



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION
JUDICIAL REVIEW CAUSE NO. 5 OF 2025
(Before Honourable Justice Mambulasa)

BETWEEN:

**THE STATE (ON THE APPLICATION OF
GOLDEN MWANGULUBE *t/a* MWANGULUBE &
COMPANY).....CLAIMANT**

-AND-

**DISCIPLINARY COMMITTEE OF THE MALAWI LAW
SOCIETY.....DEFENDANT**

CORAM: HON. JUSTICE MR. MANDALA D. MAMBULASA

Mr. Chancy Thomu Gondwe, Advocate for the Claimant

Mr. Chrispin Chimwemwe Ngunde, Advocate for the Defendant

Mr. Alfred Masamba, Advocate for the Defendant

Ms. Caroline Machado, Court Clerk/Official Court Interpreter

RULING

MAMBULASA, J

Introduction

- [1] On 11th February, 2025 the Claimant approached this Court seeking permission to apply for judicial review of the decision of the Defendant summoning the Claimant to a fresh disciplinary hearing on 14th February, 2025 on charges of misconduct of bringing the legal profession into disrepute and practising without a valid licence.
- [2] This was despite the matter having already been adjudicated by the Chikwawa Magistrate's Court which imposed sanctions including setting aside the judgment, ordering the refund of the sum of MK2,241,000.00 and requiring him to bear compliance costs thereby subjecting him to double punishment/jeopardy for the same alleged misconduct.
- [3] The Claimant also sought an interim relief by way of an order of interlocutory injunction restraining the Defendant from proceeding with the fresh disciplinary hearing on 14th February, 2025 since the impugned decision is wholly and utterly unlawful, procedurally unfair and adversely threatens and affects the interests of the Claimant as a legal practitioner and a partner in the firm of Messrs Mwangulube & Company.

- [4] On 15th November, 2024 the Defendant invited the Claimant to a conduct meeting whose purpose was to inform him about his alleged conduct that resulted in the complaint and to ensure that he had a greater understanding of the consequences of his alleged actions in compliance with rule 16 of the Disciplinary Committee Rules of Procedure, 2024.
- [5] If not restrained by this Honourable Court, the Defendant would proceed to implement the said illegal, irrational and procedurally unfair decision through its scheduled hearing which was to take place on 14th February, 2025.
- [6] Among the reliefs sought is a declaration that the decision of the Defendant to summon the Claimant to a fresh disciplinary hearing is unlawful in that it amounts to a second punishment for the same set of facts and allegations for which he already suffered judicial penalties, contrary to the principles of justice, and is *ultra vires* the powers conferred upon the Defendant under the Legal Education and Legal Practitioners Act.¹
- [7] The application was made pursuant to Order 19, rules 20 (3) and 22 of the Courts (High Court) (Civil Procedure) Rules as read together with section 16 (2) of the Statute Law (Miscellaneous Provisions) Act.²
- [8] There was also a Sworn Statement verifying facts relied on to support the application made by the Claimant.

¹ Act No. 31 of 2018.

² Cap. 5:01 of the Laws of Malawi.

- [9] The Claimant also filed Form 86A, Grounds on which relief was sought and Skeleton Arguments in support of his application.
- [10] The application was assigned to this Court by the office of the Registrar on 12th February, 2025. However, it was only brought to the attention of the Court in the evening of 13th February, 2025 when the Court was in transit to Lilongwe to attend the State of the Nation Address (SONA) by the State President, Dr. Lazarus McCarthy Chakwera, at Parliament.
- [11] When the Court perused and considered the application, it was of the considered view that it should come on notice to the Defendant. This the Court is empowered to do under Order 19, rule 20 (4) of the Courts (High Court) (Civil Procedure) Rules.
- [12] Thus, the Court gave directions that the application should be served on the Defendant by close of business on 17th February, 2025. The Defendant was to serve its documents in the matter by close of business on 20th February, 2025. The with-notice application was scheduled to be heard on 24th February, 2025.
- [13] When the matter came up for hearing on 24th February, 2025 the Defendant orally raised a preliminary issue for determination by the Court.
- [14] It was that when Advocate Mr. Chancy Thomu Gondwe filed the application on 11th February, 2025 he did not have an annual practice licence issued to him by the Malawi Law Society as stipulated in section 30 (1) of the Legal Education and Legal Practitioners Act.

[15] It was contended that by law his licence had expired on 31st January.³ His licence was only issued to him by the Malawi Law Society the next day, on 12th February, 2025.

[16] The Defendant argued that the application filed by Advocate Mr. Chancy Thomu Gondwe and the steps taken by him were therefore a nullity and should be declared as such by this Court.

[17] It also argued that if the Court agrees with its position, then it should also invoke its powers under section 89 (1) (c) of the Legal Education and Legal Practitioners Act and admonish him for practicing the profession of the law without a valid annual practice licence.

[18] The Defendant further argued that since it had been forced to prepare documents in opposition to the application and also attend court, it should be awarded costs of the application.

[19] This ruling is therefore on the preliminary issue that was raised by the Defendant and argued by the parties.

Issue for Determination

[20] There is only one issue to be determined by this Court at this stage and it is whether the preliminary issue was properly raised or brought before this Court.

³ See section 30 (2) of the Legal Education and Legal Practitioners Act.

The Law

- [21] The scheme under the Courts (High Court) (Civil Procedure) Rules is that any matter, including a preliminary issue, is to be raised or brought before the Court through a formal application,⁴ supported by a sworn statement⁵ and skeleton arguments.⁶
- [22] While an oral application may be made during the proceeding, it is not the norm. Such applications may only be made for urgent reliefs and in any event, the party making the application undertakes to file a formal application within the time that may be directed by the Court.⁷
- [23] A formal application ensures that there is no ambush on the other side and that the issue or issues to be dealt with are clear both to the parties and the Court. It also ensures that there is fairness and accurate record in the delivery of justice.
- [24] Formal applications also ensure that evidence is properly led before the Court. There is no temptation by advocates to give evidence from the Bar, a thing which is procedurally untenable.

⁴ See Order 10, rule 1 of the Courts (High Court) (Civil Procedure) Rules.

⁵ See generally Order 18 of the Courts (High Court) (Civil Procedure) Rules.

⁶ See Order 20, rule 1 of the Courts (High Court) (Civil Procedure) Rules.

⁷ See Order 10, rules 2 (2) and 9 of the Courts (High Court) (Civil Procedure) Rules.

[25] There is no doubt that this Court has the power to deal with preliminary issues. In *The Democratic Progressive Party -vs- The Attorney General (On behalf of the Office of the President of the Republic of Malawi)*⁸ the Court said:

In addition, Order 16, rule 6 (1) of the Courts (High Court) (Civil Procedure) Rules, (hereinafter referred to as “CPR”), allows the court to hear arguments by the parties in a proceeding on preliminary issues of fact or law between the parties, where it appears likely that if the issues are resolved, the proceeding or part thereof will be resolved without a trial, or the costs of the proceeding or the issues in dispute are likely to be substantially reduced. Order 16, rule 6 (1) of the CPR is in tandem with the overriding objective of the Rules, as provided for in Order 1, rule 5.

Application of the Law to the Facts

[26] In this case, no formal application of the preliminary issue, supported by a sworn statement and skeleton arguments was made by the Defendant as is required by law.

[27] The Court was just informed by the Defendant that it had a preliminary issue and that the Claimant had been briefed about it minutes before the scheduled hearing.

[28] In the course of the hearing of the said preliminary issue, it became apparent that advocates on both sides were giving facts/evidence from the Bar which should have come properly before the Court by way of sworn statements.

⁸ Constitutional Referral No. 3 of 2021 (High Court of Malawi) (Principal Registry) (Unreported).

[29] In the circumstances, this Court holds that the preliminary issue was not properly raised or brought before this Court. Procedure was not followed in bringing it.

[30] As such, the Court has no option but to strike it out but with liberty to bring it again properly if the Defendant is so minded to do.

[31] Each party shall bear its own costs.

[32] Made in Chambers this 25th day of March, 2025 at Blantyre, Malawi.


M. D. MAMBULASA
JUDGE