

MAJOR LUBINDA SAWEKEMA

v

WATSON NG'A MBI

ATTORNEY GENERAL

HIGH COURT.

DR. MATIBINI, SC, J.

29th NOVEMBER, 2004.

2004/HP/166

[1] Civil procedure - Contempt of Court - Whether can be resorted to, to enforce judgment.

[2] Legal practitioners - Professional conduct - Need for counsel to protect and promote client's interests fearlessly.

This action was commenced by way of judicial review. The applicant sought a declaration that he was entitled under the "HandBook on Civil Service Home Ownership," to purchase house number 659 off Gardenia Avenue, Lusaka. Judgment was entered in favour of the applicant.

After delivery of the judgment, the applicant commenced contempt proceedings against the respondents. As a result of the contempt proceedings, the respondent filed a Notice to Raise Preliminary Issues. The following issues were raised:

(a) that the application for contempt of Court was irregularly before the Court, and therefore misconceived, and an abuse of the Court process because the contemnor [purported] had not assumed office at the time he was cited for contempt; and

(b) that the applicant's counsel has been persistently threatening the respondent's clients without due regard to the fact that the respondent's client's are represented by the Attorney General.

Held:

1. In every sphere of practice, counsel must be courteous to the Court, and all those with whom he has professional dealings;

2. Counsel is also required to promote and protect fearlessly and by all proper and lawful means, the client's interests; even at the pain of any punishment, as long as the law permits it;

3. Discourtesy by counsel in Court amounts to contempt;

4. Submissions by counsel must be formal, informed, researched, reasoned, objective, and temperate;

5. Submissions in this case have been expressed in terms that are intemperate, improper, ungentlemanly, and void of professional courtesy;

6. Contempt of Court is a means by which the Court might act to prevent, or punish conduct which tends to obstruct, prevent, and prejudice the administration of justice;

7. Contempt of Court can take many forms: it may be, disobedience by the contemnor of an order requiring him or her to restrain from taking a specified action; assisting another to breach such an order; and taking action which impede or interferes with the course of justice;

8. When a Court has rendered a money judgment, and costs have either been agreed, or in default of agreement, taxed, the successful party is at liberty to execute, or enforce a judgment;

9. A successful party may use one of the method of executing a judgment which are available to him under Order 45, Rule 1 of the Rules of the Supreme Court;

10. In case of any money judgment made against the State, the procedure for satisfaction of such judgment is set out in section 21 of the State Proceedings Act.

11. No process of execution lies against the State for the payment of a money judgment or costs. And no public officer is liable under any judgment or order for the payment of the money or costs by the State.

12. Any order made in favour of the State against any person in any civil proceedings to which the State is a party, may be enforced in the same manner as an order made in an action between a citizen or other legal entities.

13. Whilst contempt proceedings and or judicial review should not be resorted in order to enforce money judgment against the State, Courts still retain inherent jurisdiction, through contempt proceedings to coerce those whose who willfully obstruct, prejudice, or prevent the administration of justice.

14. Courts have in appropriate cases, the power to compel any one; including public officer's obedience to its orders, and decrees.

15. No Court of justice can hold and penalize a public officer of indeed any person for contempt of Court for any act or omission of another public officer, or person.

16. A legal practitioner shall not communicate with any person whom the legal practitioner knows to be represented in the case by another legal practitioner without the latter's consent.

17. There is no reason or justification why etiquette in the legal profession should be subordinated to military etiquette.

18. Legal Practitioners Rules are binding on all legal practitioners, and the Rules govern the practice of the law.

Cases referred to:

1. Morris v Crown Office [1970] 2Q.B. 114.
2. Attorney General v Times Newspaper Limited [1974]A.C. 273.
3. Stickrose (Pty) Limited v Permanent Secretary Ministry of Finance (1999) Z.R. 155.
4. Kamanga v Attorney General and Another (2008) volume 2, Z.R. 7.

Legislation referred to:

1. Constitution cap 1, Articles 11 (b), and 54 (1) (b).
2. State Proceedings Act, cap 71, ss. 21, and 23.
3. Debtors Act, cap 77, s. 24.
4. Rules of the Supreme Court (White Book) Order 21, rule 3, and sub rule 4, and 52.
5. High Court Act, cap 27, Order 17, rule 2.
6. The Legal Practitioners Practice Rules 2002, Statutory Instrument Number 51 of 2002.

Rules 37, and 38.

Works referred to:

1. S. Sime, A Practical Approach to Civil Procedure, (Oxford, Oxford University Press, 2005).
2. F.A.R. Bennion, Statutory Interpretation, (London, Butterworths 1997).
3. Professional Conduct Inn of Court School of Law, (London, Blackstone Press Limited, 1996).

V.L.A. Kabango of Messrs Paul Pandala Banda and Company, for the applicant.

Col. M. Phiri, Senior State Advocate, Attorney General Chambers for the respondent.

DR. MATIBINI, SC, J.: The facts giving rise to this application are that on 26th October, 2005, Justice J. A. Banda, delivered a judgment in favour of the applicant. The judgment was delivered following an application for judicial review seeking the following reliefs:

(i) a declaration that house number 659, off Gardenia Avenue, Avondale, Lusaka, is an institutional house purchased using government funds, and is not ancillary to the operation of the Zambia Air Force. And as per Government policy, the sitting tenant of the house is entitled to purchase the house;

(ii) an order for certiorari to quash the decision of the respondent to cancel the sell of house number 659, off Gadenia Avenue, Avondale, Lusaka, to the applicant who is a sitting tenant; and

(iii) An order for mandamus to compel the respondent to comply with the provisions of clause 1.3 (b) of the Government Policy document titled; "Handbook on Civil Service Home Ownership," issued by Cabinet office, in July, 1996, which entitles the applicant of house number 659, off Gardenia Avenue, Lusaka, to purchase the said house, and the respondents be directed to issue the applicant an

offer for sell of the said house forthwith.

In the judgment, justice J. A. Banda declared, and ordered as follows:

(a) that the house in issue is an institutional government pool house that is liable to be sold to the applicant;

(b) that the decision of the respondent (Attorney General) refusing to sell the applicant the house in issue is quashed; and

(c) the respondent ought to make an offer to sell the house in issue to the applicant in accordance with the terms and conditions contained in the Handbook on Home Ownership Scheme for Civil Servants.

The judgment referred to above, has not been implemented to date. As a result, on 17th August, 2009, the applicant decided to issue out of the principal registry ex parte summons for leave to apply for an order of committal of contempt, pursuant to Order 52 of the Rules of the Supreme Court, 1999 edition. The nub of the application for contempt is that the applicant has to date, not enjoyed the fruits of the judgment rendered in his favour by justice J. A. Banda.

Before determining the application for contempt, counsel for the applicant, Colonel Banda decided to discontinue the proceedings, because he considered that he had cited wrong parties to the proceedings. Namely he, cited public offices - Committee on Sale of Government Pool Houses; Commander of the Zambia Air Force; and the Attorney General-instead of the office holders, personally. Thus the Committee, and public officers referred to above, were substituted by Mr. Watson Ngambi; the Permanent Secretary in the Ministry of Works and Supply. However, as a result of filing the Notice of Discontinuance, an issue arose whether or not that notice had extinguished the entire action, including the judgment of 26th October, 2005.

In a ruling delivered on 4th June, 2010, I held that in view of the provisions of Order 17 of the High Court Rules, and Order 21 of the Rules of the Supreme Court, it was not legally competent for the plaintiff to discontinue the action without leave of the Court. I consequently held that the Notice of Discontinuance was a nullity; especially granted that it was filed after entry of a final judgment.

Later, on 28th September, 2010, the respondents decided to file a Notice to Raise Preliminary issues. In the notice, the respondents indicated that at the hearing of the application for leave to apply for order of committal for contempt, the respondents will raise the following issues:

(a) The application (for contempt of Court), is irregularly before the Court, and therefore misconceived, and an abuse of the Court process because the contemnor [purported] had not assumed office at the time he was cited for contempt; and

(b) The applicant's counsel has persistently been threatening the respondent's clients without due regard to the fact that the respondent's clients are represented by the Attorney General.

On 30th September, 2010, when Colonel Phiri, attended on me in connection with the Notice to Raise Preliminary Issues, counsel for the applicant; Mr. Kabongo was

inexplicably absent, despite having been informed of the return date. Be that as it may, I directed that counsel file written submissions in relation to the issues raised in the Notice to Raise Preliminary Issues.

Thus the respondents filed their submissions on 7th October, 2010. The submissions were supplemented by a Notice to Produce dated 28th September, 2010, and a further Notice to Produce dated 7th October, 2010. The respondents in their submissions advanced two grounds of arguments. In the first ground, Colonel Phiri argued that the application citing Mr. Ngambi for contempt is irregular, misconceived, and abuse of the Court process. In support of this contention, Colonel Phiri, recalled that on 23rd April, 2010, the applicant amended the application for contempt, by substituting the Committee on Sale of Government Pool Houses; Commander of Zambia Air Force; and the Attorney General, with Mr. Ngambi. At the material time, Mr. Ngambi deposed in the affidavit in opposition to the ex parte summons for leave to apply for order of committal dated 12th August, 2010, he had not been appointed as a Permanent Secretary in the Ministry of Works and Supply. He was only appointed as Permanent Secretary, in a letter dated 26th April, 2010. And the letter of appointment was effective from 19th April, 2010. He only assumed office on 3rd May, 2010.

As a result, in addressing the first ground, Colonel Phiri posed the following question: whether or not a person can be cited for contempt for a wrong, or omission committed by his predecessors in a government office. Colonel Phiri, contends that since Mr. Ngambi assumed office on 3rd May, 2010, it was inappropriate, nay, premature to cite Mr. Ngambi for contempt on 23rd April, 2010; when the application was taken out of the Principal Registry. Colonel Phiri further argued that at the time the application for contempt was filed, Mr. Ngambi was unaware about the judgment delivered in this matter on 26th October, 2005.

Furthermore, Colonel Phiri, argued that the attempt by the applicant to enforce the judgment against the State, through contempt proceedings, runs counter to the letter of the State Proceedings Act. And clearly amounts to an abuse of the Court process. In this respect, Colonel Phiri drew my attention specifically to section 21 (4) of the State Proceedings Act. And submitted that,

“.... No person shall be individually liable under any order...”

Colonel Phiri also drew my attention to the case of *Stickrose (pty) Limited v Permanent Secretary Ministry of Finance (3)*. Colonel Phiri submitted that in the *Stickrose (pty) Limited* case (*supra*), the Supreme Court held at page 161 that:

“Equally under the State Proceedings Act, the Court was not competent to issue a committal order against Mr. James Mtonga an individual. We must make the point that public officers need protection of the law. They are not to be individually harassed by way of civil actions as a means of enforcing judgments against the State.”

In view of the foregoing, Colonel Phiri submitted that the application for leave to issue an order for committal is prematurely, and irregularly before me. Colonel Phiri thus urged me to dismiss it.

The second issue canvassed in the second ground, relates to the propriety of the applicant's counsel's communications with the 1st respondent's client. The complaint here is that the applicant's

counsel persisted in issuing threats against the Attorney General's client, who is in any event represented by the Attorney General. Colonel Phiri submitted that the communication by counsel for the applicant, amount to misconduct. In support of the preceding contention, Colonel Phiri adduced a copy of the letter complained of. The letter in question is couched in the following terms:

B 332/08/vmib
16th August, 2010.

Lt. General Andrew Sakala.
Zambia Air Force.
Air Headquarters.
LUSAKA.

Dear Sir,

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We refer to the above subject matter.

As concerned nationals and legal practitioners we are under an obligation to convey our well considered advice to you in this action as follows:

- (a) The plaintiff obtained judgment in his favour, and appeals to the High Court, and Supreme Court, were dismissed.
- (b) To date, there has been no compliance with the Court's judgment.
- (c) At the last hearing on 4th June, 2010, the Honourable Justice Dr. P. Matibini, SC, advised both counsel for the plaintiff and counsel for the defendant to resolve the matter amicably and avoid protracted litigation. The judge observed that judgments cannot remain hanging. He added that as Advocates we know the consequence of disregarding an order of the Court.
- (d) It appears that the Air Commander has not been adequately appraised of the status of the case. The case is already decided in favour of the client. A deliberate disregard for the Court's directive may land you in serious problems with the Court.
- (e) Please be warned that if the Court Order is not complied with, we shall have no alternative but to apply for leave to bring an action for contempt of Court against you (the Air Force Commander) personally. Commander's Orders cannot override a Court's judgment.

The office of the Attorney General is requested to guide the Air Commander in this matter. There is nothing left to go to Court for, and the action can be comfortably settled outside Court so that our client gets the redress he asked for including costs. Let justice prevail.

Acknowledge receipt.

Yours faithfully,

PAUL PANDALA BANDA & COMPANY

c.c The Attorney General.
Ministry of Justice, Kent Building.
Fairely Lane.
LUSAKA.

Col. Moses Phiri.
Director of Legal Services.
Zambia Air Force.
Air Headquarters.
LUSAKA.

Colonel Phiri submitted that the foregoing threats were ill timed, and were meant to instill fear in government officials, considering that the applicant had already commenced contempt proceedings against the 1st respondent in respect of the same matter.

Colonel Phiri also submitted that in the affidavit in support of the ex parte summons for leave to apply for order of committal for contempt, counsel for the respondent deposed in paragraph 8 that:

“the 2nd respondent has failed to advise the 1st respondent about the Supreme Court order referred to in paragraph 6 as well.”

Colonel Phiri argued that the conduct by counsel for the applicant was not only ill conceived, but was in total disregard of Rules 37 (3) and 38 of the Legal Practitioners Rules, 2002, contained in statutory instrument Number 51 of 2002. Rule 37 (3) provides that:

“A practitioner shall not communicate about a particular case directly with any person whom the practitioner knows to be represented in that case by another practitioner without the latter's consent.”

Further, rule 38 provides that:

“A practitioner shall treat a professional colleague with the utmost courtesy, and fairness in relation to Court matters or any other professional business or dealings.”

In view of the foregoing, Colonel Phiri contends that counsel for the applicant deliberately ignored those provisions set out above. Thus Colonel Phiri has urged me to censure counsel for the applicant.

In response, the applicants filed their submissions on 15th October, 2010. As regard the first ground, Mr. Kabongo submitted that the office of the Permanent Secretary, or any other public office, is not personal to holder. Mr. Kabongo argued that when a person assumes a public office, the privileges, powers, duties, and liabilities devolve upon the successor. Mr. Kabongo also submitted that Colonel Phiri has unfairly personalized the contempt proceedings; the proceedings are not aimed at an individual.

Mr Kabongo argued that he bears no malice against Mr. Ngambi. Mr. Kabongo submitted that Mr. Ngambi is just a victim of circumstances.

In relation to the *Stickrose (Pty) Limited* case (*supra*), Mr. Kabongo argued that what has been cited by Colonel Phiri is *obiter dicta*. It is not the *ratio decidendi* of the case. Mr. Kabongo argued that there is a world of difference between the two concepts. Further, Mr. Kabongo argued that the *Stickrose (Pty) Limited* case (*supra*), is distinguishable from the instant case. Mr. Kabongo submitted that in this case, the applicant has exhausted all avenues of negotiations with the public officials. It is against this background that the applicant instituted proceedings for contempt.

As regards, section 21 (4) of the State Proceedings Act, Mr. Kabongo submitted that the section does not protect State officials from inertia, shoddy performance, or neglect of duty. Public officials, Mr. Kabongo argued, are under a duty to act judiciously. Mr. Kabongo further argued that a judgment of the Court binds parties to an action. And a failure to enforce a Court judgment, amounts to contempt of Court. Mr. Kabongo went on to submit as follows:

“The judiciary is the overseer of the executive. After the Courts have made their decisions no one or body can go against the decisions. In a book by RONALD FRASER titled *MANY DIMENSIONS* it is written-

“even though the Kings wrote *ECCLESIASTES*, yet the Courts gave judgment in Jerusalem.”

This sums up the role of the judiciary. We are worried about the phenomenon of public officer's tendency to disrespect Court decisions. From the time the late Honourable Justice J. A. Banda decided in favour of our client, the State has not obeyed the Court's judgment.

Our client has looked to us for a solution. Are we to be turned into the “Villian of the Piece” for putting up a good fight in protecting our client's interest? Must we be intimidated and cowed against our mandate to provide efficient and effective legal representation without fear, favour or affection? Must we throw away our oaths of allegiance to uphold the law and protect it under the Constitution against any one? Must we be antagonized against the Attorney General for appealing to his office to advise the person concerned on the judgment by late Justice J. A. Banda. Is there any impudence or disrespect in restating the constitutional role of the Attorney General under Article 54 (1) (b) of the Constitution of Zambia, which stipulates that the Attorney General shall be “the principal legal advisor to the Government.” Must our freedom of expression under Article 11 (b) of the Constitution of Zambia Cap 1 of the laws of Zambia be compromised when State officials fail to exercise power. If we do not

fight for our client, who will fight for him. We pray to the Court to dismiss the first grounds and arguments from the respondent's Counsel for being emotional, personal, biased, and unprofessional. The issue at hand is not conduct of the applicant's counsel, but failure by the State to enforce the Court's judgment. In discharging our duty to the client, we have nothing to fear except the law itself. We reiterate our oath of office.”

I have deliberately reproduced verbatim this portion of the submissions. I must state at once that in every sphere of practice counsel must be courteous. Counsel must at all times be courteous to the Court, and all those with whom he has professional dealings. However, counsel is required to promote and protect fearlessly, and by all proper and lawful means, the client's interest. It will also be recalled that in the case of *Kamanga v Attorney General and Another* (4), the Supreme Court observed at page 20, that the ethics of the legal profession demand that legal practitioners should fearlessly defend the interests of a client, ever at the pain of any punishment, as long as the law permits it. This does not however give counsel a carte blanche to be insolent to judges, witnesses, or to opposing counsel. It is noteworthy that discourtesy by counsel in Court amount to contempt. (See *Professional Conduct-Inns of Court School of Law* (London, Blackstone Press Limited, 1996), paragraph 5.2. at 97). The style of submissions, by Mr. Kabongo in this case is deprecated. Submissions by counsel must be formal, informed, researched, reasoned, objective, and temperate. The submissions by Mr. Kabongo in this case have been expressed in terms that are intemperate, improper, ungentlemanly, and void of professional courtesy.

In response to the second ground, Mr. Kabongo submitted that it is established military discipline that all correspondence must be channeled through the Commander. And in the present case, the addressee is the Commander of the Zambia Air Force. Mr. Kabongo argued that the law firm respected the chain of command, and did not deliberately ignore Rules 37 (3) and 38 of the Legal Practitioners Practice Rules of 2002. Further, Mr. Kabongo submitted that he deprecates the insinuation that cast doubt on the Attorney General's ability to advise his clients correctly. The aspersion, Mr. Kabongo contended, was intended to malign the law firm against the Attorney General. Mr. Kabongo submitted that the long lapse in implementing the judgment, is proof of inertia, and neglect of duty on the part of the State.

On 10th November, 2010, Colonel Phiri filed a reply to the applicant's submissions. In the reply, Colonel Phiri submitted that Order 52, rule 1, sub rule 4, provides instances when an individual can be committed for

contempt of Court. Order 52/1/4 is in the following terms:

“Where by virtue of any enactment the High Court has power to punish or make steps for the punishment of any person charged with having done any thing in relation to a Court, tribunal, or person which would, if it had been done in relation to the High Court have been a contempt of that Court.”

In light of Order 52/1/4, Colonel Phiri submitted that a person cited for contempt should have done an act, or omitted to do an act in relation to that particular Court. Colonel Phiri argued that in this

case, Mr. Ngambi cannot be cited for contempt because there is no evidence on record to show that Mr. Ngambi failed to act on the judgment in question. This is so because at the time he was cited for contempt, he had not assumed the office of Permanent Secretary, in the Ministry of Works and Supply. Colonel Phiri also denied the allegation that he had personalized the proceedings for contempt. Further, Colonel Phiri submitted that the applicant has failed to address the issue regarding the propriety of the applicant's counsel's communications with the 1st respondent's clients. Colonel Phiri reiterated the submission that the applicant's counsel acted in total disregard of Rules 37 (3), and 38 of the Legal Practitioners Rules of 2002.

I am indebted to counsel for their arguments and submissions. The issues that fall to be determined in this matter are twofold. The first is whether or not the application for contempt is properly before me, having regard to the fact that the purported contemnor had not assumed office when the proceedings for contempt were initiated. The second issue relates to the propriety of the communications by the applicant's counsel, to the 1st respondent's clients.

Contempt of Court essentially consists of interfering with the administration of justice. Contempt of Court can take many forms. The most common forms are:

- (a) disobedience by the contemnor of an order requiring him, or her to take or refrain from taking specified action;
- (b) assisting another to breach such an order; and
- (c) taking action which impedes, or interferes with the course of justice. (See Stuart Sime, *A Practical Approach to Civil Procedure*, (Oxford, Oxford University Press, 2005) at page 487.

The central question in this application is whether or not there is any evidence that Mr. Ngambi may have committed contempt to warrant the grant of the leave sought in this matter. The answer to this question in my opinion lies in Order 52/1/4 of the Rules of the Supreme Court. To recapitulate, Order 52/1/4 is in the following terms:

“Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done any thing in relation to a Court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of the Court, an order of committal may be made by a single judge of the Queen's Bench Division.”

Further, Colonel Phiri relied on the case of *Stickrose (Pty) Limited* (supra) to support his submission that the attempt by the applicant to enforce the judgment against the State through contempt proceedings runs counter to section 21 (4) of the State Proceedings Act, and therefore amounts to an abuse of the Court process.

In order to appreciate the preceding submission, it is necessary to recite the entire section 21 of the State Proceedings Act. The marginal note to section 21 of the State Proceedings Act is styled as “satisfaction of orders against the State.” It is instructive to note that according to F.A.R. Bennion, *Statutory Interpretation*, (London, Butterworths, 1997), in section 256, at page 175, the learned author observes that:

“A side note or marginal note to a section is part of the Act. It may be considered in construing the section or any other provision of the Act, provided due account is taken of the fact that its function is merely to serve as a brief, and therefore possibly inaccurate guide to the content of the section.”

The terms of section 21 are as follows:

“21 (1) Where in any civil proceedings by or against the State, or in any proceedings in connection with any arbitration to which the State is a party, any order (including an order of costs) is made by any Court in favour of any person against the State or against a public officer as such, the proper officer of the Court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty one days from the date of the order or in the case of the order provides for the payment of costs, and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing the particulars of the order.

Provided that, if the Court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney General.

(3) If the order provides for the payment of any money by way of damages or otherwise or of any costs the certificate shall state the amount so payable and the Permanent Secretary Ministry of Finance, shall subject as hereafter provided, pay to the person entitled or to the legal practitioner acting for such person in the proceedings to which the order relates, the amount appearing by the certificate to be due to him together with the interest, if any allowed under section twenty.

Provided that the Court by which any such order as aforesaid is made or any Court to which an appeal against the order lies, may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended and if the certificate has not been issued, may order any such directions to be inserted therein.

(4) Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any Court for enforcing payment by the State of any such money or costs as aforesaid, and no person shall be individually, liable under any order for the payment by the State or any public officer as such of any such money or costs.

(5) This section shall apply both in relation to proceedings pending at the commencement of this Act, and in relation to proceedings instituted thereafter.”

I have deliberately set out section 21 of the State Proceedings Act in full, in order to make the following points. First, when a Court has rendered a money judgment, and costs have either been agreed, or in default of agreement, taxed, the successful party is at liberty to execute, or enforce a judgment. Second, a successful party may use one of the methods of executing a judgment which are

available to him under Order 45, rule 1, of the Rules of the Supreme Court. Order 45, rule 5, is expressed in the following terms.

“Subject to the provisions of these rules, a judgment or order for the payment of money not being a judgment or order for the payment of money into Court may be enforced by one or more of the following means, that is to say-

- (a) writ of fieri facias;
- (b) garnishee proceedings;
- (c) a charging order;
- (d) the appointment of a receiver;
- (e) in a case in which rule 5 applies, an order of committal; and

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- (f) in such a case, writ of sequestration.

In essence, Order 45, rule 1, deals with the enforcement of money judgments.

Third, in case of any money judgment made against the State, the procedure for satisfaction of such a judgment is set out in section 21 of the State Proceedings Act, referred to above. Thus no process of execution lies against the State for the payment of a money judgment, or costs. Further, no public officer is liable under any judgment or order for payment of the money or costs by the State. Lastly, it is noteworthy that in terms of section 23 of the State Proceedings Act, any order made in favour of the State against any person in any civil proceedings to which the State is a party, may be enforced in the same manner as an order made in an action between citizens.

To continue with the narration, Colonel Phiri in the course of his submissions drew my attention to the case of *Stickrose (Pty) Limited v Permanent Secretary* (supra). The facts of this case were that on 2nd August, 1996, the appellant obtained a judgment against the respondent in the sum of United States Dollars, five hundred and thirty thousand, five hundred and seventy seven, seventy eight cents (USD 530 577=78), and interest at the rate of 10 percent per annum. The interest was to run from 10th February, 1987, the date of the writ of summons, to 2nd August, 1996. In terms of section 21 (1) of the State Proceedings Act, a certificate for judgment against the republic of Zambia was prepared certifying the debt due to be in the sum of United States dollars one million, three hundred and thirty thousand, five hundred and forty eight, thirty six cents. (USD 1 330, 548=36), excluding post judgment interest. Sometime in June, 1997, the Court was moved pursuant to section 24 of the Debtors Act, to commit the Permanent Secretary, Ministry of Finance to jail for failing to pay the judgment debt. Yet the State was prepared to liquidate the judgment debt by way of monthly installments of two hundred million kwacha (K 200, 000, 000=00). The first of such installment was in fact paid in August, 1997. The next installment was paid in December, 1997; and the third installment in the sum of one hundred forty million kwacha (K 140, 000, 000=00), was paid on 13th May, 1998. However, the appellant decided to enforce execution of the balance of the judgment debt by way of judicial review for an order of mandamus. Later, the appellant commenced committal proceedings against the respondent. The trial judge refused to grant the order for committal. Instead, the trial judge varied the consent order by extending the period of

payment of the outstanding debt.

In delivering judgment of the Supreme Court, Sakala JS, as he was then, observed at page 159 that:

“In Zambia, the law governing satisfaction of judgments and orders against the State is specifically provided in part 4 of the State Proceedings Act. Section 21 (1) of the State Proceedings Act Cap. 71, makes provision for the issuance on application of a certificate containing particulars of an order made against the State.”

Sakala, JS. went on to recite the provisions of section 21 (3) of the State Proceedings Act referred to above. Justice Sakala, JS, continued at page 161 to observe that:

“In the circumstances of the present appeal, the Court had no jurisdiction in the first place to make an order of mandamus in judicial review proceedings as a means of enforcing a judgment against the State. Equally, under the State Proceedings Act, the Court was not competent to issue a committal order against Mr. James Mtonga as an individual.”

Sakala, JS, concluded as follows:

“We must make the point that public officers need protection of the law. They are not to be individually harassed by way of civil actions as a means of enforcing judgments against the State. Indeed, judicial review has never been a means of enforcing any judgment.”

One of the central questions which has arisen in this case is whether or not it is competent for the applicant to apply for a committal order against the 1st respondent; Mr. Watson Ngambi. Colonel Phiri has argued that the attempt by the applicant to enforce the judgment against the State through contempt proceedings, runs counter to the letter of the State Proceedings Act, and amounts to an abuse of the Court process. In aid of the preceding proposition, Colonel Phiri relied on the case of *Stickrose (Pty) Limited (supra)*.

Conversely, Mr. Kabongo contends that section 21 (4) of the State Proceedings Act, does not protect public officials, from inertia, shoddy performance, or neglect of duty. More succinctly, Mr. Kabongo argued that a failure to enforce a Court judgment amounts to contempt of Court.

At this juncture, I think it is necessary to place into proper perspective the term “contempt of Court.” Lord Cross of Chelsea in *Attorney General v Times Newspapers Limited (2)*, described the term “contempt of Court,”

in the following terms at page 322:

““Contempt of Court,” means an interference with the administration of justice, and it is unfortunate that the offence should continue to be known by a name which suggests to the modern mind that its essence is a supposed affront to the dignity of the Court. Nowadays when sympathy is readily accorded to any one who defies constituted authority, the very name of the offence predisposes many people in favour of the alleged offender. Yet the due administration of justice is something which all citizens whether on the left, or the right, or in the center, should be anxious to safeguard.”

Salmon L. J., in *Morris v Crown Office (1)*, was laconic in describing the purpose of contempt proceedings when he observed at page 129 as follows:

“...The sole purpose of the proceedings for contempt is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.”

Thus contempt of Court is a means by which the Courts might act to prevent, or punish conduct which tend to obstruct, prevent, and prejudice, the administration of justice.

Clearly, the *Stickrose (Pty) Limited* case (*supra*), is distinguishable from the instant case. The facts in the *Stickrose (Pty) Limited* case (*supra*), and section 21, of the State Proceedings Act itself, relate to a money judgment. In this case, the judgment in question does not impose any liability on the State to pay any money; instead, the judgment in issue decreed that the property in question should be offered by the State to the applicant. Thus whilst the Supreme Court held in essence, in the *Stickrose (Pty) Limited* case (*supra*) that contempt proceedings and/or judicial review should not be resorted to in order to enforce money judgments against the State, in my opinion, Courts still retain inherent jurisdiction, through contempt proceedings, to coerce those who willfully obstruct, prejudice, or prevent the administration of justice. Specifically, Courts have, in appropriate cases, power to compel anyone; including public officer's, obedience to its orders, and decrees. In a word, the instant case, falls outside the language of section 21 of the State Proceedings Act.

However, on the facts of this case, and in terms of Order 52/1/4, of the Rules of the Supreme Court, I accept Colonel Phiri's submission that Mr. Ngambi has not done, or omitted to do anything to warrant the commencement of contempt proceedings against him. Simply put, there is no proof that Mr. Ngambi has defied, obstructed, or indeed prevented the implementation of the judgment in issue. In any event, Mr. Ngambi had not assumed office of Permanent Secretary when these contempt proceedings were launched. And at any rate, no Court of justice can in my opinion hold and penalize a public officer or indeed any person for contempt of Court for any act or omission of another public officer or person. This is so because obvious injustice would be visited upon persons who are not guilty of or liable for contempt of Court. I therefore refuse leave to issue committal proceedings against Mr. Ngambi. Thus the application for leave to issue committal proceedings against Mr. Ngambi stands dismissed.

As regards the propriety of the applicant's counsel communicating directly with the 2nd respondent's client, I do not accept Mr. Kabongo's submission that it is an established military discipline that all correspondence must be channeled through the commander. The terms of Rule 37 (3) of the Legal Practitioners Rules, are so plain in my opinion that they do not require any debate. Namely, that a practitioner shall not communicate with any person whom the practitioner knows to be represented in the case by another practitioner without the latter's consent. Further, in my opinion, there is no reason, or justification why etiquette in the legal profession, should be subordinated to military etiquette, as suggested by Mr. Kabongo. The Legal Practitioners Rules are binding on all legal practitioners, and the

Rules govern the practice of the law. Therefore, the communication made by applicant's counsel directly to the 2nd respondent's client is deprecated.

Finally, costs of this application shall follow the event. And leave to appeal is hereby granted.

Application refused.