

Mrs Angelina Gilbert (on her own behalf and on behalf of the beneficiaries of the estate of Mr K.J. Chisale) vs Mrs Felister Cup (on her own behalf and on behalf of the Namilazi and Namagaseni families)

Court:	High Court of Malawi
Registry:	Civil Division
Cause Number:	Civil Cause Number 135 of 2024
Date of Judgment:	April 09, 2025
Bar:	For the Claimant: Mr Asma Kapoto For the Defendant: Mr Elliot M'bwana

Head Notes

Civil Procedure – Right of audience – Practising certificate – Counsel's failure to renew licence is not a proper basis for repeated adjournments

Civil Procedure - Striking out – Defence – Defence struck out where counsel's failure to hold a licence caused repeated adjournments

Summary

The Court, sitting in the High Court's Civil Division, entered judgment for the Claimant after striking out the Defendant's defence. The Claimant had commenced proceedings seeking a declaration of ownership over land at Nguluwe Village in Thyolo District, an order restraining the Defendant from interfering with her peaceful enjoyment of the land, damages for trespass, and costs. The Defendant had filed a defence denying any liability. Following a scheduling conference, a trial date was set for 11 March 2025. On that date, the Defendant's counsel successfully sought an adjournment on the ground that his practice licence had not yet been issued by the Malawi Law Society.

The matter was adjourned to 9 April 2025. At that subsequent hearing, it was reported that counsel for the Defendant was still unlicensed and was seeking a further adjournment on the same basis. The principal issue for the Court was whether to grant a further adjournment for this reason. The Court dismissed the application for a further adjournment. It struck out the defence and entered judgment in favour of the Claimant as sought in the statement of claim, including costs of the action. The Court held that to allow indefinite adjournments on the ground that counsel was unlicensed would be an affront to justice. Citing with approval the decision in *Annies Nyirenda v Proto Feeds*, the Court affirmed that the renewal of a practicing licence is a predictable requirement scripted in the Legal Education and Legal Practitioners Act and ought not to take a legal practitioner by surprise. A legal practitioner, it noted, shall not be entitled to practice without a valid licence.

Legislation Construed

Legal Education and Legal Practitioners Act (Cap. 3:04) (s 30(2), (3))

Judgment

The Claimant commenced the present proceedings against the Defendant, seeking a declaration that the land in contention at Nguluwe Village, Sub Traditional Authority Nguluwe in Thyolo District belongs to her; an order restraining the Defendant from preventing the Claimant from peaceful enjoyment of the land; damages for trespass and costs of this action. The Defendant denies being liable to the Claimant as claimed or at all.

The matter was set down for a scheduling conference on 27th November 2024. At that hearing directions for the further conduct of the matter were agreed upon. A trial date was set for 11th March 2025. Counsel for the Defendant sought an adjournment on the ground that his practice licence was yet to be issued by the Malawi Law Society. The matter was adjourned to a specific date being 9th April 2025 whereat it was reported that Counsel was still unlicensed and was seeking a further adjournment.

As observed by Kalua J. in *Annies Nyirenda v Proto Feeds and Another* Commercial Cause Number 385 of 2022 at para. 4:

"For a legal practitioner, renewal of a practicing licence is not a "sudden event" akin to some unforeseen natural disaster, unleashed without warning or mercy on some unsuspecting human kind by mother nature, no. Its occurrence is scripted in the law. In black and white. It really ought to take no lawyer by surprise, in all fairness. Every licence to practice expires on 31st January next following the date of its issue, and every legal practitioner desirous of practicing thereafter has to renew his licence. A legal practitioner shall not be entitled to practice unless he has had issued to him a valid licence to practice. (see s30(2) and (3) of the Legal Education and Legal Practitioners Act, Cap 3:04 of the Laws of Malawi) ... "

Having previously adjourned this matter on the same ground that Counsel for the Defendant was unlicensed, it would be an affront to justice to allow adjournments to the infinity. The Defendant's defence is therefore struck out and Judgment is hereby

entered in favour of the Claimant. It is so ordered.

Made in Chambers this 9th April 2025.

Allan Hans Muhome

JUDGE