REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL DIVISION

IN THE MATTER OF THE LEGAL EDUCATION AND LEGAL PRACTITIONER ACT 2017 AND IN THE MATTER OF ADMISSION OF ELIJAH MAGONA AND IN THE MATTER OF ADMISSION CAUSE NO. 48 OF 2024

IN THE MATTER OF THE LEGAL EDUCATION AND LEGAL PRACTITIONERS ACT

CORAM: HH ELIJAH BLACKBOARD DAZILIKWIZA PACHALO DANIELS,

Mr. F. Mathanda, Court Clerk/ Official Court interpreter

NOTICE OF REJECTION

> It is a nullity. **It was dead at the point of filing**. The Summons, as in this case, is fundamentally defective **and incompetent**[1]
>
> (Emphasis supplied)

1. We have before us what we think is an application littered with haste and traits of unpreparedness and consequently unalive on its arrival. We would be slow to impute incompetence on the person of the petitioner and or the applicant, but we would not hesitate

[1] See the reasoning of Honourable Yakuwawa Msiska in Kanjere v Patel & Chizizi Civil Cause No. 37 of 2023 (Unreported)

to describe his efforts through this application as fundamentally incompetent. We should make a promise that no-one should take our words for it but those of the eloquent Honourable Justice Yakuwawa Msiska in *Kanjere v Patel Chizizi Civil Cause No. 37 of 2023 [2024] MWHC Civ 15 (11 October 2024).* That said, what we have is an application by the petitioner made pursuant to Order 25 rule 2(1)(2)(a) of the Courts (High Court) (Civil Procedure) Rules, 2017 where the petitioner wants this matter referred to a judge in chambers. We acknowledge the petitioner's request for review of our decision in the order dated 11th November, 2024.

2. While we understand his right to so proceed, we must mention that, we initially were considering recusing ourselves to avoid the appearance of bias. We however concluded that, our duty to process the application is distinct from commenting on the merits of the case as mandated by *section 9 of the Republic of Malawi (Constitution) Act* to only consider relevant facts and prescriptions of law.

3. Like any other application, we will subject this application to a proper interrogation. We understand that, the petitioner has a right to challenge any decisions including those rendered by us, but this must be done within the confines of the law. Thus, we will not comment on the merits of the matter, as we have already rendered a decision on the issues raised in this application. Nonetheless, we will scrutinize the manner through which the application is made. We think the application is not yet ripe in its baking. It must be rejected so the applicant brings it as it ought. The perception of bias should not prevent us from ensuring that the application herewith complies with legal requirements. A thorough review of the application exposes numerous grounds for rejection, but to avoid injuring the soul of brevity, we will limit ourselves to the relevant ones.

4. Before undressing the reasons for our rejection, it must be pointed out that we are empowered under Order 5 rule(s) 10, 11 and 13(a) of the Courts (High Court) (Civil Procedure) Rules, 2017, to reject a document and issue a notice of rejection where the document filed on its face appears to us to be an abuse of the court process, or to be frivolous, or vexatious.

5. To begin with, the petitioner's skeleton arguments have been signed by a non-existent legal practitioner since soon after the signature there appears to be a name of the law firm instead of a specific legal practitioner as required by law. Thus, the last part of the skeleton arguments appears as follows:

CLEAT & ASSOCIATES

Legal Practitioners for the Claimants

We are shocked, how is CLEAT & ASSOCIATES a legal practitioner/s? does she belong to a society of legal practitioners? Certainly not. Perhaps, the petitioner and or the claimant intended to mean "a legal house" for the claimants? Again, we only have one claimant, and we will certainly not speculate on what the claimant and or the petitioner intended to write. We keep referring to the claimant and or the petitioner and not Counsel because it is logical to conclude that, the petitioner is impliedly representing himself, even though he does not have audience yet. We warn him. This is not a simple matter as will be seen below how. Everything that is before us, explains why our coram is incomplete because we think the application is incompetent as it does not specify any legal practitioner representing the petitioner and or the claimant.

The implication one has from reading the application is that it is not clear who is representing the claimant and or the petitioner. Supposedly, CLEAT & ASSOCIATES signed the application as a legal practitioner. How can that be? And yet the record indicates as such. Truly, CLEAT & ASSOCIATES cannot sign any Court document because she is not a person in law neither is she a member of the noble calling. We do not know who is representing the petitioner and or the claimant. Is he representing himself? Of course he is learned in law but not yet conferred the honour to have our audience or better yet any Court of law.

His time which we know is coming, is certainly not ripe. But we understand his unrelenting zeal. We surmise that, the passion to practice, will soon be quenched by the honour that when all is done according to law, the Honourable Chief Justice will confer the petitioner and or the claimant the privilege of audience before the superior courts and courts subordinate thereto.

6. We made a promise when we introduced the entrance of our reasonings that not our words but those of Honourable Justice W. Yakuwawa Msiska in *Kanjere v Patel & Chizizi Civil Cause No. 37 of 2023 (Unreported)*, must qualify as authority in describing the application which is now before us. The learned Judge had the following to say on the use of a law firm's name without indicating the specific Legal Practitioner. At paragraph 64:

> *...the Court holds that the summons is incompetent in that it was not signed by a legal practitioner known to law. The fatal effect of the signing of an originating process by a firm of legal practitioners is that the entire suit is incompetent ab initio. It is a nullity. It was dead at the point of filing. The Summons, as in this case, is fundamentally defective and incompetent. It is inchoate, legally non-existent and can therefore, not be cured by way of an amendment. See* Ministry of Works and Transport, Adamawa State v Yakubu (supra).[2]

7. The Honourable Judge goes ahead giving guidelines on how processes are to be signed. Quoting Rhodes-Vivour JSC in *SLB Consortium Limited v Nigerian National Petroleum Corporation (2016) 9 NWLR 317*, where the Supreme Court of Nigeria states as follows:

> "***All processes filed in court*** *to be signed as follows: First, the signature of counsel, which may be a contraption. Secondly,* ***the name of counsel clearly written****. Thirdly,* ***who counsel represents****. Fourthly, name and address of the legal firm*."

[2] Ibid

(Emphasis supplied)

8. It does not require too much reading to understand that the application we have is guilty of omission to do as eloquently presented by the learned Court above. We adopt the reasoning of the Honourable Judge in its entirety. The petitioner's application herein is fundamentally defective and incompetent for penning down as signature against the name of the law firm as if the firm is a legal practitioner. This alone is enough a reason to reject the application.

9. In any case, the petitioner was initially being sponsored by Counsel Clement Masauko Mwala but clearly looking at the manner in which the application is drafted and our reading of his sworn statement in support of this application under his name, clearly shows that the claimant is representing himself and or filing this application even though he erroneously submits that CLEAT & ASSOCIATES are his legal practitioners. We have already concluded that, that cannot be. We must generally comment that there is a procedure if one would want to change a legal practitioner under Order 33 of the Courts (High Court) (Civil Procedure) Rules, 2017 which provides as follows and must be complied with:

> 1.—(1) A party who is represented by ***a legal practitioner*** in a proceeding may change his legal practitioner without an order of the Court.
>
> (2) The party or his legal practitioner ***shall file*** with the Court a notice of the change and shall serve the notice on each party to the proceeding.
>
> (3) The party or his legal practitioner ***shall file*** *with the Court a notice of appointment* without an order of the Court and shall serve the notice on each party to the proceeding and on his former legal practitioner, if any.
>
> (4) The notices under sub rules (2) and (3) shall state the party's new address for service.

[Emphasis supplied]

10. What we note is that, a party is represented by a legal practitioner who belongs to a legal house or any other such institution. Assuredly, a legal practitioner and law firm cited as legal practitioners are used interchangeably as though they mean the same thing. Its erroneous to so proceed. Here the Order above talks about a change of a legal practitioner and not otherwise. The manner through which the application is done, is respectfully incompetent and frivolous. The claimant should have taken time to properly draft the application because the application would be referred to the Honourable Chief Justice. We would fail in our sacred duty to send documents to the Honourable Chief Justice, documents which may offend the use of his Honourable time. We say this with greatest respect. We do not intend to fail. We will not.

11. It is trite law that the use of the word "*shall"* in a statute connotes mandatory duty (see the Malawi Supreme Court of Appeal decision in *New Building Society v Henry Mumba [2001-2007] MLR (Com) 243*). Therefore, when the rules use "shall file" on the Order above, they make it mandatory that the party who is changing a legal practitioner should file a notice of such a change. The petitioner in his petition was sponsored by Counsel Clement Masauko Mwala like earlier stipulated, but in the current application before us, after a closer reading of the sworn statement by the petitioner it is clear he is representing himself. For instance, paragraphs 3 of his sworn statement reads as follows:

> *THAT On or around September, 2024,* ***I filed a petition to be admitted to t****he Bar after graduating from the University of Malawi on the 29th of August, 2024.*
>
> *(Emphasis supplied)*

12. The use of the first-person pronoun within the sworn statement in support of the application, and many a reading thereof, suggests that the petitioner is representing himself by referring to the petition which was filed in Court on record by Counsel Clement Masauko Mwala. While the application indicates representation by a law firm, no specific

counsel is identified by name, as is required raising concerns about the identity of the individual who signed the document.

13. We do not intend to imply that the petitioner is prohibited from self-representation but perhaps not in these kinds of applications more so where Counsel Mwala was already on record as the sponsor. It could well be that his (we mean the claimant) is just an omission to properly draft the documents in that licensed lawyers from his firm have filed this application, but to conclude so from the papers we have, it would be us committing intellectual dishonesty. If our doubts are in fact answered affirmatively, then proper legal procedures must be adhered to and the court record must accurately reflect that. We feel compelled to caution the petitioner, as an aspiring legal practitioner, about the dangers of circumventing legal requirements and in essence representing himself where he does not have audience with the Court.

    Can he legally proceed on his own behalf? Does he possess the privilege of audience? Is his omission one of drafting and or presentation? We do not know, but what we know is that; a competent application should be immune to such rudimentary but fatal deficiencies.

14. Accordingly, we will reject to issue this application. It must be redone. Needless to say, the application is flooded with serious littering of amateurish approach and that is why we will also reject it on the basis that, the petitioner and or the claimant has not complied with the rules substantially. It goes without saying, that Order 18 rule 18 of the Courts (High Court) (Civil Procedure) Rules, 2017 permits the filing of a sworn statement despite any defects in form, provided the Court grants specific permission. It is also crucial to note that the sworn statement filed by the petitioner in support of the application exhibits several significant deficiencies. Firstly, the sown statement does not comply with Order 18 rule 7 sub-rule 4 of Courts (High Court) (Civil Procedure) Rules, 2017. This omission is certainly not fatal *per se* but only shows how the application was made with haste.

15. Again, the sworn statement fails to comply with the mandatory requirement stipulated on Order 18 rule 7 Sub-rule 5(d) of Courts (High Court) (Civil Procedure) Rules, 2017. This

undertaking is a fundamental procedural safeguard designed to ensure accountability and adherence to only present before the Court issues that are true and that one would commit an offence if otherwise. Since this is an application that is heavily supported by a sown statement, clearly the rules have not been followed and such a substantial breach cannot be cured under the umbrella of the overriding objective, which objective must be read together with Order 5 rule 9 of Courts (High Court) (Civil Procedure) Rules, 2017, which allows rejection as a consequence of any substantial breach of the rules. On this we also reject the documents. We would go on and on to expose the breaches but we warn our hand. Our intention is clean we only want to forward a competent application. This one is not. We will not forward it as sought unless otherwise refined.

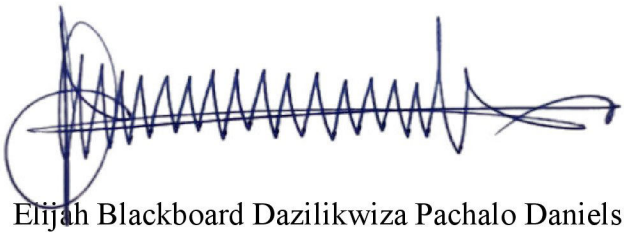
16. Be that as it may, the Legal Education and Legal Practitioners Act (Cap 3:04) unequivocally establishes the Honourable the Chief Justice as the Judge within the High Court responsible for all admissions. Consequently, the petitioner should have directed through our office his request for review to the Honourable the Chief Justice and not just any judge in chambers for want of jurisdiction. The reading of his application is clearly raising issues whose substance we are not permitted to comment on but are indeed a terrain of the Honourable Chief Justice. We cannot assume on behalf of the claimant and or the petitioner where indeed he intends us to refer this matter to. If this omission is not fundamental, we do not know what else is. Unfortunately, this solidifies our position that the application was done with haste and it is frivolous in all its breathe. We will reject the documents and only advise the petitioner and or claimant to reconsider keenly and be meticulous before he refiles this application. The petitioner has the right to proceed as he wishes but ours is a duty we are meticulous about. We reject the documents for we have tested them and we have found them wanting and deficient.

17. In light of these considerations, we find it necessary to reject these documents for they constitute an abuse of court process with the aforesaid reasons. Before any further step is taken, we highly recommend that the contents and ingredients of section 3 of the Legal Education and Legal Practitioners (Amendment) Act, 2024 must be read well and understood, and so are Orders 5, 10, 18, 25 of the Courts (High Court) (Civil Procedure)

Rules, 2017. This will help the applicant file a competent application whatever it will be and we will without delay refer it accordingly. Ours is simply a mere recommendation. There is no peril in not taking heed of our humble recommendation. We simply warn that procedure and law must *prima facie* be followed regard being had to the honour of the office that any such applications as may be will be referred to the honourable office of the Chief Justice. If we were to submit anything to that office we would make sure that we are thorough and meticulous. That is what we are inviting the claimant to do.

18. But our decision remains, we reject issuing these documents, we do not need to cite any procedural authority on that lest we be guilty of repetitions. We will not repeat ourselves on that.
19. It is so ordered.

PRONOUNCED in chambers this 22nd day of January, 2025 at the High Court of Malawi, Principal Registry Civil Division.



Elijah Blackboard Dazilikwiza Pachalo Daniels

ASSISTANT REGISTRAR