



Malawi Judiciary

IN THE SUPREME COURT OF MALAWI

MSCA CRIMINAL APPEAL NO. 05 OF 2016

BETWEEN

JOYCE ZIONE GOMANI 1ST APPELLANT

AND

ENERST MUZA2ND APPELLANT

AND

THE REPUBLIC RESPONDENT

**CORAM : HONOURABLE JUSTICE E. B. TWEA SC, JA
HONOURABLE JUSTICE D.F. MWAUNGULU SC, JA
HONOURABLE JUSTICE A.D. KAMANGA SC, JA
R. Kapile/Thabo Nyirenda - Counsel for the Appellant
B. Phiri/Saidi - Counsel for the respondent
Shaibu - Judicial Research Officer -
Mrs C. Chimtande - Recording Officer
Miss V. Mombera – Reporter**

RULING

TWEA SC JA

Our apology for starting late. We have been exchanging notes on the disposal of the issues that this Court asked Counsels to address it on.

We are grateful for your industry. We will not however, go into details of your submissions, at this stage. We will just give you the main points on which we are agreed and where we differ.

i. The legal position is that once Counsel is admitted to the bar, unconditionally, Counsel has a right of audience before the courts.

ii. That section 17 of General Interpretation Act requires that subsidiary legislation to be gazette. However, when an institution sets up standards for its members which are approved by the majority – members are bound to maintain those standards.

iii. Once admitted Counsel's right of audience before courts can only be lost through procedures laid down by law. We encourage the Malawi Law Society to observe the law in this respect.

iv . That the requirement is that the High Court, of its own motion or the Attorney General, may move that process. The High Court in such case, however, specifically refers to the Chief Justice sitting alone or, should he wish, with a High Court Judge. Again, we encourage the Malawi Law Society to observe the law on this.

v. We acknowledge the issues that the decision in Oberem v Oberem(2013) Matrimonial Cause 6 (MHC) LR (unreported), may raise on appeal however, we may not, at this point, comment on them.

vi. The dissenting opinion is that we are not bound by the decisions of the Court below therefore Counsel Thabo Nyirenda may proceed to have audience before this Court.

vii. The majority view is that despite the legal challenges that the case of Oberem v Oberem (supra) may face, on appeal, the judgment of the High Court stands until set aside. We do not subscribe to the view that the decision of the Court below in

Oberem vs Oberem (supra) applied specifically to that case. We are of the view that it applied generally to the standing of Counsel Thabo Nyirenda in private cases. We encourage Counsel Thabo Nyirenda to observe this legal position.

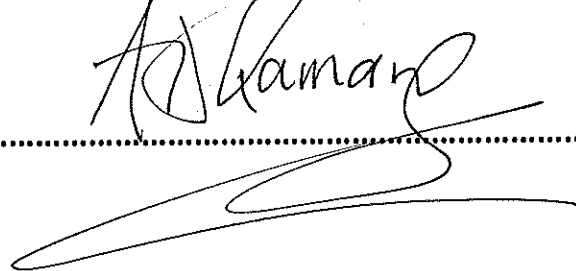
Counsel Thabo Nyirenda therefore will not be allowed audience before this Court. Counsel Thabo Nyirenda is encouraged to apply to stay the ruling in the case of Oberem v Oberem (Supra) pending appeal, if he so wishes.

Formal ruling will follow in the first week of new sessions.

Pronounced in open Court the 7th Day of December 2017 at Lilongwe.

HONOURABLE JUSTICE E.B. TWEA SC, JA

HONOURABLE JUSTICE A.D. KAMANGA SC

A handwritten signature in black ink, appearing to read 'A.D. Kamanga', is written over a horizontal dotted line. Below the signature, there is a large, sweeping horizontal flourish.