

The State (On the Application of Golden Mwangulube t/a MWANGULUBE & COMPANY) v The Disciplinary Committee of the Malawi Law Society

Judgment

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Edna Bodole
Cause Number:	Judicial Review Application Number 05 of 2025
Date of Judgment:	June 30, 2025
Bar:	appellant unrepresented respondent unrepresented

1. This is the Claimant's with notice application under Order 19 rule 20 (3) of the Courts (High Court) (Civil Procedure) Rules, 2017, seeking permission to apply for judicial review of the Defendant's decision or resolution dated 4th April, 2025. The Claimant also seeks an interim injunction restraining the Defendant from implementing the resolutions made pending the determination of the matter. The impugned decisions are namely, suspending the Claimant for a period of one year, recommending to the Chief Justice for his debarment, and ordering him to

pay K500,000.00 as costs for the Disciplinary proceedings. The Claimant also seeks an order of an interlocutory injunction restraining the Defendant from implementing these resolutions pending the determination of the judicial review application, should permission be granted.

2. The reliefs sought by the Claimant if granted permission to commence judicial review are as follows:

(a) A declaration that the decision of the Defendant amounts to double punishment and is, therefore, unlawful, unreasonable, procedurally unfair, and made in bad faith.

(b) A declaration that the decision of the Defendant suspending the Claimant for a period of one year, recommending to the Chief Justice for his disbarment and an Order/resolution to pay K500,000 .00 being costs of the Disciplinary proceedings is unlawful in that it amounts to a second punishment for the same set of facts and allegations for which allegations the Claimant has 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.

(c) A declaration that the impugned decision of the Defendant is irrational in that it seeks to penalize the Claimant despite the matter having already been resolved by a competent judicial body, and without considering the finality of judicial determinations, the penalties already imposed by the Magistrate, and the financial burden already suffered by the Claimant in compliance with the said determinations.

(d) A declaration that the Defendant's decision/resolution is procedurally unfair as it was made (i) without affording the Claimant an opportunity to be fairly heard on whether further proceedings were justified, and (ii) without disclosing any fresh factual or legal basis warranting a reopening of the matter.

(e) A declaration that the Defendant's decision/resolution is premised on a factual misrepresentation that the Claimant personally appeared in court on 18th March, 2024 when, in fact, he did not, as the court record would clearly show that Counsel Mbwana, and not the Claimant, appeared for trial on that day.

(f) A declaration that the Defendant's decision to charge the Claimant with engaging in misconduct that brings the profession into disrepute is unlawful and in that the alleged act of filing a Notice of Adjournment without a practicing license does not, in law, amount to such misconduct.

(g) A declaration that the Defendant's decision to proceed with the disciplinary hearing despite the matter having been resolved by consent between the parties is unreasonable and constitutes an abuse of process, as the complainant acknowledged receipt of full refunds from the Claimant and agreed to have the default judgment set aside and the matter recommenced afresh.

(h) A declaration that the Defendant's decision to proceed with a disciplinary hearing on the same set of facts after he has already suffered financial and reputational consequences amounts to bad faith and is contrary to the principles of fairness and justice, as the Defendant is acting in a manner that is oppressive, vindictive, and devoid of any legitimate regulatory purpose.

(i) An order of certiorari or a like order quashing the decision or resolution by the Defendant.

(j) A prohibitory order restraining the Defendant from implementing the said resolution.

(k) An order for costs.

(l) Any other order that this Court deems just and proper.

3. In support of the application for the present proceedings, the Claimant stated that he is a Legal Practitioner practicing under Messrs. Mwangulube & Company and was seized of a matter in Civil Cause No. 268 of 2023: *Joseph Nyalapa and Ben Charles v Nico General Insurance Company Limited* before the Senior Resident Magistrate Court in Chikwawa (lower court). By agreement with Counsel for the Defendant, Counsel Jere, in the matter and Counsel Chitsonga, the Claimant was to stop representing one of the clients as there was another matter involving the same facts and the same parties handled elsewhere. Due to an administrative error, the Claimant's law firm mistakenly filed a Notice of Adjournment in the matter when the Claimant's practicing license had expired. Despite the Court Record showing that another counsel, not the Claimant, appeared for the Claimant on the said date having filed a Notice of Change of Legal Practitioners, the Claimant was later accused of having attended court and proceeded with the trial without a valid practicing licence.

4. Following these events, Nico General Insurance Company through their legal representatives, Messrs. Churchill and Norris lodged a complaint against the Claimant with the lower court which ruled that the judgment obtained by the Claimant's firm was a nullity due to the improper filing of the Notice of Adjournment and he was ordered to refund the executed sums at his own expense. Despite these financial and procedural sanctions, the matter was resolved amicably through a consent order between the parties, setting aside the default judgment and allowing the case to recommence afresh.

5. Despite the resolution of the matter before the lower court, the same complaint was subsequently lodged with the Defendant. The Claimant was summoned to a disciplinary hearing on 15th November, 2024 of which he attended virtually where it was acknowledged that he had refunded the disputed funds and that he had settled with all parties involved. However, the complainant maintained that the Claimant had practiced without a valid license, leading the Defendant to make an impugned decision that the Claimant should face additional disciplinary charges of misconduct i.e. bringing the legal profession into disrepute and practicing without a valid license contrary to section 89 (2) (j) and (h) of the Legal Education and Legal Practitioner's Act. He was then summoned to another disciplinary hearing to answer these charges on 14th February, 2025.

6. The Claimant submitted that the revival of the same complaint before the disciplinary committee is unfair, oppressive, wrongful and in bad faith as the matter was adjudicated upon by the lower court, resolved by consent and he had already been subjected to substantial financial consequences. Further, the law does not render a document filed by a legal practitioner without a valid licence null and void yet the disciplinary process against him is predicated upon this erroneous assumption.

7. The Claimant further submitted that he has no alternative remedy to the reliefs sought herein in that the Defendant's decision is not appealable to any other superior body within the Defendant or under the Legal Education and Legal Practitioner 's Act except by way of judicial review as provided under section 96

(3) of the Legal Education and Legal Practitioner's Act.

8. The Defendant submitted that the Claimant filed a Notice of Adjournment, attended court, and continued with the trial despite not possessing a valid practicing licence. According to the case of Pastor Chilamba and 5 Others v Pastor Mfera and 3 Others Civil Cause No. 21 of 2022, any document and all procedures filed by a legal practitioner without a valid practicing licence are considered null and void. This indicates that the Claimant's conduct amounts to misconduct.

9. The Defendant further submitted that the Claimant never filed a Notice of Change of Legal Practitioners as he did not produce it during the disciplinary hearing. His case was based on practicing without a licence and if there was evidence to the contrary, surely, he would have produced it. This evidence cannot be relied upon by the Claimant at this stage when it was not produced at the disciplinary hearing.

10. The Claimant was summoned to a conduct meeting on 15th November, 2024. A conduct meeting is not part of the disciplinary inquiry. It is merely a prehearing procedure that informs the legal practitioner about his conduct and the consequences thereto, and whether the matter should be escalated to a disciplinary hearing. It does not involve any substantive decision making. The Claimant was only requested to indicate whether he understood the charges and their potential consequences.

11. The Claimant was called to a disciplinary hearing that took place on 14th February, 2025 and he attended the hearing. Both the Claimant and Counsel Victor Jere gave evidence. Both parties were given a chance to cross examine each other and they also responded to questions from the Defendant. After the hearing, the Defendant proceeded to met out the disciplinary penalty in line with section 96 of Legal Education and Legal Practitioner's Act which grants the Defendant discretion to impose any penalties stipulated under the said provisions. Further, the law does not proscribe circumstances in which a particular penalty should be imposed.

12. The Defendant further submitted that they were mandated to hear the matter despite the Claimant complying with the lower court's order, refunding the complainant, and settling the matter by consent as the complainant never withdrew his complaint and the issues raised by the complainant established allegations of ethical violations that were to be considered by the Defendant.

13. The Defendant did not subject the Claimant to further disciplinary proceedings as the matter had not been adjudicated by the lower court. The lower court does not have jurisdiction over the Claimant as a legal practitioner on matters of misconduct. The jurisdiction lies with the High Court and the Defendant.

14. Order 19 rule 20 the Courts (High Court) (Civil Procedure) Rules, 2017 provides as follows:

(1) Judicial shall cover the review of

(a) a law, an action or a decision of the Government or a public officer for conformity with the Constitution, or

(b) a decision, action or failure to act in relation to the exercise of a public function in order to determine_

(i) its lawfulness;

(ii) its procedural fairness;

(iii) its justification of the reasons provided, if any, or

(iv) bad faith, if any,

where a right, freedom, interests or legitimate expectation of the applicant is affected or threatened. .. "

15. Order 19 rule 20 (3) of the Courts (High Court) (Civil Procedure) Rules, 2017 provides that an application for judicial review shall be commenced with the permission of the Court. The purpose for the requirement for leave is to eliminate at an early stage any frivolous, vexatious or hopeless applications for judicial review, and to ensure that an applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further investigations and consideration - see State v governor of the Reserve Bank of Malawi and Another, Ex Parte Finance Bank of Malawi [2005] MLR 431. Inland Revenue Commissioners v National Federation of Self Employed and Small Businesses Limited [1981] 2All ER 93.

16. In Ombudsman v Malawi Broadcasting Corporation [199] MLR 329 the Court held that permission to apply for judicial review will be granted only if the Court is satisfied that there is an arguable case for granting the relief claimed by the

applicant. The Court further held that at this stage there is no duty on the part of the Court to belabour itself going into the matter in depth. Once the Court is satisfied that there is an arguable case then permission should be granted. The discretion that the court exercises at this stage is not the same as that which the court is called on to exercise when all the evidence in the matter has been fully argued at the hearing of the application for judicial review.

17 .At this stage, therefore, the Court has simply to satisfy itself if the Claimant has an arguable case in relation to the impugned decision and the reliefs sought. If this Court is satisfied, then permission should be granted.

18. The evidence clearly demonstrates that the Claimant, through his legal firm, filed a Notice of Adjournment despite not having a valid practicing licence. The Claimant submitted that the matter was resolved before the lower court when he refunded the executed funds and the judgment in question subsequently was set aside. He further submitted that the decision to summon him to a disciplinary hearing is tantamount to a double punishment. This Court is of the view that the settlement of the matter by the parties was conducted outside the disciplinary process. The events in the lower court represented a standard legal procedure that occurs when a party obtains a judgment improperly. These proceedings are unrelated to the disciplinary procedures applicable to legal practitioners. Therefore, the Claimant cannot expect this process to limit the Defendant's authority regarding cases of professional misconduct, such as the present one.

19. Section 91 of the Legal Education and Legal Practitioners Act authorizes the Defendant to receive and investigate complaints, conduct hearings, and impose penalties as outlined in section 96. Further, Rule 15(1) of Part IV of the Disciplinary Committee Rules of Procedure, 2024 grants the Defendant the authority to accept complaints and summon legal practitioners to conduct meetings. Rules 18 and 19 of Part V of the same Rules empower the Defendant to initiate disciplinary proceedings or investigate the conduct of any legal practitioner. Consequently, under section 91 of the Legal Education and Legal Practitioners Act along with Parts IV and V of the Disciplinary Committee Rules of Procedure, 2024, the Defendant was obliged to accept the complaint filed by the complainant concerning professional misconduct and to initiate disciplinary proceedings against the Claimant. Furthermore, since the complainant did not withdraw the complaint, the Defendant was justified in summoning the Claimant to a disciplinary hearing.

20. Regarding the Claimant's submission that he was already penalized by the lower court, this does not diminish the authority of the Defendant to discipline legal practitioners. According to sections 89 and 91 of the Legal Education and Legal Practitioners Act, only the High Court and the Defendant possess the jurisdiction to discipline a legal practitioner for misconduct that violates ethical standards. A lower court does not hold such disciplinary powers.

21. The Claimant further submitted that he underwent two disciplinary proceedings. According to Rules 15 and 16 of the Disciplinary Committee Rules of Procedure, 2024 a legal practitioner is initially summoned to a conduct meeting, which serves to inform him of the charges. This is a preliminary step

and does not involve any substantive decision. The conduct meeting can also be attended virtually. The meeting held on 24th November, 2024, was a conduct meeting, which explains the Claimant's virtual attendance. Conversely, the meeting on 14th February, 2025, was a disciplinary hearing during which both parties were present, and a decision was made based on the hearing. This indicates that he did not undergo two disciplinary hearings.

22. The Defendant has the authority under section 96 of the Legal Education and Legal Practitioners Act to impose sanctions on legal practitioners who have engaged in misconduct. This authority is discretionary. The Claimant committed a serious misconduct that strikes at the core of the legal profession, especially since a legal practitioner is authorized to practice law in courts only with a valid practicing licence. Such conduct is considered to undermine the integrity and reputation of the legal profession. The Defendant had the discretion to impose appropriate penalties on the Claimant for his serious misconduct. Furthermore, the recommendation to the Chief Justice to strike the Claimant off the roll of legal practitioners does not amount to an error of law, as it is simply a recommendation that the Chief Justice will decide to accept or reject after considering the arguments presented both by the Claimant and the Defendant. See *The State (On the application of Golden Mwangulube tla Mwangulube and Company and The Disciplinary Committee of the Malawi Law Society* Judicial Review Case No. 9 of 2025.

23. This Court, therefore, concludes that there is no arguable case warranting further examination through a full judicial review hearing, as the Claimant has not demonstrated any clear error of law in the Defendant's disciplinary process.

Consequently, the Claimant's application for permission for judicial review is dismissed.

24. Considering the unsuccessful outcome of the Claimant's application for permission for judicial review, there is no need to assess whether an interlocutory injunction should be granted, as there are no grounds for such a determination. Consequently, the Claimant's application for an interlocutory injunction also fails.

25. Made in chambers this 30th June, 2025 at Blantyre.