

JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
JUDICIAL REVIEW CASE NO. 80 OF 2016

**BETWEEN:**

**THE STATE**

**-AND-**

**THE OFFICER-IN-CHARGE (FISCAL POLICE) ..... 1<sup>ST</sup> RESPONDENT**

**THE INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> RESPONDENT**

**EX-PARTE:**

**TITANI MUWALO MOYO ..... 1<sup>ST</sup> APPLICANT**

**CRISPUS MOYO ..... 2<sup>ND</sup> APPLICANT**

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA  
Mr. Domasi, of Counsel, for the Applicant  
Mr. O. Chitatu, Court Clerk

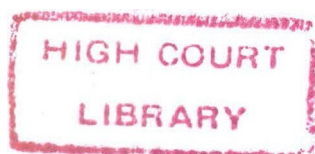
**RULING**

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*Kenyatta Nyirenda, J.*

On 31st October 2016, the Applicants filed with Court an ex parte Summons under 0. 53, r. 3 of the Rules of the Supreme Court (RSC) to obtain leave of this Court for them to make an application for judicial review against the Respondents in respect of the decision of the Respondent "*ordering the arrest of the Applicants on issues and facts that are generally and naturally civil in nature* " [Hereinafter referred to as the "Summons"].

The Summons was accompanied by four other documents, namely, (a) Notification of Judge's Decision on Application for Leave to Apply for Judicial Review, (b) Skeleton Arguments in Support for an Application for Leave to Apply for Judicial



Review (c) Affidavit Verifying Facts Relied on to Support Application for Leave to Apply for Judicial Review and (d) a draft Order. Each page of these documents is endorsed, at the bottom thereof, with the words "*Filed by Chidothe, Chidothe & Company, P.O. Box 3398, Blantyre*"

As is ordinarily the case with applications of this sort, the Summons was dealt with by the Court in summary fashion, that is, on consideration of documents only: see O. 53, r. 3(3) of RSC and **State and others; Ex parte Ziliro Qabaniso Chibambo [2007] MLR 372.**

Having read the above-mentioned documents (but without Counsel personally appearing before the Judge), the Court granted the Applicants leave to apply for judicial review of the challenged decision. The Court also (a) directed that the application for judicial review be made by Originating Motion and (b) ordered the Respondent not to arrest and/or prosecute the Applicants on any criminal allegations involving the Applicants on one hand and James Matiya regarding loans the Applicants took from the said James Brian Matiya or his associates". [Hereinafter referred to as the "stay order"].

Hearing of the Originating Motion was scheduled for 13th January 2017. On the set hearing date, Counsel Domasi appeared before me in Chambers. As the events that took place thereafter in Chambers form a foundational basis of the decision herein, it may not be out of place to quote, more or less, verbatim the proceedings:

*"Counsel: Matter is for hearing. We are discussing with the Respondents with a view of settling this matter out of court*

*Court: There is no document on file to show that the Respondents were served with Court process in this matter*

*Counsel: Both Respondents refused service and referred us to the Director of Public Prosecutions*

*Court: If they refused service and referred you to the Director of Public Prosecutions, how come they are discussing with you to have the matter settled out of court*

*Counsel: Yes, I am still discussing with them*

*Court: Your legal firm is YD Attorneys, it is your firm that is seised with this matter?*

*Counsel: Yes*

*Court: In that case, how come the documents were filed by M/s Chidothe, Chidothe & Company?*

*Counsel: I think there was a mistake due to "copy and paste"*

*Court: Your are not serious. I do not understand how all the documents could have been typed "Chidothe, Chidothe & Company"*

*Counsel: In that case, I am acting on brief from M/s Chidothe, Chidothe & Company*

*Court: When did you get the brief?*

*Counsel: No response"*

Section 21(1) (b) of the Legal Education and Legal Practitioners Act (Act) is relevant and it reads:

*"(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)*

*(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;" -Emphasis by underlining supplied*

It is clear that section 21 of the Act provides disciplinary powers with regard to the conduct of legal practitioners. Such disciplinary powers include the power reposed in this Court to admonish any legal practitioner in any of the circumstances set out in section 21(1) of the Act. Upon this Court's inquiries at the hearing on 13th January 2017, this Court is convinced that the conduct of Counsel Domasi in discharging his professional duties in this matter was improper as envisaged under section 21(1) (b) of the Act.

In light of the foregoing, this Court finds it fitting in the present case to exercises its powers under section 21(1) of the Act to admonish Counsel Domasi for the improper conduct. Needless to say, it is important that Counsel Domasi should ensure that he conducts himself properly from now onwards.

For the sake of completeness, the continuation of the stay order cannot be sustained.  
It has, accordingly, to be discharged. I so order.

Pronounced in Court this 18th day of January 2017 at Blantyre in the Republic of Malawi.

A handwritten signature in blue ink, consisting of a large, stylized 'D' followed by a vertical stroke and a small flourish.

**Kenyatta Nyirenda**  
**JUDGE**