct of its business. Let me also make it clear, that it is wholly wrong for the Court to hide under the guise of judicial independence where Counsel raises legitimate concerns in a fashion which is professional. When that happens, we must be quick to treat Counsel with respect and Courtesy and timely address his issues as it were.

18. In any case, Counsel Mussa breached Chapter 11 Rule 14 of the Code of Ethics cited above. I must respectfully invite Counsel to inscribe such nuggets on the tablet of his professional garment. That will help serve Counsel who in my view should enjoy the benefits of his labour till he attains old age. That I say, respectfully.

19. Now let me admit that it would be against my judicial conscience to proceed handling this particular application on behalf of the Honourable Judge. As I understand the law, to recuse myself the test I should use on the factors or issues before me, is an objective one. This Court owes duty to Counsel to treat him fairly or indeed to act in a manner that Counsel must expect fairness or accorded a treatment that any reasonable person would say that justice will be done. I mean, the test on whether to recuse oneself or not is an objective one, it is not subjective. See the case of George Kainja vs ACB & Another (Order on Recusal) Judicial Review Cause No. 48 of 2022 (unreported). Considering that under Order 25 this Court can deny or return documents or any application made thereunder, with what happened and if the Court for arguments sake returns the application for being wanting on the law and the rules, perhaps a reasonable person would think that the Court has acted with malice. I mean, if the matter further delays even beyond the control of the Court, Counsel would be justified to conclude that the Court has held the file with the intent to revenge or exert pain on Counsel. That is not what this Court should do. Much as this Court has the requisite mental preparedness over control of emotions, but justice must be seen that it is being done hence on my own motion I must refer the matter back to Honourable Justice Tembo for directions as I recuse myself as it were. Thus, Order 25 Rule 2 CPR 17:

*"The Registrar may, **of his own initiative**, or on application by a party, refer a proceeding before him to a Judge in chambers.*

*(2) Upon receipt of reference of a proceeding under sub rule (1), the Judge may—*

*(a) hear and determine any issue which was before the Registrar in the proceeding; or*

*(b) determine any question arising in the proceeding and may return the proceeding to the Registrar with directions as the Court considers appropriate."*

*(Emphasis Added)*

It is in my opinion that this matter be referred to the Honourable Judge in Chambers who shall then provide the necessary directions as to how the application which was before me should be handled to which also he should give authority to deal.

20. It is from the foregoing background that I hereby recuse myself from handling any application in this matter and on the authority of Order 25 Rule 1 as read together with Order 25 Rule 2 of CPR 17, I refer this matter to the Honourable Judge for authority and or directions.

21. It is so decided.

**PRONOUNCED** in Chambers this 21<sup>st</sup> November, 2022 at the High Court of Malawi Sitting at Principal Registry Blantyre.

Elijah Blackboard Dazilikwiza Pachalo Daniels

**ASSISTANT REGISTRAR**