



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 26 OF 2014

BETWEEN:

DERICK MAFUNGA

PLAINTIFF

AND

K.J. CHOKOTHO

1st DEFENDANT

INGWE BUS COMPANY

2nd DEFENDANT

PRIME INSURANCE COMPANY LIMITED

3rd DEFENDANT

Coram: JUSTICE M.A. TEMBO,

Sudi, Counsel for the Plaintiff

Tandwe, Counsel for the 3rd Defendant

Chanonga, Official Court Interpreter

ORDER ADMONISHING COUNSEL

This is this court's order on the exercise of this Court's power under section 21 of the Legal Education and Legal Practitioners Act admonishing counsel Mr Sudi in this matter.

The facts of this matter are most startling in as far as conduct at the bar is concerned. Mr Sudi is acting for the plaintiff in this matter. During the cross-examination of his client by counsel for the 3rd defendant, Mr Sudi wrote an answer on a sheet of paper in relatively big letters to assist his client respond to a question put to the said client. Counsel for the 3rd defendant alerted this fact to this Court at the bar as this Court was taking down notes in the course of proceedings.

This Court had no doubt about what was being alleged by counsel for the 3rd defendant. An immediate brief inquiry, involving questions to Mr Sudi and calling for the sheet of paper used by Mr Sudi and an examination of the same clearly supported the allegation made by counsel in the circumstances.

This Court asked Mr Sudi why he did what he did. He responded that he was not trying to assist his client but rather that he was taking down his notes. This response was clearly not true. He then apologized for his conduct.

This Court reminded Mr Sudi that he has ethical standards to abide by and that coaching a witness is certainly below the ethical conduct expected of the bar. He agreed and apologized.

This Court asked Mr Sudi how many years of standing he has at the bar. This question came because the papers he filed in this matter show that he took over this matter from the legal firm of Mr Malijani and Company. He indicated that he is entering his second year at the bar. Further, that he is still working for Mr Malijani with whom he has terms and that in fact the plaintiff asked him to handle this matter. This Court had serious doubts about the truthfulness of the statement that Mr Sudi had terms with Malijani and Company and was therefore allowed to handle this matter in his own right after filing a notice of change of legal practitioners. In fact, a call to Mr Malijani revealed that Mr Sudi resigned from Malijani and Company a while ago. This is really worrisome. This Court could clearly see that lack of supervision contributed to Mr Sudi's conduct of trying to win this case through crooked means. It is advisable for counsel to work under supervision and learn the job properly before taking matters and rushing to prosecute them without supervision.

This Court notes that section 21 of the Legal Education and Legal Practitioners Act gives this Court disciplinary powers with regard to the conduct of legal practitioners in the following terms

(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.

The scheme under section 21 of the Legal Education and Legal Practitioners Act is such that this Court may, on its own motion and after such inquiry as it thinks fit, among other things, admonish any legal practitioner in any of the circumstances indicated under sub section 1 of that section. The Court may also proceed on application by the Attorney General and the Chief Justice will sit on such an application alone or with such other judges as he may direct. See *Attorney General v Chiume* [1994] MLR 20.

In the foregoing circumstances, this Court was satisfied that the conduct of Mr Sudi was improper and so this Court exercised its power under section 21(1) Legal Education and Legal Practitioners Act and admonished counsel for the plaintiff, Mr Sudi, for the improper conduct in discharging his professional duties in this matter as aforesaid. Counsel shall conduct himself properly from now onwards.

Made in open court at Blantyre this 9th February 2016.

M.A. Tembo
JUDGE