



**IN THE MALAWI SUPREME COURT OF APPEAL  
MSCA MISC. CIVIL APPLICATION No. 14 OF 2025**

(BEING PRINCIPAL REGISTRY  
JUDICIAL REVIEW APPLICATION NO 9 of 2025)

**BETWEEN**

**THE STATE (On the application of GOLDEN MAWNGULUBE t/a  
MWANGULUBE & COMPANY) ..... APPLICANT**

**AND**

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

**CORAM: HON. JUSTICE R. MBVUNDULA, S.C., J.A.**

C. Gondwe, Counsel for the Applicant

M. Mnthunzi, Recording Officer

**RULING**

1. The applicant is a legal practitioner who is at odds with the respondent over his conduct with respect to a personal injury matter he handled on behalf of a minor who was suing through an adult representative. The minor was injured in a road accident.
2. The respondent received a complaint alleging professional misconduct on the part of the applicant, instituted and concluded a disciplinary hearing and made a number of decisions adverse to the applicant, following which the applicant sought permission in the High Court to commence judicial review

proceedings against the said decisions. The High Court declined to grant the permission.

3. The present application was brought before this Court following the said refusal by the High Court, pursuant to the provisions of the Supreme Court of Appeal Act as read with the Supreme Court of Appeal Rules which permit this Court to entertain afresh such an application once declined in the High Court. Such a hearing is not an appeal against the High Court decision but, as already stated above, a fresh application.
4. I already rendered my decision, albeit summarily, refusing to grant the leave sought, as I find the grounds upon which the application is premised to be wanting. In my assessment, no court, properly and objectively addressing its mind to the facts and circumstances at hand, would quash or reverse all and any of the decisions complained of by the applicant.
5. The applicant was engaged by one Prisca Pondani to represent a minor who was suing Prime Insurance Company for damages for personal injuries. The applicant instituted an action in that behalf in the Blantyre Magistrate Court. There is what appears to be a consent judgment entered for the sum of K700 000.00 damages and K400 000.00 costs. Out of those sums, the applicant paid out to the complainant the amount of K343 000.00. According to the applicant Ms Pondani complained that the said amount was too low in view of the injuries that had been sustained by by the minor, who had spent two months admitted in hospital. The applicant states that in reaction to this complaint the applicant agreed to pay out the amount of K4 500 000.00 with the aim, according to him, to settle the matter amicably.
6. I immediately observe, firstly, that the applicant has not explained the basis upon which he initially paid out only K343 000.00 to the complainant when, in his own words, the quantum of damages paid out by the insurer was supposedly K700 000.00. There is no explanation as to who the beneficiary of the balance was, and the legal grounds therefor. Secondly, there is no explanation, and so it remains unclear, how the amount of compensation ultimately paid out to the complainant rose to K4 500 000.00, given the applicant's case that the insurer ostensibly consented to and paid out only K700 000.00 damages.
7. Upon being dissatisfied with the K343 000.00 payout, Ms Pondani laid a complaint to the Malawi Law Society and the matter ended up before the

- Society's disciplinary committee which summoned the applicant and ultimately held a disciplinary hearing on 14<sup>th</sup> February 2025.
8. The applicant claims that by this date he had already made a settlement by way of two cheques totaling the K4 500 000.00 aforesaid. The evidence on record, however, contradicts this assertion as it shows that two payments were made, the first one on 17<sup>th</sup> February, 2025 (cash amounting to K2 000 000.00) and the second on 19<sup>th</sup> February, 2025 (a cheque paid through the Malawi Law Society for K2 157 000.00). The two figures obviously do not add up to K4 500 000.00 as the applicant asserts this far. Elsewhere, however, the applicant states that the sum-total of the two amounts represented the difference between the K4 500 000.00 finally "offered" and the amount of K343 000.00 earlier on paid and complained about by Prisca Pondani. It however remains a fact that the two payments were not made prior to the disciplinary hearing as the applicant asserts, the same having been made on the 17<sup>th</sup> and 19<sup>th</sup> February, 2025, respectively, some days after the hearing on 14<sup>th</sup> February, 2025.
  9. After the lodging of the complaint to the respondent, the respondent initially summoned the applicant to a "Conduct Meeting" that was to be held on 15<sup>th</sup> November, 2024 *"to inform you about your alleged conduct that had resulted in the complaint and to ensure that you had a greater understanding of the consequences of your alleged actions."*
  10. Subsequent to the Conduct Meeting the applicant was summoned to the disciplinary hearing. The summons to that hearing, dated 6<sup>th</sup> February, 2025, laid out the nature of the complaint, and that Ms Pondani was dissatisfied with the compensation that she had received, and sought information on how the claim was settled and in what sum.
  11. I reproduce hereunder the substantive contents of the summons.

*11.1 The Disciplinary Committee took note that:*

- a) You confirmed to the Committee that you had understood the charges against you and their consequences.*
- b) You had not resolved the issues with the complainant.*
- c) You denied the charges.*

*Therefore, the matter was escalated to a disciplinary hearing*

## **CHARGES**

1. *Engaging in misconduct that brings the profession of the law into disrepute contrary to Section 89(2)(j) of the Legal Education and Legal Practitioners Act, 2017 (LELPA).*
2. *Embezzlement contrary to section 89(2)(m) of the LELPA.*
3. *Failure to keep client informed of the progress of their matter contrary to Chapter 10 rule 14 of the Malawi Law Society Code of Ethics (Code of Ethics).*
4. *Making settlement on behalf of a client without the client's instructions contrary to Chapter 10 rule 15(1) of the Code of Ethics.*
5. *Failure to promptly and fully communicate all settlement offers to the client contrary to section 10 rule 15(ii) of the Code of Ethics.*

...

**KINDLY TAKE NOTE** that a party wishing to be heard is required to file his written representations with the Committee **not less than five (5)** working days before the said date of hearing and at the hearing a party shall only be required to answer questions from the opposite party and from the Committee but not to orally repeat what is in his representation.

**FURTHER NOTE** that you are entitled to legal representation.

**ANY PARTY** intending to call a witness must file with the Committee written witness statements of such statements (sic), duly sworn and serve on the opposite party **not less than five (5)** working days before the date of hearing. Any statements of a witness not called at the hearing shall not be used.

12. Equally reproduced below are the substantive contents of the applicant's response to the charges (dated 12<sup>th</sup> February, 2025):

12.1 *In response to the above-captioned Summons, my defence is as follows:*

1. *I had 2 meetings with the complainant and two of her relatives at my office. For both meetings, I fully reimbursed all the 3 of them transport costs to and from Balaka to Blantyre plus lunch.*
2. *Tentatively, we agreed **K4, 500,000.00** as compensation to settle the complaint. I requested them to bring the Health Passport Book of the injured infant to verify the complainant claim that he had spent 2 months at hospital with the injured infant. The complainant indicated the said Health Passport Book was with the biological mother of the injure infant who also stays in Balaka,; the complainant has neglected or failed to bring the requested Health Passport Book. Attached hereto is a copy I wrote to the Malawi Law Society Chief Executive Officer relating to the same dated 10<sup>th</sup> December, 2024 and marked "GMI".*

3. *Additionally, I felt that it was proper for the biological mother of the injured infant to be present in the settlement discussions as well as the payment of the money but the complainant failed to bring the biological mother of the injured infant. This brought apprehension and fear for me that it was possible some fraud could be involved in part of the complainant and her 2 relatives who were coming with her on both occasions to my office.*
4. *To avoid further delays and escalations of the complaint, I had a discussion with the Chief Executive Officer of the Malawi Law Society Secretariat who will then ascertain who to pay the settlement money between the complainant and the biological mother of the injured infant.*

13. As it is now known, the disciplinary committee found the applicant guilty of misconduct. In paragraph 26 of the applicant's affidavit in support of this application expresses surprise that having found him guilty of misconduct the disciplinary committee proceeded to take the action it took. He, perhaps naively, states as follows:

13.1 ***THAT** my understanding was that this matter had been resolved during the Disciplinary Hearing only to find that the Disciplinary Committee proceeded and resolved to suspend me for two years with a recommendation to be struck off the roll of Legal Practitioners in accordance with Section 96(I) of the Legal Education and Legal Practitioners Act. I attach and exhibit a copy of the Findings of the Disciplinary Hearing marked "GM9".*

14. Firstly, I observe that the document exhibited as "GM9" has no bearing on the present matter as it relates to a different disciplinary hearing, also against the applicant, wherein he was found to have misconducted himself by practicing without a licence. The record of the disciplinary proceedings in the present matter, including the specific findings by the committee, have not been placed before this Court. A party who applies for leave to apply for judicial review but withholds from the court vital information suffers the consequence that leave is withheld because such applicant will have breached his duty of full disclosure or candidness. In the present instance, the record of the disciplinary proceedings whose decisions are impugned has not been availed to this Court. Instead a false one has.

15. It was noted under paragraph 11.1 above that one of the procedural conditions at the disciplinary proceedings was that the applicant was to be asked questions by the opposite side and by the committee. Because the record has not been availed, this Court is left ignorant as to, for example, what questions

the applicant was asked, if any, and what answers he may have given, and whether the facts were incriminating or otherwise. A party who withholds crucial evidence is presumed to do so because he considers that evidence to be adverse to his case. That presumption must apply with full force in the present application.

16. Further still, the withholding of the record of the disciplinary hearing offends the legal requirement for full disclosure more specifically in *ex parte* applications such as the present. The case of *R v Kensington Income Tax Commissioners, ex p Princes Edmond de Polignac* [1971] 1 KB 486, is in point, where Warnington LJ, at 506, stated:

16.1 *It is perfectly well settled that a person who makes an ex-parte application to the court, that is to say, in the absence of the person who will be affected by that which the court is asked to do, is under an obligation to the court to make the fullest and possible disclosure of all material facts within his knowledge and that if he does not make that fullest possible disclosure then he cannot obtain any advantage from the proceedings and he will be deprived of any advantage he may have already obtained by means of the order which has thus been wrongly obtained by him.*

17. The applicant advances the argument that when the adverse decisions of the disciplinary committee were made the complaint had already been resolved. The argument is not only untrue, but also lacking merit. It is untrue because, firstly, he himself expressly admitted at the Conduct Hearing that he had not yet resolved all the issues with the complainant, and secondly, that the balance was paid after the disciplinary hearing. The issue remains to be whether he misconducted himself in the first place. It is on record that if under the alleged consent judgment, damages were in the amount of K700 000.00 and he paid out the lesser amount of K343 000.00 without any justification. In the absence of any plausible explanation a finding of wrongdoing seems unimpeachable. Then it turned out that in fact the damages were in the larger amount of K4 500 000.00, the balance of which he only made good under lawful stress, namely, the disciplinary hearing and presumably its findings. The applicant acknowledges in his response to the disciplinary charges that the figure of K4 500 000.00 had been agreed to (see paragraph 12.1.2 above), which might bring into question the authenticity of the alleged consent order for K700 000.00, but that is perhaps a matter for another day and forum.

18. The applicant informs the Court that the disciplinary committee made the following decisions, which the applicant would seek to challenge at the judicial review, if leave were to be granted:

- 18.1 that the applicant be suspended from being a legal practitioner for a period of two years from the date his practice licence will be due for renewal;
- 18.2 that a recommendation be made to the Honourable the Chief Justice that the applicant be struck off the roll of legal practitioners; and
- 18.3 that the applicant should compensate the complainant in the sum of K4 500 000.00.

19. The applicant considers the following further factors as warranting judicial review:

- 19.1 *That he will suffer twice for the same set of facts he has already been punished for.* He has not cited any law to the effect that once a legal practitioner reimburses misappropriated client's money no further disciplinary sanctions are warranted. This submission is rejected.
- 19.2 *That the decisions are an affront to the principles of justice, irrational and procedurally unfair.* This claim must be measured against the provisions of section 43 of the Constitution which provides for administrative justice as follows:

*Every person shall have the right to—*

- (a) lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and*
- (b) be furnished with reasons, in writing, for administrative action where his or her rights, freedoms, legitimate expectations or interests are affected.*

The applicant has informed this Court that he was summoned and charged, in writing, as having violated the provisions of Legal Education and Legal Practitioners Act and/or the Malawi Law Society Code of Ethics. Further, that the procedure to be followed was outlined in the summons (which procedure he did not object to). He was allowed to make his representations, in writing, if he was minded to do so. Additionally, he was advised that he could call witnesses, and entitled to legal representation. It appears from these facts that the respondent proceeded in accordance with the requirements of section 43

of the Constitution and the rules of natural justice, generally. The applicant omits, in fact, to specify the principles of justice he perceives to have been violated by the respondent in this case. This assertion has no leg to stand on.

19.3 *That the decisions are ultra vires the powers conferred upon the respondent under the Legal Education and Legal Practitioners Act.* What has been said about the respondent citing relevant statutory provisions in the charges proffered against the applicant equally applies here.

19.4 *That the decisions threaten the applicant's interests as a legal practitioner and are unlawful.* That the decisions do threaten the applicant's professional career may be true, but they legitimately flow directly from the applicant's own misconduct in his handling of the affairs of the complainant. The decisions can, therefore, be scarcely categorized as unlawful. His situation would appear to be the consequence of his own actions. The steps taken by the respondent are anything but unlawful.

19.5 *That the decision to suspend the applicant and recommend that he be struck off the roll of legal practitioners, when the applicant "had already suffered financial and reputational consequences amounts to bad faith and is contrary to principles of fairness and justice, oppressive, vindictive, and devoid of any legitimate regulatory purpose".* To start with, the applicant does not appear to have suffered any financial loss. Restitution does not cause loss to one liable. The applicant suffered no injustice in the circumstances. As regards the matter of his reputation, no reasonable person can blame the respondent for it. If reputation matters, the applicant has only himself to blame. This is a pointless and hollow argument which must surely fail.

20. In the final analysis I form the undoubted view that the applicant's situation cannot be salvaged by way of judicial review and accordingly withhold leave to apply. The application stands dismissed.

Made in Chambers at Blantyre this 22<sup>nd</sup> day of April 2025.

  
R. Mbvundula S.C., J.A.

**JUSTICE OF APPEAL**