



JUDICIARY
IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
CIVIL CAUSE NO. 127 OF 2015

BETWEEN:

WANDA LICHANDA.....1ST APPLICANT
BELO JAMES.....2ND APPLICANT

AND

MISS ANAFI.....1ST RESPONDENT
SENIOR CHIEF MPONDA.....2ND RESPONDENT

CORAM: HON. JUSTICE RE KAPINDU

: Maj. Kamwendo, Counsel for the Applicants
: Mr. Kapoto, Counsel for the Applicants
: Mrs. Ndanga, Official Interpreter

RULING

KAPINDU, J

1. This matter was, in the forenoon of 11 May 2016, due for hearing of an inter-partes Summons for Interlocutory injunction brought in terms of Order 29, r. 1 of the Rules of the Supreme Court.
2. When the matter came up for hearing, Counsel Kapoto of Tannalegal Associates presented himself as Counsel representing the Plaintiffs in the matter.
3. The Court, taking judicial notice of Counsel's newly admitted status at the Bar, quickly enquired to confirm when Counsel was admitted to practice law in Malawi. Counsel Kapoto informed the Court that he was admitted to practice law in Malawi (admitted to the Bar) on 13 April 2016. He further informed the Court, upon the Court's further probing, that his admission was with conditions, and that the conditions were that he would work in the employment of and under

the direct supervision of Counsel Major Atanzio Kamwendo of Tannalegal Associates.

4. The Court asked as to the whereabouts of Counsel Major Kamwendo and was informed by Counsel Kapoto that he was appearing in a criminal trial in the Chief Resident Magistrate's Court.
5. At this point the Court advised Counsel that it was going to deliver an appropriate ruling in respect of this preliminary enquiry by the Court and the matter was adjourned.
6. I have decided to take this rather unusual step to write out a ruling on this matter in order to emphasize the seriousness that this Court attaches to the need to preserve time honoured standards relating to admission to practice and the right of audience of Counsel before the courts. I fully agree with Justice Kachale's remarks in Khamalatha & 26 Others vs Secretary General of the Malawi Congress Party, Civil Cause Number 1347 of 2015, where he stated that: "questions of competency of counsel to conduct litigation in our courts on behalf of someone else are very fundamental to the administration of justice."
7. The enquiry I made in this matter arises out of the Court's firm belief that the legal profession in Malawi must always strive to maintain the highest standards of professionalism. Such lofty heights of professionalism can only be reached if the profession invests generously into the professional development of young and/or newly admitted Counsel in terms of material and financial resources, supervisory time and attention from supervising Counsel of prescribed standing, among other things.
8. The Legal Education and Legal Practitioners Act (LELPA) has created a scheme under which some categories of Counsel newly admitted to the Bar are so admitted with conditions. Section 11A(2) of the LELPA is apposite in this regard. It provides as follows:

(2) Subject to the other provisions of this Act, where any person has been admitted to practise as a legal practitioner and his admission is conditional, he may not practise as a legal practitioner—

- (a) except as the employee—
 - (i) of a prescribed legal practitioner; or
 - (ii) of a firm of legal practitioners of which at least one partner is a prescribed practitioner; or

(iii) in the legal department of a local authority, such department having a prescribed legal practitioner at its head; and

(b) unless while so practising he is under the general guidance, supervision and control of—

(i) the prescribed legal practitioner referred to in paragraph (a) (i); or

(ii) the partner referred to in paragraph (a) (ii) or a partner of his in the same firm who is a prescribed legal practitioner; or

(iii) the head of the legal department referred to in paragraph (a) (iii),
as the case may be.

For the purposes of this subsection, a prescribed legal practitioner is a legal practitioner of at least three years' standing whose own admission is not conditional:

Provided however that no legal practitioner shall be a prescribed legal practitioner while he is exercising, or attempting to exercise, the guidance, supervision and control referred to in paragraph (ii) over more than two legal practitioners whose admission is conditional.

9. The question that we need to answer in the present case is whether the scheme of the LELPA envisages a situation where a legal practitioner admitted with conditions, such as Counsel Kapoto herein, can appear alone to argue a full trial, or at all, when he is not in the company of a prescribed legal practitioner to exercise guidance, supervision and control over his manner of practice in Court.
10. Critical for examination in this regard is the requirement under Section 11A(2)(b) of the LELPA that such a person "**may not practice** as a legal practitioner... **unless while so practising** he is under the general guidance, supervision and control of [a prescribed legal practitioner]..." (Emphasis supplied).
11. Available textbooks that have explored the issue of the legal profession in Malawi do not provide needed guidance on the meaning or import of the expression "unless while so practising he is under the general guidance, supervision and control of [a prescribed legal practitioner]..." I have had recourse to the Monograph titled *The Malawi Legal System: An Introduction* (1983)(Unpublished) by Dr. M.R.E Machika (at page 89); and also *The Legal Profession in Malawi* (1988) by Mr. K.E. Mhone (*passim*). Both of these simply restate this expression, as it is, without attempting to further elucidate on its scope. Local jurisprudence has also not afforded much guidance on this point.

12. It is therefore left to this Court to construe the meaning of the expression "unless while so practising he is under the general guidance, supervision and control of [a prescribed legal practitioner]..."
13. It appears to me that the object and purpose of the conditions imposed on newly admitted Counsel is to ensure that the highest standards of professionalism are maintained in law practice and that high quality legal representation of litigants should never be compromised. Ancillary to this primary objective is the need to ensure that newly admitted Counsel are properly inducted into the ways of the practice of law and that they are not thrown into the throes or the deep end of law practice unsupervised, unguided and uncontrolled.
14. The expression "unless whilst so practicing" in Section 11A(2)(b) suggests that the guidance, supervision and control must be active whilst the conditionally admitted legal practitioner practices. Admission to practice entails practice before or in the courts, and it goes without saying that Court appearance is a core aspect of law practice. This means that a conditionally admitted legal practitioner may not practice as a legal practitioner in the form of appearing before a court, unless whilst so appearing (i.e. so practicing) he or she is under the guidance, supervision and control of a prescribed legal practitioner. When appearing in court, it seems to me impossible for the supervising legal practitioner of prescribed standing to guide, supervise and control the conditionally admitted legal practitioner unless the prescribed legal practitioner, or at least another legal practitioner of prescribed standing from his/her chambers, is physically present in court accompanying the conditionally admitted lawyer (the supervisee) and providing necessary guidance, supervision and where necessary, control.
15. If the object and purpose of the expression "unless while so practising he is under the general guidance, supervision and control of [a prescribed legal practitioner]..." was that a legal practitioner admitted with conditions may appear unsupervised, the logical consequence may be that such a legal practitioner might as well complete his/her period of supervision without ever being supervised in his/her manner of conduct in Court. Effectively, the duty to supervise such a legal practitioner during court appearances could have been left to the presiding judicial officer, and to my mind, that could not have been the intention of the legislature. The presiding judicial officer is under no legal obligation to supervise in this regard.
16. It should be recalled that it is very possible for a person, in the scheme of our legislation, to see the four walls of a Courtroom for the first time on the day of his/her conditional admission. The question is whether, on the next day following such admission, such a legal practitioner should be left to represent a

client alone and unsupervised in a Court of law. The answer to me is in the negative. The answer against this mischief lies in the law itself and is not left to the discretion of the supervising legal practitioner to decide on what occasions to be in the company of the supervisee and on what occasions not to.

17. I hold the view that, in essence, a conditionally admitted legal practitioner in Malawi (otherwise referred to as the “supervisee” in this decision), is analogous to the concept of “pupillage” that obtains in other common law jurisdictions. Jack Lee Tsen-Ta, in an article titled “Getting Called: A Practical Guide” , 18 *Singapore Law Review*, 455 (1997), at page 459, describes pupillage as the:

“period of apprenticeship during which a qualified person is attached to a law firm to receive instruction and gain experience in every type of work normally undertaken by an advocate and solicitor and to become acquainted with the laws and general rules of practice and procedure applicable to the legal profession” and that “At the end of pupillage, pupil masters are required to certify that their pupils have achieved this.”

18. The analogy between this description of pupillage, and the scheme of supervisor and supervisee envisaged under the Legal Education and Legal Practitioners Act in the case of admission to practice law with conditions, is very clear. The scheme under the LELPA in this regard fits hand-in-glove within the meaning of pupillage. A lawyer under pupillage is essentially a lawyer in training. The period of supervision is critical in the professional development of a legal practitioner. It is perhaps pertinent that this Court states what it considers to be some of the obligations of the supervisor and the supervisee during the period of conditional admission.

19. After looking at arrangements from similar common law/commonwealth jurisdictions, this Court opines that ***among the responsibilities*** of the supervising legal practitioner of prescribed standing (the supervisor) during such period are to (i) give specific and detailed teaching instruction to the supervisee in the drafting of pleadings and other documents; (ii) ensure that the supervisee is well grounded in the rules of conduct and etiquette of the Bar; (iii) require his/her supervisee to read his/her papers and draft pleadings and other court documents or legal documents including opinions, or other documents, and then discussing the drafts personally with the supervisee; (iv) require his/her supervisee to accompany him/her to court on sufficiently frequent occasions and to take proper notes of the proceedings during those occasions, and then discussing the proceedings with his/her supervisee afterwards; (v) ensure that his/her supervisee has the opportunity to do such work and gain such experience as is

appropriate for a person commencing practice in the type of work done by the supervisor; (vi) take all reasonable steps to enable his/her supervisee to see the work done by other members of the chambers (where this applies) so that the supervisee may have an idea of the type of work which a legal practitioner does in practice; (vii) endeavour to provide the supervisee with an opportunity to see a variety of Court-related work and, wherever and whenever possible, arrange for the supervisee from time to time to accompany other members of his/her chambers or other legal practitioners to Court; (viii) encourage the supervisee to attend such activities as the Malawi Law Society may from time to time arrange including its Continued Legal Education (CLE) initiatives; (ix) take a direct interest in and monitor all work his/her supervisee does on his/her own and, (x) in particular, he/she should, in relation to all Court appearances by his/her supervisee, give guidance and assistance before his/her supervisee goes to Court and should discuss the supervisee's performance afterwards.¹

20. The conditionally admitted legal practitioner (the supervisee) also has his/her own responsibilities during the period of supervision. These *include* that he/she should apprise himself/herself of and comply with the provisions of the Legal Education and Legal Practitioners Act and any associated Rules relating to his/her admission to practice law and indeed relating to the practice of law generally in Malawi; and to treat his/her period of supervision as a training period. Among other important things, during this period, he or she will (i) be bound by the Code of Conduct of the Malawi Law Society and such other rules or guidelines as may be applicable to him or her from time to time; (ii) acquaint himself/herself generally with the etiquette of the Bar; (iii) maintain a positive attitude towards his/her period of supervision, be conscientious in receiving the instruction given by his/her supervisor, and apply himself /herself thereto full time with all care and attention as if his/her supervisor's work were his/her own; (iv) have the initiative to ask for instruction from his/her supervisor and, where appropriate, to seek the consent of his/her supervisor to see the work of or go to Court with other members of his/her supervisor's chambers; (v) have the initiative to discuss with and receive information from his/her supervisor on all matters relating to practice and etiquette at the Bar; (vi) seek guidance from his/her supervisor and, where appropriate, other members of his/her supervisor's chambers as to the type of work which he/she is likely to do when he/she commences to practice without conditions and as to how such work ought to be done; (vii) preserve the confidentiality of the affairs of his/her supervisor, his/her supervisor's clients or the clients of any members of his/her supervisor's chambers; (viii) without the prior approval of his/her supervisor, not render professional advice to or do work for his/her supervisor's clients on behalf of his/her Pupil supervisor at any stage of his supervision period; (ix) in the course

¹ See Hong Kong Bar Association, Code of Conduct: Annex 5, http://www.hkba.org/the-bar/code-of-conduct/code_of_conducta5.htm

of his/her supervision, ensure that he/she performs with diligence such minimum activities as the law, or the Malawi Law Society may from time to time require as part of the fulfilment of the conditions imposed on his/her practice; (x) only take on such work as his/her supervisor allows him/her to, since there is no entitlement to practise independently; and, (xi) where his/her supervisor has allowed him/her to take on a case, consult and discuss with his/her supervisor in relation to all aspects of the case.²

21. I must, for the avoidance of doubt, mention that Counsel Kapoto, as his individual person, exudes an admirable air of tact, courtesy, aptness and general professional confidence which gives me hope that he has great potential to become a legal practitioner of note in the legal fraternity in Malawi. Such persons as Counsel Kapoto should be carefully nurtured in the above described manner, so that they may achieve their optimum professional potential by being afforded the opportunity to practice for the statutorily prescribed period of at least one year under the close and direct supervision, guidance and control of a legal practitioner of prescribed standing, in all aspects of law practice.
22. I therefore hold that unless Counsel Kapoto appears in the company of the prescribed legal practitioner who exercises guidance, supervision and control over his practice, in the instant case Counsel Major Kamwendo or another prescribed legal practitioner from his firm, Counsel Kapoto may not appear before this Court as a legal practitioner in this matter.
23. I must mention before I rest, that I am of opinion that it could have been appropriate if the law had perhaps been crafted as in other countries where a legal practitioner under pupillage has a limited right of audience, limited to subordinate courts; and also where the restriction not to appear unaccompanied by a prescribed legal practitioner is limited to the first six months of conditional practice. Regrettably, my reading of the LELPA does not seem to admit of such flexibilities.
24. I should also point out that I noted that Counsel Kapoto's name does not appear on the list of Licenced Legal Practitioners as at 29 April 2016. Admittedly this matter was not canvassed during the hearing and I cannot hold it against Counsel because he could possibly have furnished evidence that since the list of Licenced Legal Practitioners was published by the Malawi Law Society on 29 April 2016, he has taken out a licence of practice. Section 23(1) of the LELPA is very clear that "Every legal practitioner shall on admission pay the admission fee prescribed in the Second Schedule and **shall, in the year of his admission, and annually thereafter, take out an annual licence** for which he shall pay the fee specified in the Second Schedule." (Emphasis supplied)

² Ibid

25. For purposes of clarity, a newly admitted legal practitioner, whether with or without conditions, is not entitled to appear in any Court of law in Malawi as a legal practitioner unless he or she has in possession a valid Licence of Practice. The decision of Kachale J in **Khamalatha & 26 Others vs Secretary General of the Malawi Congress Party** above makes this position very clear.

Delivered in Chambers this 12th day of May 2016 at Zomba.

R.E. Kapindu, PhD
JUDGE