

M (A PRACTITIONER) v LAW ASSOCIATION OF ZAMBIA

High Court
Ngulube, CJ.
17th January, 2000 and 7th April, 2000
1999/HP/1649

Flynote

Legal Practitioners – Practicing Certificate – suspension – propriety of.

Headnote

The identity of the applicant was not published in the Judgment. The Practitioner who is in private practice was suspended from practice by the Law Association of Zambia through its Legal Practitioners Committee.

The Association had received a complaint from a member of the public which was considered to be sufficiently serious to warrant the suspension of the applicant while the matter itself was referred to the Disciplinary Committee.

One important issue of principle required to be pronounced upon was whether the Association has power to suspend a practitioner pending the hearing of a complaint referred to the Disciplinary Committee.

Held:

- (i) When a practitioner's livelihood is at stake and there is also urgent need to review the matter for the sake of the clients and the profession, an ordinary action possibly with pleadings is inappropriate.
- (ii) Suspension of a practicing certificate to protect clients and the profession is dictated by urgent and grave necessity and not by any alleged need to punish anyone in advance of subsequent proceedings before the disciplinary committee.

Legislation referred to:

1. Legal Practitioners Act Cap 30 Sections 37(2), 68, 69, and 70.
2. Interpretation and General Provisions Act Cap 2 S. 25.

Case referred to:

(1) *Hamaundu v Law Association of Zambia and Others*, 1998/HP/540.

H.H. Ndhlovu, of *H.H. Ndhlovu and Company* for the applicant.
R.M. Simeza, of *Simeza Sangwa and Associates* for the respondent.

Judgment

NGULUBE, CJ, delivered judgment of the court.

I have decided that it is unnecessary to disclose the identity of the applicant in the published judgment.

The detailed facts of this case are not relevant to the issues to be decided and can be summarized thus: The practitioner who is in private practice was suspended from practice by the Law Association through its Legal Practitioners Committee. The Association had received a complaint from a member of the public which was considered to be sufficiently serious to warrant the suspension of the applicant while the matter itself was referred to the Disciplinary Committee. After action commenced but before the hearing, the issue of the suspension was resolved by the parties though the initial complaint itself remained pending for hearing before the Disciplinary Committee.

In answer to my concern that further proceedings may have become unnecessary, following the resolution of the suspension complained of out of Court, Mr Ndhlovu indicated that only one important issue of principle required to be pronounced upon, that is to say whether the Association has power to suspend a practitioner pending the hearing of a complaint referred to the Disciplinary Committee. Before I heard the arguments and submissions on this point, Mr Simeza raised two preliminary objections: One was that an application brought under S.37 (2) of the Legal Practitioners Act - which is concerned with refusal to issue a practising certificate - should not be entertained when the issue is not refusal to issue but the suspension of a current practising certificate. It was suggested that in this event, an aggrieved practitioner should commence action by writ in the ordinary way.

I have had occasion in the past to consider the very special parental jurisdiction reposed in the Chief Justice and I have not entertained efforts to circumvent or to trim such jurisdiction especially on technical objections. In the exercise of such jurisdiction, the Chief Justice has the same authority as the Master of the Rolls in England. When a Practitioner's livelihood is at stake and there is also urgent need to review the matter for the sake of the clients and the profession, an ordinary action possibly with pleadings is inappropriate. As I pointed out in the *Haamaundu* Case (1) (unreported) I have, as pater familias of the legal profession, previously entertained applications moved in a variety of ways and I have not felt any pressing need to prescribe a special procedure, content only that the matter has come before me. I repeat: Such cases are not suitable for pleadings in the ordinary way and any process of a summary kind for use at chambers will be in order.

The second objection by Mr Simeza was well taken and this was that practitioners ought not to launch proceedings when a complaint against them was already before the Disciplinary Committee which might circumvent, derail or delay such disciplinary proceedings. I upheld a similar objection in the *Haamaundu* case where I ordered a stay of the court action during the pendency of such disciplinary proceedings. A detailed and more reasoned discussion of the issue whether a current practising certificate can be suspended will have to await a future opportunity but, as presently advised, and having taken the submissions on both sides into account, there are situations when such a certificate may lawfully be suspended: See the examples in Halsbury's Laws of England, 4th Edition Reissue, Vol. 44(1), paragraphs 69 and 70. Some of the instances correspond with those envisaged in our own Sections 68 and 69 of the Legal Practitioners Act in the serious cases where the Association may in effect seize a practitioner's practice under the Third Schedule. As presently advised, it is not correct - as Mr Ndhlovu suggested - that a Practising Certificate once issued can never be suspended at all unless it be part of the punishment ordered by the Disciplinary Committee or the Court.

Suspension to protect clients and the profession such as under S.69 is dictated by urgent and grave necessity and not by any alleged need to punish anyone in advance of subsequent proceedings before the Disciplinary Committee.

Again, as presently advised, the power of the Association to licence a practitioner would imply a power to suspend for compelling and urgent cause and within the spirit of S.25 of the Interpretation and General Provisions Act, CAP.2 which provides that—

“Where any written law confers a power on any person to do or enforce the doing of an act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing”.

The profession is an honourable and noble one; it is not just another trade or calling and it would be highly dangerous for the clients, the public, and the profession if serious errant activity could not be dealt with instantly and if all would be stuck with a practitioner for the duration of a current practising certificate regardless of some very serious harmful activity.

This power, of course, cannot be exercised lightly or routinely since, in the ordinary course, suspension if warranted should follow after a hearing before the Disciplinary Committee or the Court. The instant and prior exercise of the power to suspend should be reserved for serious and urgent cases such as where dishonesty is suspected or where not to take swift action would probably expose the clients and the profession to serious harm or damage.

For reasons hereinbefore stated, this case stands stayed and adjourned generally and I make no order for costs.