



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY (CIVIL DIVISION)
JUDICIAL REVIEW CAUSE NO 48 OF 2025**

BETWEEN

**THE STATE (ON APPLICATION OF
CHIKUMBUTSO MKWAMBA) CLAIMANT**

AND

**DISCIPLINARY COMMITTEE OF THE
MALAWI LAW SOCIETY DEFENDANT**

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Ndolo, Counsel for the Claimant

Mr. Ngunde, Counsel for the Defendant

Mrs. Alinafe Mtenje, Court Clerk

JUDGMENT

Kenyatta Nyirenda, J.

Introduction

1. This is my judgment on an application for judicial review brought by the Claimant under Order 19, rules 20, of the Courts (High Court) (Civil Procedure) Rules [Hereinafter referred to as the “CPR”].

2. The Claimant is a licensed legal practitioner. The Defendant is established under section 90 of the Legal Education and Legal Practitioners Act (Act) as a committee of the Malawi Law Society (Society). The functions of the Defendant are to receive complaints, investigate complaints, conduct hearings on disciplinary matters and to impose penalties.

The Case of the Claimant

3. The Claimant is contesting the decision of the Defendant to continue dealing with disciplinary proceedings against him beyond the mandatory 90-day limit set under section 95(1) of the Act. The challenge focuses on the following four grounds:

- “1. *The decision of the Defendant to proceed with disciplinary processes against the Claimant way after the expiry of the mandatory 90 day statutory time limit provided for under section 95 (1) of the Legal Education and Legal Practitioners Act (LELPA) within which the Defendant is required to conclude the resolution of a complaint brought before it.*
2. *The decision of the Defendant to proceed with disciplinary processes against the Claimant way after the expiry of the mandatory 90 day statutory time limit provided for under section 95 (1) of the Legal Education and Legal Practitioners Act (LELPA) purportedly on the basis of Rule 14 of the Disciplinary Committee Rules of Procedure, 2024 (the 2024 Rules) which Rules are inconsistent with the letter and spirit of section 95 (1) of the (LELPA).*
3. *The decision of the Defendant to proceed with disciplinary processes against the Claimant way after the expiry of the mandatory 90 day statutory time limit provided for under section 95 (1) of the Legal Education and Legal Practitioners Act (LELPA) purportedly on the basis of Rule 14 of the 2024 Rules which Rules have not been gazetted or published.*
4. *The decision of the Defendant to proceed with disciplinary processes against the Claimant way after the expiry of the mandatory 90 day statutory time limit provided for under section 95 (1) of the Legal Education and Legal Practitioners Act (LELPA) purportedly on the basis of Rule 14 Rules 2024 which Rules have not been laid before parliament as is required by section 58 of the Constitution of the Republic of Malawi .”*

4. The Claimant requests declarations that:

- (a) the Defendant lost jurisdiction to determine the complaint after 90 days expired from the time that the Defendant through its secretariat received the complaint;
- (b) rule 14 of the Disciplinary Committee Rules of Procedure, 2024 (Rules) is inconsistent with section 95(1) of the Act, to the extent that it purports to extend the mandatory 90 day statutory time limit set by the said section within which a complaint is supposed to be resolved and concluded, and to the extent of such inconsistency, is invalid, void and of no legal effect;

- (c) the Rules not having been published or gazetted as is required by section 17 of the General Interpretation Act are not of any effect and any act made under the said unpublished Rules is invalid, void and of no legal effect;
- (d) the Rules, not having been laid before Parliament in terms of section 58 of the Constitution are invalid and of no legal effect; and
- (e) the proceedings before the Defendant, after the expiry of the 90 day statutory time limit for disposal of complaints, were void and of no legal effect.

5. The application is supported by a sworn statement made by the Claimant (the Claimant's sworn statement) and the same is couched in the following terms:

- 3.1 *On 24th October 2024 I received an email from the secretariat of the Malawi Law Society (MLS) attaching a letter dated 23rd October 2024 inviting me to comment on a complaint by Mr Boma. A copy of the said letter is now produced and exhibited hereto marked CM1.*
- 3.2 *The letter did not enclose or attach a copy of the actual complaint but subsequently the MLS sent me an email with the subject captioned as "complaints Bundle" which included the actual complaint. A copy of the complaint is now produced and exhibited hereto marked CM2.*
- 3.3 *The Complaint was written on the MLS prescribed forms and was dated 24th June 2024.*
- 3.4 *There is no indication as to when the complaint was received by the MLS as there was no date stamp to indicate when the MLS received the complaint dated 24th June 2024.*
- 3.5 *Nevertheless and the foregoing notwithstanding I responded to the letter dated 23rd October 2024 on 1st November 2024.*
- 3.6 *By a cover letter dated 9th December 2024, the Defendant invited me to a conduct hearing which was to be done in Blantyre on 16th December 2024 but I was later communicated through a telephone call that the conduct meeting had been adjourned to a date to be advised.*
- 3.7 *By a notice of adjournment dated 9th January 2025, the Defendant advised me that the conduct meeting was to be held on 16th January 2025. A copy of the notice of adjournment is hereby produced and exhibited hereto marked CM3.*
- 3.8 *Indeed the conduct meeting was held on 16th January 2025 which was almost 210 days from the date of the complaint and 83 days from the date of the Defendant's letter dated 23rd October 2024.*
- 3.9 *The defendant communicated its findings through email which I received on 5th May 2025, 310 days from the date complaint and 193 days from the date of the Defendant's letter*

dated 23rd October 2025 and 110 days from the date of the conduct meeting. A copy of the letter dated 2nd May 2025 is hereby produced and exhibited hereto marked CM4.

- 3.10 The Defendant then purported to escalate the matter to itself through a disciplinary hearing which hearing was scheduled 4th July 2025 according to a communication to me dated 20th June 2025. A copy of the notice of hearing is hereby produced and exhibited hereto marked CM5.*
- 3.11 I appointed Messrs Soko and company to act on my behalf and counsel sought on adjournment as he had prior commitments on the scheduled date and the hearing was adjourned to 25th July 2025.*
- 3.12 At the hearing, Messrs Soko and Company appointed counsel Rennie Ng'omba on a brief with instructions to raise a preliminary objection with regard to the fact that the Defendant had lost jurisdiction after the expiry of 90 days from the date the Defendant received the complaint as stipulated under section 95 (1) Of the LELPA. A copy of the preliminary objection is hereby produced and exhibited hereto marked CM6.*
- 3.13 The Defendant overruled the objection and proceeded to determine the substantive issues.*
- 3.14 Through an email received in the evening of 1st August 2025, exactly 402 days from the date of the complaint and 279 days from Defendant's letter dated 23rd October 2024, the Defendant communicated its grounds for overruling the preliminary objection and its purported findings and orders. A copy of the findings is hereby be produced and exhibited hereto marked CM7.*
- 3.15 The Defendant based its objection on Rule 14 of the Disciplinary Committee Rules of procedure, 2024 which according to the Defendant "provides that a complaint shall be deemed to have been referred to the committee after the exhaustion of pre-hearing procedures.*
- 3.16 The Defendant further stated that even though the Rules have not been gazetted yet, they are applicable pending such gazetting because they had been adopted by a resolution of the Malawi Law Society at an online General Meeting.*
- 3.17 On the substantive issues, the Defendant purported to find me guilty of embezzlement contrary to section 89 (2) (m) of the (LELPA) and engaging in misconduct that brings the profession of the law into disrepute contrary to section 89 (2) (j) of the LELPA.*
- 3.18 As punishment, the Defendant purported to resolve that for being found guilty of engaging in misconduct that brings the profession of law into disrepute, I should be suspended in accordance with section 96 (1) (b) of the LELPA for a period of 1 year. The Defendant further purported to resolve that for being found guilty of embezzlement, I should be recommended to the Chief Justice to be struck off the roll in accordance with section 96 (1)(a) of the LELPA.*
- 3.19. The Defendant also purported to order that I should, within 30 days upon receipt of the decision, pay MK 5,169,938.71 being the sum of MK 3,000,000 allegedly received minus 10% of my legal fees plus interest from 4th August 2022 at 3% above Standard Bank lending rate, as compensation to be paid to the complainant in accordance with section 96 (2) (b) of the LELPA.*

4. *I am aware that in terms of section 96 (3) of the Legal Education and Legal Practitioners Act, I have 30 days from the date of the decision to submit an application for review.*
5. *I am also aware that the Disciplinary Committee Rules of Procedure, 2024 have neither been gazetted nor been laid before parliament.*
6. *As for the application for stay, I state that I have been heavily prejudiced by the findings of the Defendant in that it has put the process of renewing my practising license under threat which will gravely affect my right to earn a living. I state that I have no other gainful employment apart from law practice.*
7. *The suspension will also have a damaging effect on my standing as a Legal Practitioner in that it will drive some potential clients away from my practice.*
8. *I do not believe that this is damage that the Defendant can compensate me for.*
9. *It is accordingly my prayer that a stay of the Defendant's impugned decision be issued."*

The Case of the Defendant

6. The Defendant is opposed to the application and it filed the following Defence:

- “1. *The Defendant refers to the Claimant's Statement of Grounds for Judicial Review as particularised in paragraphs 2.1 – 2.6 thereof and:*
 - 1.1 *denies that it lost jurisdiction to dispose of the matter concerning the Claimant.*
 - 1.2 *denies that its Disciplinary Committee Rules of Procedure, 2024 (“Rules of Procedure, 2024”) are invalid or ineffectual for not having been laid before Parliament or for not having been gazetted.*
 - 1.3 *denies that Rule 14 of its Rules of Procedure, 2024 is inconsistent with section 95(1) of the Legal Education and Legal Practitioners Act (“LELPA”) as alleged or at all. The Claimant is put to strict proof thereof.*
2. *The Defendant repeats the matters in and under paragraph 1 above and states that:*
 - 2.1 *It disposed of the matter within the maximum statutory period of 120-days from the date the matter came before it for disposal as prescribed by section 95(1) and (2) of the LELPA as read together with Rule 14 of its Rules of Procedure, 2024.*

- 2.2 *The Rules of Procedure, 2024 were duly developed and adopted by the Defendant and the Malawi Law Society for immediate effect by a resolution of its membership at a general meeting held on 4th July 2024.*
 - 2.3 *The Rules of Procedure, 2024 are binding on members of the Malawi Law Society as institutional standards approved by the majority of its membership.*
 - 2.4 *In the alternative, to the extent that the Rules of Procedure, 2024 Rules were developed and adopted by the Defendant under section 94(2) of the LELPA, the Defendant was not required to comply with section 17 of the General Interpretation Act or section 58 of the Constitution as alleged or at all.*
 3. *The Defendant repeats paragraphs 1 and 2 above and denies that the disciplinary proceedings against the Claimant and the outcome thereof are invalid, null or void.*
 4. *The Defendant consequently denies that the Claimant is entitled to the reliefs sought in the judicial review or at all and puts the Claimant to strict proof thereof.*
 5. *Save as hereinbefore specifically admitted, the Defendant denies each and every allegation of fact contained in the grounds for judicial review as if the same were herein specifically set out and traversed seriatim.”*
7. The Defendant also filed with the Court a sworn statement made by Counsel Bright Theu (the Defendant’s sworn statement), wherein he states that:

“3. **THAT** I have read the Claimant’s Sworn Statement in Support and wish to respond to it as I do below.

Background

4. **THAT** the Malawi Law Society (“Society”) on the 24th of June 2024 received a complaint from Mr. Benjamin Boma alleging possible misconduct against Mr. Chikumbutso Mkwamba. Produced and shown to me is the complaint marked “**BT1**”.
5. **THAT** the complaint, among others, alleged that:
 - 5.1 *In or around March 2022, the Claimant was engaged by Mr. Boma to represent him in a claim for compensation for loss of life on behalf of beneficiaries of the Estate of Bruno Boma against United General Insurance Company Limited (UGI).*
 - 5.2 *By a letter dated 29th July 2022, UGI advised the Claimant that the agreed sum for compensation and costs amounting to MK3,150,000.00 was processed and paid to the Claimant’s firm’s bank account through an*

electronic funds transfer. However, the Claimant did not disclose this payment to Mr. Boma and failed to remit the funds to Mr. Boma.

6. **THAT** upon receipt of the complaint, the Society wrote to the Claimant and the Claimant responded to the same. Produced and shown to me is a letter to the Claimant and his response marked “**BT2**” and “**BT3**”.
7. **THAT** by a letter dated 6th December 2024 from the Society’s Honorary Secretary, the Society referred the matter to the Respondent. Produced and shown to me is a letter of referral exhibited and marked “**BT 4**”.
8. **THAT** upon receipt of the complaint, the Defendant invited the Claimant to a conduct meeting which was scheduled on 16th December 2024 but was later adjourned and took place on 16th January 2025. The purpose of the conduct meeting was to inform the Applicant about his alleged conduct that resulted in the complaint and to ensure that he had a greater understanding of the consequences of his alleged actions in compliance with rule 16 of the Disciplinary Committee Rules of Procedure, 2024. Produced and shown to me is copy of the summons to a conduct meeting and copy of the Disciplinary Committee Rules of Procedure, 2024 marked as “**BT5**” and “**BT6**”.
9. **THAT** the Claimant did not attend the conduct meeting but informed the Defendant that it could proceed in his absence because he would resolve the matter in due course. The Defendant proceeded with the conduct meeting in the absence of the Claimant and found a prima facie case of misconduct against the Defendant. The Defendant escalated the matter to a disciplinary hearing. Produced and shown to me is copy of the findings to a conduct meeting “**BT7**”.
10. **THAT** following the findings of the Conduct meeting, the Claimant was invited to a disciplinary hearing that was scheduled to take place on 4th July 2025 to answer the charges. Produced and shown to me is the copy of the summons to the disciplinary hearing marked “**BT8**”.
11. **THAT** by an email dated 3rd July 2025, the Claimant, through his appointed legal practitioner Mr. Khumbo Soko, sought an adjournment of the disciplinary hearing. The Defendant granted the adjournment on condition that the Claimant pays the sum of MK200,000.00 to the Secretariat within fourteen days. This sum was meant to take care of the complainant’s travel and accommodation expenses incurred in attending the hearing as adjourned to the 25th of July 2025 in Blantyre. The Defendant further indicated that no additional request for adjournment from Mr. Mkwamba would be entertained. Produced and shown to me is the copy of the email from Mr. Khumbo Soko marked “**BT9**”.
12. **THAT** the notice of adjournment of the hearing scheduled to 25th July 2025 at 10:00 am was served on the Claimant on 15th July 2025 and his lawyers on 16th July 2025. Produced and shown to me is a copy of the Notice of Adjournment, together with the email sending the same to the Claimant, exhibited and marked “**BT10**”.

13. *THAT at the meeting of the Defendant that took place on 25th July 2025, the Claimant was represented by Mr. Remmie Ng'oma, a legal practitioner, on brief from Mr. Khumbo Soko. The Claimant did not attend the hearing on this day.*
14. *THAT on the date of hearing on 25th July 2025 at 08:35 am, the Society received an email from Mr. Soko raising a notice of objection to the hearing and informing the Defendant that Mr. Remmie Ng'oma would appear on brief. Produced and shown to me is the copy of the email from Khumbo Soko bearing both a date and time stamp, marked "BT11".*
15. *THAT before the commencement of the hearing, Mr. Ng'oma was afforded an opportunity to present the preliminary objection. In the objection, he argued that the Defendant had lost jurisdiction over the matter on the ground that the complaint had not been prosecuted within the time limit prescribed under Section 95 of the Legal Education and Legal Practitioners Act (LELPA). Produced and shown to me is the copy of the Preliminary Objection marked "BT12".*
16. *THAT having considered the objection before it, the Defendant dismissed the objection based on the following:*
 - 16.1 *The preliminary objection was raised on the morning of 25th July 2025, being the same day scheduled for the disciplinary hearing. Having considered the timing of the objection, the Defendant found that the objection was served contrary to Rule 20 of the Disciplinary Committee Rules of Procedure, 2024, which requires that any party wishing to raise a preliminary objection must give written notice to the Defendant at least two days prior to the date of the inquiry or disciplinary hearing. The objection could not thus be entertained.*
 - 16.2 *Regardless and in order to render a complete decision on the objection, the Defendant considered the substance of the objection. The Defendant referred to Rule 14 of the Disciplinary Committee Rules of Procedure, 2024, which provides that a complaint shall be deemed to have been referred to the Defendant after the exhaustion of pre-hearing procedures.*
 - 16.3 *Accordingly, the Defendant noted that pre-hearing procedures were exhausted on the date of issuance of the outcome of the conduct meeting. In the present case, the findings of the conduct meeting were issued on 2nd May 2025, accordingly, the 120-day time limit prescribed under Section 95 of LELPA would only expire on 2nd August 2025. The Defendant therefore found that it retained temporal jurisdiction to proceed with the disciplinary hearing. The Defendant proceeded with the hearing.*
 - 16.4 *The Claimant argued that the Defendant's Rules of Procedure, 2024 are not applicable because they have not been gazetted. The Defendant took the view that the Rules having been adopted by resolution of the Society which binds its members, were applicable as against any member of the Society, pending such gazetting.*

17. **THAT** the hearing proceeded, and the Defendant only received evidence from the Complainant. The Claimant had informed the Defendant through Mr. N'gomba that he would not be able to attend the hearing, either physically or virtually and expressly consented to proceeding with the hearing in his absence. Whereas the Committee understood that Mr. Mkwamba had not travelled to Blantyre to attend the hearing physically, no proper explanation was given for Mr. Mkwamba's failure to attend the hearing virtually, an opportunity which was availed.
18. **THAT** the Claimant, through a further email, informed the Defendant that he had no problem to the Defendant proceeding with the hearing and indicated his intention to challenge the legality of the Rules. Produced and shown to me is a copy of the said email, marked "**BT13**"
19. **THAT** after considering the evidence from the witness under oath, the Defendant found the Claimant guilty of embezzlement and engaging in misconduct that brings the profession of the law into disrepute for his failure to protect the interests of the complainant. Produced and shown to me is the finding of the disciplinary hearing exhibited and marked "**BT 14**".
20. **THAT** the Disciplinary Committee Rules of 2024 were adopted by the Defendant and endorsed by Resolution of the General Meeting of the Malawi Law Society on 4th July 2024 to replace the Disciplinary Committee Rules of Procedure, 2015. Produced and shown to me is the copy of the Malawi Law Society General Meeting resolution exhibited and marked "**BT 15**".
21. **THAT** the Defendant has statutory power to regulate its own procedure.
22. **THAT** I verily believe that the Applicant is not entitled to the reliefs particularized in his application and his prayer for judicial review lacks merit.

WHEREFORE I pray that:

- (a) The application for Judicial Review be dismissed.
- (b) The Defendant be awarded costs of this proceeding."

Issues for Determination

8. The following issues were agreed upon at a Scheduling Conference as issues to be determined in the present case:

- (a) whether or not the Rules were properly developed, adopted and brought into effect by the Defendant and the Society?
- (b) whether or not the Defendant had jurisdiction to dispose of the matter concerning the Claimant?

- (c) whether or not the disciplinary proceedings and the resultant decision against the Claimant were valid and lawful?
- (d) whether or not the Rules are invalid or ineffectual for not having been published in the Gazette?
- (e) whether or not the Rules are invalid or ineffectual for not having been laid before Parliament?
- (f) whether rule 14 of the Rules is inconsistent with section 95(1) of the Legal Education and Legal Practitioners Act (Act) regarding the time frame of disposal of disciplinary matters?
- (g) whether or not the Claimant is entitled to the reliefs being sought.

Whether or not the Rules were properly developed, adopted and brought into effect by the Defendant and the Society (first issue)?

9. The Claimant submits that the Rules were neither properly developed nor properly brought into effect. Paragraph 4.4 of the Claimant's Skeleton Arguments has addressed the first issue and the relevant part thereof states as follow:

“4.4.1 The issue herein can only be responded to in having a look at the Constitution an legislative provisions relating to the development, adoption and effectualization of subsidiary legislation.

4.4.2 Section 94 of the LELPA provides;

“94(1) subject to other provisions of this Act, the Disciplinary Committee shall regulate its own procedure.

(2)The Disciplinary Committee may make rules for regulating the making, hearing and determination of applications or complaints under this part”.

4.4.3 The Defendant therefore can develop and adopt subsidiary legislation as it has those powers under this provision. However, such subsidiary legislation is subject to other provisions under this Act and generally other Acts and of course the Constitution of the Republic of Malawi.

4.4.4 It has already been demonstrated that Section 58(1) of the Constitution requires that any subsidiary legislation be laid before Parliament. Section 5 of the Constitution provides that “any act of Government or any law that is inconsistent with the provisions of this constitution shall, to the extent of such consistency, be

invalid.” The purported effectualisation of the Rules in so far as they were not laid before Parliament renders the Rules constitutionally invalid and void.

4.4.5 *Furthermore, section 17 specifically provides that the Rules shall come into operation on publication in the Gazette. It is not in dispute that the said Rules have not been published in Gazette. The Rules as they stood at the time the Defendant was purporting to conduct a hearing were merely in draft form and not valid or effective law. Anything which was conducted under the guise of such unpublished Rules was an exercise in futility and invalid, void and of no legal effect whatsoever.*

4.4.6 *The said Rules therefore, were not properly brought into effect by the Defendant and the Malawi Law Society as the Constitution of the Republic of Malawi requires that the Rules be laid before Parliament in terms of section 58(1) of the Constitution. Furthermore, the law in particular section 17 of the GIA requires the Rules to be published in the Gazette.*

...”

10. It is the case of the Defendant that the Rules were properly developed, adopted and brought into effect by the Defendant and the Society. Paragraphs 20 and 21 of the Defendant’s sworn statement are relevant and these state as follows:

“20. **THAT** the Disciplinary Committee Rules of 2024 were adopted by the Defendant and endorsed by Resolution of the General Meeting of the Malawi Law Society on 4th July 2024 to replace the Disciplinary Committee Rules of Procedure, 2015. Produced and shown to me is the copy of the Malawi Law Society General Meeting resolution exhibited and marked “**BT 15**”.

21. **THAT** the Defendant has statutory power to regulate its own procedure.”

11. The same point is addressed in the Defence in the following terms:

“2.2 *The Rules of Procedure, 2024 were duly developed and adopted by the Defendant and the Malawi Law Society for immediate effect by a resolution of its membership at a general meeting held on 4th July 2024.*

2.3 *The Rules of Procedure, 2024 are binding on members of the Malawi Law Society as institutional standards approved by the majority of its membership.*

2.4 *In the alternative, to the extent that the Rules of Procedure, 2024 Rules were developed and adopted by the Defendant under section 94(2) of the LELPA, the Defendant was not required to comply with section 17 of the General Interpretation Act or section 58 of the Constitution as alleged or at all.”*

12. In the Defendant’s skeleton arguments it is stated that the Rules were adopted on 10th July 2024. Then there is paragraph 4.16 of the Defendant skeleton arguments which states that:

“At its General Meeting held on 4th July 2024, the Society adopted the 2024 Rules as proposed by the Defendant. One of the proposals by the Defendant was that when computing the time within which a complaint is referred to the Defendant under section 95 of the LELPA, “a complaint shall be deemed to have been referred to the Committee after exhaustion of pre-hearing procedures provided for in Part IV”. Despite the Rules not being gazetted, the Rules were proposed by the Defendant under section 94(2) of the LELPA. Members of the Society at the General Meeting held on 4th July 2024 agreed with this proposal through a resolution passed by the General Meeting. The Claimant is a member of the Society and therefore bound by this resolution. See Joyce Gomani & Enerst Muza – vs- The Republic, R v Registrar of Financial Institutions ex Parte Malawi Law Society and Peterson v. College of Psychologists of Ontario.”

13. The Court is inclined to agree with what is stated in paragraph 4.16 of the Defendant’s skeleton arguments that the Rules were not made by the Defendant but by the Society. A copy of the Rules was adduced before this Court as part of the evidence contained in paragraph 8 of the Defendant’s sworn statement (reproduced at paragraph 7 of this Judgment). The first page of the Rules cite the provisions under which the Rules are made as follows:

“LEGAL EDUCATION AND LEGAL PRACTITIONERS ACT (CAP.3:04)

*Disciplinary Committee Rules of Procedure, 2024
(Under section 73(2)(p) as read with section 94(2) of the Act)”*

14. I pause to observe that I find it very strange that the Rules do not contain the standard opening phrase for such type of legislation. The opening phrase is formally called the enabling clause in subsidiary legislation. Its purpose is to cite the specific section of the parent Act that grants the Minister or authority the legal power to make the subsidiary legislation in question. The function of the enabling clause is to establish the legal foundation of the subsidiary legislation, showing that the subsidiary legislation is not made arbitrarily but under delegated authority. Typically, an enabling clause begins with words “IN EXERCISE of the powers conferred by section ... of the ... Act, I ... make the following regulations”. I strongly believe that if an enabling clause had been included in the Rules, it would have been clear from the outset that:

- (a) the power to make rules under section 73 of the Act is reposed in the Society to the exclusion of any other authority (including the Defendant); and

- (b) it is the Defendant and not any other authority (including the Society) that is given the power to make rules under section 94 of the Act.

15. Time to revert to the Rules. As already stated, the Rules are said to have been made under sections 73(2)(p) of the Act as read with section 94(2) of the Act. What are the contents of the cited provisions?

16. Section 73 of the Act deals with the Society's power to make rules and it is couched in the following terms:

“(1) The Society may make rules prescribing anything which under this Part may be or is to be prescribed, and generally for the better carrying out of the purposes of this Part and the objects for which the Society is established.

(2) Without prejudice to the generality of subsection (1) and subject to section 69, the Society may make rules for –

- (a) annual and other subscriptions of the Society;*
- (b) the manner of application for membership of the Society;*
- (c) standards of professional conduct with which every legal practitioner shall comply;*
- (d) criteria for conferment of honorary membership to the Society;*
- (e) the grounds for suspension or expulsion of the Society and the procedure relating thereto;*
- (f) the resignation of members;*
- (g) the regulation of powers exercisable by any committee that the Society may establish, and delegation of the powers thereto;*
- (h) the manner of convening meetings of the Society and of committees, and quorums thereof, and the procedure relating thereto;*
- (i) the manner in which, and the conditions subjects to which, any member not present at a general meeting any vote by proxy on any resolution before that meeting;*
- (j) the manner of election, removal and replacement of officers of the Society;*
- (k) the design, custody and use of the common seal;*
- (l) the regulation on setting up, running and dissolution of a legal practice.*

- (m) *the classes of resolutions at meetings of the Society and their effect;*
- (n) *the manner in which members shall fulfill the requirement to undertake annual continuing legal education;*
- (o) *the requirements relating the fidelity fund and indemnity insurance cover; and*
- (p) *any other matter the Society deems necessary for the proper conduct and regulation of its affairs.*

(3) *The High Court shall have jurisdiction to make any order it deems necessary or appropriate for the implementation or enforcement of any of the rights conferred upon the Society or any committee thereof, as the case may be, by rules made under this section.”*

17. It is certain and undeniable that the power to make rules under section 73 of the Act is reposed in the Society and not the Defendant.

18. It is also important to note that section 73 of the Act does not subject the making of rules by the Society pursuant to section 73 of the Act to recommendation, advice or approval by another entity such as the Minister or the Defendant. I have no doubt that if Parliament had intended that the making of rules by the Society should be subject to such a qualification, an express provision to that effect would have been included in the Act, most likely section 73 of the Act. Such provisions abound in our statute book and an example of such a provision is to be found in the Act itself: see section 121 of the Act which states, in part, thus:

“(1) *The Minister may, on the recommendation of the Society, make Rules*

(2) *The Minister may, on the recommendation of the Society, make Rules”*

19. Section 94 of the Act makes provision regarding proceedings of the Defendant and it states as follows:

“(1) *Subject to other provisions of this Act, the Disciplinary Committee shall regulate its own procedure.*

(2) *The Disciplinary Committee may make rules for regulating the making, hearing and determination of applications or complaints under this Part.*

(3) *The Disciplinary Committee shall meet for transaction of business at a time and at a place determined by the chairperson.*

(4) *Half of the members shall form a quorum of any meeting of the Disciplinary Committee.*

(5) *At any meeting of the Disciplinary Committee, members shall, in the absence of the chairperson, elect one (1) of its number, to act as chairperson.” – Emphasis by underlining supplied*

20. Here again, it is certain and undeniable that it is the Defendant and not the Society that is empowered to make rules under section 94 of the Act. The observations made by the Court at paragraph 18 of this Judgment in relation to section 73 of the Act apply, mutatis mutandis, with equal force to section 94 of the Act, that is to say:

- (a) section 94 of the Act does not subject the making of rules by the Defendant under section 73 of the Act to recommendation, advice or approval by another entity such as the Minister or the Society; and
- (b) if Parliament had intended that the making of rules by the Defendant should be subject to some qualifications, an express provision to that effect would have been included in the Act, most likely section 94 of the Act.

21. Having vested the power to make rules under section 73 and section 94 of the Act respectively in two separate entities, that is, the Society in respect of rules under section 73 and the Defendant with regard to rules under section 94, the critical question becomes whether it is legally tenable for the Society and the Defendant to team up and jointly come up with rules envisaged to be made pursuant to sections 73 and 94 of the Act respectively?

22. The answer has to be an emphatic negative (No! No! No!). Why is this so? This is because what happened here is that effectively:

- (a) the power exclusively granted to the Society by section 73 of the Act to make rules was in substance exercised jointly with the Defendant;
- (b) the Society also exercised powers that are exclusively reposed in the Defendant pursuant to section 94 of the Act;
- (c) the power exclusively vested in the Defendant by section 94 of the Act for the Defendant to regulate its own procedure and make rules for regulating the making, hearing and determination of applications or

complaints under Part IX of the Act was in substance exercised by the Society; and

- (d) the Defendant also exercised powers that are exclusively granted to the Society under section 94 of the Act.

23. The inescapable outcome of this muddle (for it is no less) is that the Rules are ultra vires and void. The learned authors Wade and Forsyth in their book **Administrative Law** 8ed (2000) at pages 326 and 327 explain in vivid terms why statutory power exercised by “wrong hands” has to suffer such onerous legal consequences:

“Power in the wrong hands

Closely akin to delegating, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them. In this class might be included the case of the cinema licensing authority which, by requiring films to be approved by the British Board of Film Censors, was held to have surrendered its power of control and also the case of the Police Complaints Board, which acted as if it were bound by a decision of the Director of Public Prosecutions when only required to ‘have regard’ to it. This doctrine has even been applied to voting by local councillors.

Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise. The Minister of Housing and Local Government made it a rule to refuse planning permission for gravel-working on top-class agricultural land whenever the application was opposed by the Minister of Agriculture. The court held that this was to put the decisive power into the hands of the wrong minister and that a decision so taken must be quashed. Similarly, the court invalidated a reinstatement order made under wartime labour regulations by a national service officer, who was empowered to direct reinstatement of workers dismissed for misconduct. For the officer was acting under directions from the minister, whereas he was a statutory authority in his own right and should have exercised his personal discretion. The minister’s directions were merely that there should be reinstatement wherever the appeal board was unanimous. But in fact, the minister had no power to lay down any such rule, however reasonable. A decision of the Home Secretary that a prisoner should serve a term of at least 20 years was quashed because he acted ‘as a rubber stamp’ on the advice of the judge or of the parole board without making his own decision. Even where there is a right of appeal to a minister, and it may seem sensible to take account of this practice, it has been held that this must not be

adopted uncritically; but this was a case where the Act specifically required a local authority to follow certain rules, which did not extend to the departmental practice which they followed wrongly.” – Emphasis by underlining supplied

24. There is another compelling reason why the Rules have to be declared invalid. The Rules purport to have been made under section 73(2) (p) of the Act which allows the Society to make rules for “*any other matter the Society deems necessary for the proper conduct and regulation of its affairs.*”. I fail to understand how this provision can be understood as giving powers to the Society to make rules in respect of the same matters that the Defendant is allowed to make under section 94 of the Act, that is, rules for regulating the making, hearing and determination of applications or complaints under Part IX of the Act. I am fortified in my view by the fact that section 73 of the Act falls under Part VIII of the Act whilst section 94 is contained in Part IX of the Act. Section 73 of the Act is clear in stating that the Society is being allowed to make rules prescribing anything which under Part VIII of the Act may be or is to be prescribed, and generally for the better carrying out of the purposes of Part VIII of the Act and the objects for which the Society is established as set out in section 64 of the Act. In plain terms, the Society wandered off course and landed itself out of bounds.

25. In view of the foregoing and by reason thereof, the following is the summary of the Court’s observations regarding the first issue:

- (a) the Rules lack the standard opening phrase (“IN EXERCISE of the powers conferred by...”) which establishes delegated authority;
- (b) Parliament divided the rule making powers:
 - (i) section 73 of the Act confers rule-making powers on the Society in respect of matters under Part VIII of the Act;
 - (ii) section 94 of the Act confers rule-making powers on the Defendant in connection with matters under Part IX of the Act.
- (c) the Society and Defendant jointly exercised powers reserved separately, resulting in ultra vires action;
- (d) statutory power exercised by “wrong hands” is void (Wade & Forsyth, *Administrative Law*, 8th ed., pp. 326–327); and
- (e) the Society cannot use section 73(2)(p) of the Act to regulate matters reserved for the Defendant under section 94 of the Act.

26. In view of the foregoing, the Court holds that:
- (a) the Rules were improperly developed, adopted and brought into effect;
 - (b) the Rules are invalid and ultra vires the Act for contravening sections 73 and 94 of the Act; and
 - (c) any proceedings conducted under the guise of such Rules are void and of no legal effect
27. Accordingly, the Rules are declared invalid and of no legal effect.

Whether or not the Defendant had jurisdiction to dispose of the matter concerning the Claimant (second issue)?

28. The Claimant submits that section 95(1) of the Act requires the Defendant to dispose of a matter before it within 90 days or 120 days where the period has been extended under section 95(2) of the Act. The key argument by the Claimant is that the Defendant lost jurisdiction over the matter once 90 days had expired (or 120 days if at all there was an extension) and any proceedings that happened after the expiry of the statutory maximum time limit were a nullity.

29. The submissions by the Claimant on the second issue are couched in the following terms:

“4.1.1 Section 95 of the LELPA provides:

“(1) The Disciplinary Committee shall dispose of any matter before it within ninety (90) days.

(2) The Disciplinary Committee may, upon giving good and justifiable reasons, extend the period for disposing any matter for a period not exceeding thirty (30) days.”

4.1.2 The Defendant lost jurisdiction at the expiry of 90 days from the day the complaint was received. Section 95(1) of the LELPA is unambiguously peremptory in that the Committee shall dispose of any matter before it within ninety (90) days.

“The Disciplinary Committee shall dispose of any matter before it within ninety (90) days.”

4.1.3 The question perhaps could be, when is a matter said to be before the Disciplinary Committee? The Disciplinary Committee Rules of Procedure 2015, ‘the 2015 Rules’, sheds more light on how the process works.

4.1.4 *Firstly, in terms of Rule 2 of the 2015 Rules, the Executive Director of the Society is the Secretary of the Disciplinary Committee. Then in terms of Rule 4, all documents required to be filed with the Disciplinary Committee, including complaints, are filed with the Secretary. When the Executive Director receives a complaint, therefore, he does so on behalf of the Disciplinary Committee. At the point of receipt of the complaint, therefore, the Committee becomes seized of the matter. The matter is placed before it and the 90 day timer begins to tick.*

Part III of the Rules, Rules 7-9 are clear that the lodging of the complaint with the Secretary is what commences the disciplinary process.

4.1.5 *It is not clear as to when the complaint was received by the Malawi Law Society but according to CM2, the complaint was dated 24th June, 2024 and the letter to the Claimant, inviting his comments, is dated almost 120 days later the 23rd of October, 2024. Either way, assuming the complaint was received by the Malawi Law Society on the day it is dated, it follows that the 90 days expired on the 24th September 2024.*

4.1.6 *However the letter which was sent to the Claimant on 24th October, 2024 is dated 23rd October 2024. We will therefore assume that the complaint was lodged with the secretariat on the same day that the letter to the Claimant was written namely 23rd October, 2024. In this scenario, the Defendant had up to 23rd January, 2025 to dispose of the matter in terms of section 95 (1) of the LELPA.*

4.1.7 *Of course, section 95 (2) of the LELPA empowers the Committee to extend time for a further 30 days, “upon giving good and justifiable reasons”. In this case, no such extension was had. What this would mean is that by 1st August, 2025, the Committee had long lost jurisdiction or legal authority to continue hearing the matter.*

4.1.8 *The peremptory time restriction under section 95(1), LELPA may be extended but only upon giving good and justifiable reasons. Yet even then, the permissible extension is expressly restricted to thirty (30) days. The language in section 95(2) of the LELPA clearly shows that it is to the accused Legal Practitioner - and perhaps the Complainant - that good and justifiable reasons for extension should be given. What this means is that an extension is not had as a matter of course.*

4.1.9 *No extension is on record or was communicated to the Claimant regarding the present matter. Consequently, the reasons, including whether the same were good and justifiable is hardly fathomable in the circumstances. The consequence must be that there were no such good and justifiable reasons, otherwise they would have been “given” to the Claimant as required under the section 95(2), LELPA.*

4.1.10 *Legislative history of the LELPA shows that the timelines introduced by section 95 were deliberate and were meant to address what was then reckoned as a slow and inefficient disciplinary regime for legal practitioners. At page 86 of the 2013 Report of the Special Law Commission that reviewed the LELPA, it is clearly stated that the proposed timelines were initially even stricter, 28 days;*

“in terms of procedure of the complaints committee, the Commission resolved that the complaints committee should be empowered to regulate its own procedure. This notwithstanding, the Commission emphasized that the complaints committee should maintain public confidence by speedily disposing of complaints. The Commission therefore resolved that the proposed law should provide for a time frame within which complaints have to be disposed of by the complaints committee the proposed length of time for disposal of these matters is twenty-eight days from the date that the complaint is received.”

4.1.11 *For the avoidance of doubt, it is a sound proposition of law that statutory time limits are jurisdictional and only Parliament can stipulate whether a court or statutory body can hear a proceeding, when and under what conditions can it do so: **Bowles v Russell 551 U.S. 205 (2007)** is authority for this proposition which was applied with approval in **Jumbe & others v Electoral Commission, Judicial review case No. 38 of 2014** (unreported).*

4.1.12 *The Uganda Court of Appeal put the point lucidly in **Makula International Ltd vs, His Eminence Emmanuel Cardinal Nsubuga & another, Civil Appeal No. 4 of 1981** also applied with approval in **Jumbe & ors v EC** (cited above).*

“It is clear this case that a period of limitation laid down under the Civil Procedure rule can be extended if a statutory provision that permits the courts to extend time is made applicable to it by any enactment or rule. What the court cannot do is to go outside the limits of the Act, and extend time “in the purported exercise of a general discretion under his inherent powers”. In other words, it is the use of the residual or inherent power to extend or enlarge time, when there is no enactment or rule that permits it, that is not authorised.”

4.13 *In a related matter - the issue of the time for applying for review of the decision of the Defendant was litigated upon in **Kazembe v Malawi Law Society, Judicial Review Case No 21 of 2024**. The court held that there was no jurisdiction to extend the 30 day period. Similarly, the Defendant here could not extend the time beyond the 90 days allowed by statute, even if they had exercised the extension option in the first place. It would follow that whatever happened after the expiry of the initial 90 days was an exercise in futility. The Defendant simply lacked the legal power to issue the orders that it purported to issue. The conduct meeting and the disciplinary hearing were all an exercise in futility. They were an utter waste of time and were devoid of any legal meaning and effect. The proceedings were a nullity.”*

30. The Defendant contends that the decision concerning the Claimant was made within the time prescribed under section 95 of the Act and as such the Defendant had jurisdiction to dispose of the matter concerning the Claimant. The second issue is covered in paragraphs 4.15 to 4.17 of the Defendant’s Closing Submissions:

*“4.15 Section 91 of the LELPA provides that a complaint may be referred to the Defendant by the court, the Malawi Law Society or the court. The Malawi Law Society (“Society”) received the complaint on 24th June 2024 (See exhibit **BT1**. Under Rule 9 of the Disciplinary Committee Rules, 2015 (“2015 Rules”), for a*

*complaint to be before the Defendant, the complaint was required to pay the Society a non-refundable fee of MK2,000.00. The complaint was never under the Defendant because the complainant never paid the sum of MK2,000.00 as required by Rule 9 of the 2015 Rules. Consequently, the Society referred the complaint to the Defendant on 6th December 2024 (See exhibit marked **BT4**).*

- 4.16 *At its General Meeting held on 4th July 2024, the Society adopted the 2024 Rules as proposed by the Defendant. One of the proposals by the Defendant was that when computing the time within which a complaint is referred to the Defendant under section 95 of the LELPA, “a complaint shall be deemed to have been referred to the Committee after exhaustion of pre-hearing procedures provided for in Part IV”. Despite the Rules not being gazetted, the Rules were proposed by the Defendant under section 94(2) of the LELPA. Members of the Society at the General Meeting held on 4th July 2024 agreed with this proposal through a resolution passed by the General Meeting. The Claimant is a member of the Society and therefore bound by this resolution. See Joyce Gomani & Enerst Muza –vs- The Republic, R v Registrar of Financial Institutions ex Parte Malawi Law Society and Peterson v. College of Psychologists of Ontario.*
- 4.17 *The pre-hearing procedures under Part IV of the 2024 Rules were concluded on 2nd May 2025. See exhibit **BT7**. The decision of the Defendant that is being challenged was made by the Defendant on 1st August 2025, 91 days after the matter was referred to the Defendant in accordance with section 91 of the LELPA as read with Rule 14 of the 2024 Rules. Under section 95(2), the Defendant is entitled to extend the time within which to dispose of the matter. In the present case, the Defendant made its decision on the 91st day. On page 2 of exhibit marked **BT14**, the Defendant informed the complainant that it was within the time and that its jurisdiction would expire on 2nd August 2025 upon the expiry of 120 days from the date of issuing the findings of the conduct meeting. Although the computation of time was incorrect, as the 120 days would have expired on 30th August 2025. **We contend that the decision of the Defendant was made within the time prescribed under section 95 of the LELPA and the Defendant had jurisdiction to dispose of the matter concerning the Claimant.**”*

31. I have considered the submissions by both parties. According to section 95 (1) of the Act, the Defendant is required to dispose of “any matter before it within ninety (90) days”. It is common ground that neither section 95 nor any other provision of the Act expressly states when the 90 days begin to run. In the circumstances, the Court has to examine the complaints system as provided in the Act (and not outside the Act) to determine when the period of 90 days starts to tick.

32. To my mind, the time has to start to run the moment the matter in question comes before the Defendant. When does a matter come before the Defendant? In terms of section 91 of the Act, the Defendant gets seised of a complaint by way of reference. The reference may be made by the Society, the general public or the court.

33. At this juncture it is important to understand the complaint handling process as envisaged by the Act. In my opinion, the complaint handling process under the Act can be conveniently be divided into the following five stages:

- (a) lodging of a complaint;
- (b) investigation stage;
- (c) hearing stage
- (d) decisions and recommendations; and
- (e) reporting and enforcement.

Lodging of a complaint

34. Section 91(a) of the Act is quite telling. It shows that the Defendant can receive complaints from three distinct sources, that is, the Society itself, directly from the general public and a court.

35. Referred by the Society means the Society itself has received a complaint from a member of the general public, another authority, or internally. Having received a complaint, the Society (acting through its Secretariat), then screens the complaint to ensure that it falls within the scope of professional misconduct under the Act. Once satisfied, the Society proceeds to refer the complaint onward to the Defendant. The role of the Society here is to act as a gatekeeper or filter, channeling matters into the disciplinary process.

36. Complaints may also originate directly from the general public. A person submits his or her grievance straight to the Defendant without going through the Society first.

37. A court can also refer a matter to the Defendant, usually when misconduct arises during proceedings.

Investigation stage

38. At this stage, the Defendant may request written responses from the legal practitioner, gather evidence, interview witnesses, review documents and decide whether the matter warrants a formal hearing.

Hearing stage

39. This is the stage whereby, among other things, the complainant and the legal practitioner are notified and invited to appear before the Defendant, the Defendant conducts proceedings similar to a tribunal and evidence is presented to it.

Decisions and recommendations

40. Decisions and recommendations are made after the Defendant completes its deliberation on the matter.

Reporting and enforcement

41. Once decisions and recommendations have been made by the Defendant, matters regarding reporting and enforcement arise.

42. One of the key points that the above description of the step-by-step complaint handling process greatly helps to make is the distinction between “lodging a complaint” and “referral of a complaint”. It is time to examine how the complaint was handled in this case.

43. It is not in dispute that the complaint was lodged with the Secretariat on 24th June 2024 by using the following complaint form:

“COMPLAINTS FORM

Particulars of complainant

Name of complainant:

Address of complainant:

Contact details

Phone number:

Email address:

Are you making a complaint on behalf of someone else? If yes

What is their full name:

What is their address:

What is their phone number:

Relationship to this person:

Have they agreed to make this complaint:

Details of complaint

Name of the lawyer:

Name of the Law firm:

Postal address of the law firm:

.....

Particulars of complaint. What is the conduct of the legal practitioner that you are complaining about?

.....
.....
.....
.....

Have you complained to the lawyer or the law firm?

.....
.....
.....

When did you complain?

.....
.....
.....

Did the lawyer or law firm respond to your complaint?

.....
.....
.....
.....

When, and What response was given?

.....
.....
.....
What would you like the Malawi Law Society to do?

.....
.....
.....
Have you complained before to us? If yes, when?

Declaration:

- 1. To the best of my knowledge, everything I have reported to you is correct.*
- 2. The disciplinary committee has my permission to contact the lawyer or law firm involved.*
- 3. I understand the committee will share information provided by me with others who are directly involved in the investigation of my complaint, on a confidential basis.*
- 4. I will treat all information provided to me during the investigation of my complaint as confidential.*
- 5. I agree to cooperate fully with staff at the disciplinary committee.*

Signed:.....

Dated:.....”

44. There are two key challenges with this form. Firstly, it does not state under which provision it is being made. The recommended legislative drafting practice is that a form should indicate the provision under which it is being made. The citation of the provision becomes of help where there are questions regarding the form.

45. Secondly, the form does not state to whom it is addressed. As already discussed, the Defendant can receive complaints from three distinct sources, that is, the Society itself, directly from the general public and a court.

46. The Court will proceed as though the complaint was addressed to the Society and not directly to the Defendant because there is a letter dated 23rd October 2024

written by Chief Executive Officer of the Society wherein it is stated that the “*Society is in receipt of a complaint from Mr. Benjamin Boma ...*”

47. The complaint was referred by the Society (acting through the Secretariat) to the Defendant on 6th December 2024: see paragraph 7 of the Defendant’s sworn statement and paragraph 4.15 of the Defendant’s Closing Submissions. The referral of the complaint was made under cover of a letter dated 6th December 2024 and the relevant parts thereof are as follows:

“ ...

The Chairperson

The Disciplinary Committee of the Society

...

Dear Honourable Chairperson

RE: REFERRAL TO THE MALAWI LAW SOCIETY DISCIPLINARY COMMITTEE OF A COMPLAINT AGAINST MR CHIKUMNUTSO MKWAMBA

The Malawi Law Society received a complaint from Benjamin Boma against Mr. Chikumbutso Mkwamba of Messrs Fountain Court Law Offices. The complaint alleged as follows:

...

The Society wrote Mr. Mkwamba on 23rd October 2024 and he responded to the Society’s letter.

On behalf of the Society, I would like to refer the complaint to the Disciplinary Committee. The referral is made under section 91(a) of the Legal Education and Legal Practitioners Act. All documents related to the complaint are enclosed for your ease of reference.

Yours Sincerely,

*Gabriel Gift Chembezi
Honorary Secretary”*

48. Based on the foregoing, it is my finding and holding that the complaint herein was referred to the Defendant on 6th December 2024. What this means is that the 90 days started running from 6th December 2024 and the 90 days expired on 6th March 2025.

49. Section 95 (2) of the Act allows the Defendant to extend time for a further 30 days, upon giving good and justifiable reasons. There is no evidence before the Court

that the Defendant sought to resort to section 95(2) of the Act. The Court will proceed by giving the Defendant the benefit of doubt that there was an extension by a further 30 days meaning that the period of 120 days from 6th December 2024 expired on 6th April 2025.

50. The Defendant agrees with the Claimant that the challenged decisions were made on 1st August 2025: see paragraph 4.17 of the Defendant's Closing Submissions.

51. As rightly submitted by Counsel Ndolo, section 95(1) and (2) of the Act are couched in unambiguously peremptory terms, that is, the Defendant is enjoined to dispose of any matter before it within 90 days or, where there is an extension, 120 days. The moment the stated period of 90 days or 120 days, as the case may be, elapses, the Defendant lacks jurisdiction to continue handling the matter. In this regard, the Court fully agrees with the submissions by the Claimant that by 1st August, 2025, the Defendant had long lost jurisdiction to dispose of the matter concerning the Claimant.

52. Based on the foregoing, the key findings by the Court are as follows:

- (a) the complaint was referred to the Defendant on 6th December 2024;
- (b) 90 days from 6th December 2024 expired on 6th March 2025;
- (c) if at all there was any extension, 120 days expired on 6th April 2025;
- (d) the decision was made on 1st August 2025, well beyond the statutory limits set out in section 95 of the Act; and
- (e) sections 95(1) and section 95(2) are couched in peremptory language and as such once the time stated therein lapses, jurisdiction by the Defendant is lost.

53. All in all, it is the holding of this Court on the second issue that the Defendant lacked jurisdiction to make the decisions that it made concerning the Claimant. Accordingly, the decisions are null and void for want of jurisdiction.

54. Before moving on to the next issue, I wish to make the following comments regarding the Rules, particularly rule 14. It appears to me that upon reflection the Society realized that the 90 or 120 day statutory time limits stipulated in section 95(1) and (2) of the Act were not long enough a period within which the Defendant could meaningfully carry out all the necessary disciplinary procedures and dispose of a matter before it. In his oral submissions, Counsel Ngunde stated the challenge

with the mandatory statutory time limit in section 95(1) and (2) of the Act in the following terms:

“Managing complaints before the Disciplinary Committee is a lengthy and complicated process. It cannot be done within 120 days. Otherwise, the Disciplinary Committee will not be doing a good job. The Defendant needs ample time to investigate the matter and hear the parties.”

55. With due respect to the Defendant and the Society, whatever challenges the 90 or 120 day statutory time limit created or presented, the answer did not lie in seeking to amend section 95(1) and (2) of the Act through the backdoor. Neither the Rules nor any other subsidiary legislation could amend section 95(1) and (2) of the Act: see section 48(2) of the Constitution which affirms the primacy of an Act of Parliament over all other forms of law (other than the Constitution).

Whether or not the disciplinary proceedings and the resultant decision against the Claimant were valid and lawful?

56. The Claimant asserts that whatever the Defendant did upon the expiry of 90 days after the complaint was brought before it was null and void and of no effect for want of jurisdiction.

57. On its part, the Defendant contends that disciplinary proceedings and the resultant decision against the Claimant were valid and lawful. The third issue is covered in paragraph 4.22 of the Defendant’s skeleton arguments as follows:

“As submitted in paragraphs 4.15. to 4.17. above, the decision of the Defendant was made within the prescribed time limit. In addition, under section 95(2) the Defendant is entitled to extend the period for disposing of any matter for a period not exceeding thirty (30) days upon giving good and justifiable reasons. The law is not clear as to whom the Defendant should give the “good and justifiable reasons”. The Defendant is not required to give these reasons to the complainant or a legal practitioner against whom a complaint is filed. The provision of good and justifiable reasons is done by the Defendant within its administrative realm in the course of managing the complaints. Requiring the Defendant to be providing such reasons to the complainant or a legal practitioner against whom a complaint is filed would be demanding too much from the Defendant.”

58. Having considered the respective submissions, the Court is of the viewpoint that the third issue is very much connected to the first and second issues. Given the conclusions of this Court on those issues, namely, that the Rules are invalid and ultra vires the Act for having being made in contravention of sections 73 and 94 of the Act and that the decisions made by the Defendant concerning the Claimant were

null and void for want of jurisdiction, it follows that the disciplinary proceedings and the resultant decision against the Claimant are invalid and unlawful.

The Remaining Issues

59. Having regard to the determinations that the Court has made in respect of the first, second and third issues, no useful purpose would be served in considering the remaining issues, that is:

- (a) whether or not the Rules are invalid or ineffectual for not having been published in the Gazette?
- (b) whether or not the Rules are invalid or ineffectual for not having been laid before Parliament?
- (c) whether rule 14 of the Rules is inconsistent with section 95(1) of the Act regarding the time frame of disposal of disciplinary matters?

Whether or not the Claimant is entitled to the reliefs being sought?

60. The Court has determined that the Rules are invalid and ultra vires the Act and that the disciplinary proceedings and the resultant decision against the Claimant are invalid and unlawful. In this regard, the Claimant is entitled to the following reliefs and the same are duly granted:

- (a) a declaration that the Defendant lost jurisdiction to determine the complaint after the mandatory statutory time limits set out in section 95(1) and (2) of the Act expired on 6th April 2025;
- (b) a declaration that after the mandatory statutory time limits set out in section 95(1) and (2) of the Act expired on 6th April 2025, the proceedings before the Defendant were void and of no legal effect; and
- (c) a declaration that rule 14 of the Rules is inconsistent with section 95(1) of the Act, to the extent that it purports to extend the mandatory statutory time limits set by section 95(1) and (2) of the Act within which the Defendant is enjoined to dispose of any matter before it.

Costs

61. Normally, costs follow the event. What this simply means is that the unsuccessful party has to pay the costs of the successful party: see Order 31, rule 3(2), of the CPR.

62. The Defendant prays that each party should bear its own costs, arguing that *“the Claimant’s case raises important issues regarding the management of complaints by the Defendant following the coming into force of the LELPA on 1st January 2019.”*

63. I am not persuaded by this reasoning. In my view, both the Defendant and the Society acted recklessly in the manner in which they formulated the Rules. First, it is difficult to accept that bodies composed of persons well-versed in the law could fail to appreciate that the power to make rules under section 94 is vested solely in the Defendant. Second, it requires no special expertise to recognize that disciplinary proceedings implicate fundamental rights and freedoms enshrined in Chapter IV of the Constitution, and therefore demand procedures that are carefully considered and firmly grounded in the applicable law. Third, there is no evidence before this Court that the Defendant or the Society sought the legal opinion of the Attorney General regarding the validity of the Rules, particularly whether they could take effect without publication in the Gazette.

64. Based on the foregoing reasons, I consider that the appropriate order to make in the exercise of the Court’s discretion would be to award costs of this action to the Claimant. It is so ordered.

Way Forward

65. The Rules having been nullified, it is most likely that the Defendant, the Society and other concerned parties will seek to formulate new rules in accordance with the requirements of the Act. Before embarking on that exercise, it is advisable that they take time to reflect upon and properly determine the legal character of both the Society and the Defendant.

66. The central question in relation to the Society is whether it is established under the Act as:

- (a) a self-regulatory organization, that is, an entity that governs its members through internal rules, codes of conduct, and disciplinary mechanisms;

- (b) a statutory body, that is, an organization created by a statute, with legal authority, duties, and powers defined by the statute; or
- (c) a hybrid of both, that is a self-regulatory organization and a statutory body.

67. The respective legal character of the Society and the Defendant, as provided under the Act, will have significant implications for the validity and enforceability of any rules they may seek to promulgate. In particular, the following compliance considerations arise:

(a) *Publication in the Gazette*

If either the Society or the Defendant is deemed to be exercising statutory rule-making powers, then any rules they make must be published in the Gazette in accordance with section 17 of the General Interpretation Act. Failure to publish would render such rules ineffective against members and unenforceable against third parties. Publication serves the dual purpose of ensuring transparency and providing public notice of binding obligations.

(b) *Gazetting and Legal Effect*

Gazetting is a constitutional safeguard and not just a mere formality. Rules that are not gazetted when they ought to be gazette cannot acquire the force of law. Consequently, disciplinary proceedings or regulatory actions taken under unpublished rules would be void *ab initio*, exposing the Defendant or the Society to challenges on grounds of illegality and lack of jurisdiction.

(c) *Parliamentary Oversight*

Section 58 of the Constitution requires that subsidiary legislation be laid before Parliament in accordance with its standing orders. This oversight mechanism ensures democratic accountability and prevents regulatory bodies from exercising unchecked power. Rules not laid before Parliament risk being declared invalid, as they lack the constitutional approval necessary for enforceability.

(d) *Binding Effect on Members and Non-Members*

The legal character of the Society will determine whether its rules bind only members (as in the case of a purely self-regulatory organization) or whether they extend to non-members and the public at large (as in the case of a statutory body). Where rules purport to affect third parties, strict compliance with statutory requirements of publication, gazetting, and parliamentary oversight becomes indispensable.

(e) *Enforceability in Disciplinary Proceedings*

Given that disciplinary proceedings implicate fundamental rights under Chapter IV of the Constitution, any rules governing such proceedings must be firmly grounded in law. Rules that are procedurally defective by reason of lack of publication or inconsistency with the parent statute cannot lawfully restrict rights or impose sanctions.

Pronounced in Court this 21st day of May 2026 at Lilongwe in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE