



Law



Registry

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

JUDICIAL REVIEW CASE NUMBER 36 OF 2017

BETWEEN:

THE STATE

AND

**DISCIPLINARY COMMITTEE OF THE
MALAWI LAW SOCIETY**

1st RESPONDENT

MALAWI LAW SOCIETY

2nd RESPONDENT

EX PARTE:

LUSUNGU GONDWE

APPLICANT

CORAM: JUSTICE M.A. TEMBO,

Theu, Counsel for the Applicant
Msowoya, Counsel for the Respondents
Mpasu, Official Court Interpreter

ORDER

This is this court's order dismissing the proceedings in this matter following the applicant's failure to take any steps to prosecute his originating motion for judicial review of the respondents' decision in exercise of their supervisory jurisdiction over the applicant in this matter.

The applicant is a legal practitioner and a member of the 2nd Respondent.

The 2nd Respondent is a statutory body responsible for, among others, the discipline of legal practitioners who are its members. The 2nd Respondent exercises its disciplinary powers through the 1st Respondent.

The applicant commenced these judicial review proceedings on 12th June 2017 when he obtained leave from this Court to commence judicial review proceedings against the respondents.

the conduct meeting to which the applicant was called was private and for the purpose stated in the Rule 10 (2) of the Disciplinary Committee Rules of Procedure.

The applicant attended the private conduct meeting before the Disciplinary Committee of the Malawi Law Society. His client did not.

In the end, it transpired that the matters that the applicant's client complained about had been settled by the applicant by the date of the conduct meeting.

The Disciplinary Committee of the Malawi Law Society decided that there was no need to inquire further into the matter since the applicant had settled the subject matter of the complaint of his client. It also determined that settlement of the subject matter of the complaint by the applicant was an admission on his part concerning his client's complaint.

And consequently, the Disciplinary Committee of the Malawi Law Society resolved to take the impugned decision recommending to the Attorney General to suspend the applicant and prosecute him for the alleged professional misconduct in this matter.

However, as correctly pointed out by the applicant, Rules 15 and 16 of the Disciplinary Committee Rules of Procedure provide that the Disciplinary Committee of the Malawi Law Society can only make recommendations to the Attorney General if a disciplinary hearing is held following a conduct meeting from which the Committee considers that the allegation of professional misconduct against a legal practitioner warrants disciplinary proceedings.

In terms of Rule 15 (4) of the Disciplinary Committee Rules of Procedure, the hearing must be conducted in accordance with section 10 of the Commissions of Inquiry Act.

The hearing is preceded by a notice of hearing containing the alleged acts of professional misconduct. See Rule 15 (2) of the Disciplinary Committee Rules of Procedure.

This Court granted the applicant the permission to apply for judicial review on the ground that he had a legitimate expectation to be charged with an alleged act of professional misconduct and to be heard by the Disciplinary Committee of the Malawi Law Society before the Committee made its recommendations to the Attorney General.

This Court made further ancillary orders, including, a stay of the recommendation of the respondents to the Attorney General to suspend the applicant and prosecute him.

matter.

Order 12 rule 56 Courts (High Court) (Civil Procedure) Rules provides that this Court may strike out a proceeding, without notice, if there has been no step taken in the proceeding for 12 months.

This Court is of the view that this is an appropriate case in which it should exercise its discretion to strike out the judicial review proceedings, without notice, considering that the applicant has not taken any step in these proceedings for a period exceeding 12 months.

When the applicant and the respondents indicated that a settlement agreement had been reached in this matter they also undertook to file that agreement.

The two lawyers representing the parties herein were under a duty to this Court to file their agreement in this matter. That would close these proceedings.

This Court wishes to put on record that Mr Theu for the applicant is an apt lawyer and so too Mr Msowoya for the respondents.

However, it is worrisome that in the end no agreement was filed by the two of them as undertaken to this Court and the matter was left hanging for over 12 months.

This Court therefore excoriates both lawyers, Mr Bright Theu and Mr Alick Msowoya for their conduct herein which is below par.

The judicial review proceedings are accordingly struck out and so too any ancillary reliefs granted at the permission stage.

Notwithstanding the foregoing, it is worth saying a few things about this matter.

First of all, the proceedings which have just been struck out in this matter involve very important and grave issues to do with the disciplining of legal practitioners by the respondents under statute.

It is very disturbing to see that there are Rules of procedure to be followed by the Disciplinary Committee of the Malawi Law Society in the course of its proceedings, which Rules the Disciplinary Committee of the Malawi Law Society allegedly failed to follow.

It is further appalling to see that the Disciplinary Committee of the Malawi Law Society that was actually chaired by a Solicitor General failed to follow the simple and straightforward rules of procedure. And that this led to these proceedings.

this view is stated by Megarry J. in *John v Rees* [1970] Ch 345, 402 where he said that the law

Is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.

In the circumstances, one is tempted to wonder whether, from the perspective of the Disciplinary Committee then, the whole disciplinary process in this matter was deliberately rigged in favour of not carrying out the disciplinary process. That the process in this matter was a window dressing.

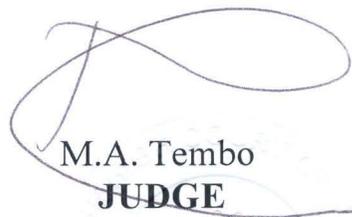
One may speculate that the Disciplinary Committee deliberately made the elementary mistake so that once the recommendations were made to the Attorney General the whole process would come to a screeching halt as the process would be amenable to judicial review as it turned out! Who knows?

There is no way of telling which is which since the whole matter also hanged in limbo until it was struck out due to the conduct of the applicant's lawyer and the conduct of the Disciplinary Committee itself yet again, in not filing the agreement as undertaken.

The circumstances surrounding the proceedings that have been struck out are appalling all round. That is the least this Court can say in this very distressing situation.

The Registrar shall notify the parties of the decision of this Court striking out the proceedings as is required under Order 12 rule 58 Courts (High Court) (Civil Procedure) Rules.

Made in chambers at Blantyre this 26th November 2018



M.A. Tembo
JUDGE