



PATRICK GRAY MPAKA

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BRIEF PROFILE

(Under Chapter 5 MLS Code of Ethics)

1. Brief Description:

With law degrees from Malawi and London Universities, and post graduate certificate and diploma from London University, Patrick has practiced in all the major courts of Malawi from June 2005. His focus is on dispute resolution through litigation, arbitration, mediation conciliation and negotiation. Under Malawi law, Patrick is a Legal Practitioner since 2005, a Notary Public since September 2013 and an Insolvency Practitioner since May 2017. He is a member of the Malawi Law Society which is a statutory regulatory body for the legal profession in Malawi. Currently, he is the Law Society's peer elected Vice-Chairperson for the period 2019-2021.

2. Public Service:

By statute, the Law Society has, among others, the objects of "*protecting matters of public interest touching, ancillary or incidental to the law*", and "*promoting highest professional standards, integrity, competence and credibility in legal services*". Entrusted by peers with leadership of the Law Society in the period 2019-2021, Patrick has been instrumental to the Law Society's role upholding these values. In the period 2019-2021 the country was preparing for and went through a watershed presidential election which generated intensive public interest and constitutional litigation at the High Court and the Supreme Court of Malawi followed by the emergence of the world wide pandemic corona virus in the same period. Patrick has led in legal representation for the Law Society in key public interest litigation in addition to his previous experience acting for the Law Society in its general public and professional interest objects. His writings, some of which are listed in Part 7 below, have contributed to the direction of the legal profession in Malawi.

3. Litigation Experience and Contribution to Development of the Law:

Patrick has appeared as lead advocate in more than 200 cases up to judgment level at the Malawi High Court Commercial and Civil Divisions and at the Malawi Supreme Court of Appeal. Over the last 15 years, he has handled and advised on all manner of cases under Malawi law including constitutional and administrative law, banking and finance law, general commercial law, competition law, contract law, criminal law, the law of deceased estates, the

law of trusts, child justice and family law, property law, tax law, torts, labour and employment law, land law, property law, human rights law and other practical areas of law. The Table at item 5 below provides a sample overview of some the selected range of the cases that Patrick has been involved in.

The Malawi Judiciary, with cooperation from World Bank and/or the European Union, usually selects some of the best judgments from the superior courts and publishes the Malawi Law Reports as guiding precedent on Malawi law. Between 2005 and 2014, a total of 10 Law Reports have been published. In each one of the reports, there is reported at least a judgment in which Patrick actively participated as lead Counsel either at the High Court or the Supreme Court. In the 2008 Malawi Law Reports (Commercial Series), 6 judgments in which Patrick was involved as lead Counsel are recorded out of a total of 36 reported cases making his contribution to jurisprudence 17% of the content in that particular Law Report. Patrick has contributed as lead Counsel in a total of 20 cases reported in these publicly available 10 volumes of various series of the Malawi Law Reports. Out of these 20 reported cases, 7 are Supreme Court judgments.

In one of the reported cases, the Supreme Court overturned and overruled its 10 year standing decision in favour of the legal position Patrick advocated for on appeal. Since 2006, that new legal position has been accepted as correct across the legal profession and has regulated the commercial sectors affected for 15 years now. In two other cases, not yet reported, Patrick, through judicial review proceedings, advocated for a legal position which the High Court and the Supreme Court respectively agreed with leading to regulators in the telecommunication industry and in the financial services industry passing new regulations for their respective sectors soon after the cases.

Patrick has regularly acted for or against and advised a wide variety of businesses including corporations with international networks, banks, insurers, finance companies, and manufacturers. Patrick has also acted for several individual clients suing large corporations in a wide range of subjects on Malawi law including labour relations, child justice and family law, conversion, trespass and unjust enrichment. Over the years, in the process of discharging his professional responsibilities, Patrick has dealt with and continues to deal with almost all the facets of law and its practice in Malawi providing advisory counsel in transaction work and appearing in superior Courts from time to time.

4. Commercial Arbitration:

Patrick has been a subscribed member of the American Society of International Law and of the Mauritius International Arbitration Centre. He is currently a member of the SADC Panel of International Commercial Arbitrators constituted and launched on 11th December 2020 by the SADC Lawyers Association in partnership with the Arbitration Foundation of Southern Africa (AFSA). This, according to the AFSA-SADC Division, *“is a unique panel of high level and experienced experts nominated by the 15 SADC Bar Associations based on globally competitive criterion”*. Locally, Patrick has presided over several private commercial arbitrations and administrative proceedings recently delivering an arbitral award on 5th January 2021.

5. Education:

- (i) Post-graduate Institution : University of London
- Qualifications* : *Master of Laws Degree, 2012(International Business Law)*
- : *Postgraduate Diploma in Laws, 2010(Law and Development)*
- : *Postgraduate Certificate in Laws, 2009(Commercial & Corporate Law)*
- Lead Colleges* : University College London, Queen Mary and Westfield College
- Modules* : (i) International Economic Law
- (ii) International Investment Law
- (iii) Multinational Enterprises and the Law
- (iv) Law and Policy of International Courts and Tribunals
- (ii) Graduate Institution : University of Malawi, Chancellor College
- Qualification* : *Bachelor of Laws (Honours), 2005*

6. Professional Career:

- April 1, 2008 to date* : Partner and Head of Litigation, DESTONE & Co. Legal Practitioners P. O. Box 31315, Blantyre 3 www.destonelaw.com
- February 2019- March 2021* : Vice Chairperson, Malawi Law Society.
- January 2005 to March 2008* : Associate then Head of Litigation, Chagwamnjira & Co..Legal Practitioners, P. O. Box 51865, Limbe.
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7. Papers and/or Publications

- The Malawian Lawyer (November 2008)*: “Pleadings Redefined: The Is and the Ought of *Steiner Theka v. National Bank of Malawi Limited*”
- Malawi Law Society Conference on Civil Procedure Rules (2016)*: “The Interim Civil Code in Malawi: Ruminations from the Bar on the Kenyatta-Mwaungulu Debate” (co-authored with Kalekeni Kaphale, SC)
- Malawi Law Society Annual General Conference (Feb. 2018)*: “Of Eight Law Lords and Lady Justice: Ruminations from the Bar on Supreme Court Practice Direction No.1 of 2018”
- Malawi Law Society Annual General Conference (February 2020)*: “There Shall Be the Malawi Law Society-Proposals for Navigating the Confluence of Communitarian and Libertarian Values Under the Legal

Malawi Law Society Special Review Conference (November 2020): Malawi Law Society and its Members
as Civics Teachers in Constitutional Democracy: Review
of the 2019-2020 Experience

8. Selected High Court and Supreme Court Case Law:

Over the years, Patrick has been involved in many cases in a wide-ranging legal subject matter thereby acquiring and advising on practical workings of the law and contributing to legal developments in Malawi. Below is a selected sample of some completed cases whose judgements and rulings are public records:

	Case and citation	Brief subject matter
1.	<i>New Building Society v. Henry Mumba</i> MSCA Civ. App. No.26 of 2005 [2001-2007]MLR(Com) 243	Banking law -land and law of securities-realization of security-availability of equitable remedies to defaulting chargor
2.	<i>Speedy's Limited v. Finance Bank Malawi Limited</i> HC Com. Cause No. 49 of 2007 [2001-2007]MLR(Com) 373 also in [2001-2007]MLR(Com) 343	Contract law -bank overdraft-interest on debt-promissory estoppel-waiver Company law -insolvency-proceeding against a company in voluntary liquidation
3.	<i>Chidanti-Malunga v. Fintec Consultants and Another</i> HC Com. Cause 6/2008 [2008] MLR(Com) 243	Collateral contracts -aspects of collateral contract
4.	<i>Trust Securities Limited v. Finance Bank Malawi Limited (in voluntary liquidation)</i> HC Com. Cause 51/2007 [2008] MLR(Com) 127	Alternative Dispute Resolution -Mediation-admissibility of mediation reports in subsequent judicial process
5.	<i>Gilton Chakhaza v. Portland Cement Limited</i> HC Civ. Cause No. 1581 of 2006 [2008]MLR 118	Employment law -due process-unfair dismissal-remedies Defamation -dismissal letter as a basis for defamation-elements and proof of defamation
6.	<i>Sajid Jussab v. NBS Bank Limited</i> MSCA Civ. App. No. 2 of 2010 [2010]MLR 337	Land law -sale of land-duty to pass title to the purchaser-duty to register charge-scope of damages for breach duty
7.	<i>Chitakale Plantations Limited v. Mary Woodworth and Another</i> MSCA Civ. App. No. 68 of 2010 [2010]MLR 61, 57	Land law -possession-evidence of title Corporate law -holding company and subsidiaries-separation of legal personality-entitlement to sue Civil Procedure -appeals procedure-grounds of appeal-stay pending appeal
8.	<i>Finance Bank of Malawi (In Liquidation) v. Heyns and Another</i> MSCA Civil Appeal No. 45 of 2010 [2011] MLR, 73	Injunctions – access to equitable remedies before the Supreme Court
9.	<i>Ben Abudu Kambulire v. NBS Bank Limited</i> HC Civ. Cause No. 2384 of 2008 [2014]MLR 11	Unjust enrichment law -relations with contract Law of Damages -pleading and proof of special damages Contract law -sale of land-interpretation of agreements
10.	<i>Citizen Insurance Company Limited v. M.A. Kharafy & Sons</i> MSCA Civ. App. No. 33 of 2010 [2014]MLR 83	Insurance law -fidelity guarantee and principles for indemnity for loss

		Contract law -promissory estoppel-waiver of notice-pleading waiver in civil proceedings
11.	<i>The State v Malawi Energy Regulatory Authority Ex,parte Malawi Housing Corporation</i> HC Judicial Review Case No. 37 of 2013 (unrep.) (25.02.2014)	Energy laws -judicial review of administrative action under energy laws Damages -energy laws-loss of domestic property-scope of regulatory authority-power to order compensation
12.	<i>Reserve Bank of Malawi v. Finance Bank of Malawi v. Attorney General</i> HC Commercial Case No. 104 of 2008 (unrep.)(27.10.14)	Constitutional law -constitutional referral by Court-commercial matters and jurisdiction-constitutional dimensions of banking licence-due process Bank regulation -revocation of banking licence-legal framework Regulatory takings -multinational enterprises and the law-misfeasance of public office Contract law -setting aside consent order-regulatory takings-duress as vitiating circumstance
13.	<i>Barrow Investments Limited v. MPICO Malls Limited</i> Commercial Cause No. 6 of 2013 (02.02.2015)	Costs - rate of and considerations for assessing party and party costs – the rule against fetter of discretion.
14.	<i>S.C Yiannakis Ltd v. Trans Maritime Ltd</i> Commercial Case No. 160 of 2014 (07.08.2015)	International trade -carriage of goods by sea-carriage of goods by land-contract law-liability for carriage charges
15.	<i>The State v The Registrar of Financial Institutions Ex parte Prime Insurance Co. Ltd and Goss Katoki Mwalilino</i> HC Judicial Review No. 44 of 2016 (unrep.) (8.07.2016)	Financial services law -insurance regulation-scope of statutory management law under Financial Services Act-judicial review
16.	<i>The State v. Malawi Communications Regulatory Authority ex.p. Telekom Networks Malawi Plc</i> MSCA Civ. App. No, 73 of 2016(High Court Judicial Review Cause No. 9 of 2015) (16.08.16)	Telecommunications law -scope and limits of regulatory reach and judicial review-permission-exhaustion of alternative remedies Civil procedure law -Supreme Court-original jurisdiction in judicial review proceedings. Data security and ICT law -electronic monitoring and the limits of confidentiality and privacy rights protection obligations in ICT services
17.	<i>The State v The Registrar of Financial Institutions Ex parte Prime Insurance Co. Ltd and Goss Katoki Mwalilino</i> MSCA Civil Appeal No. 41 of 2016 (unrep.) (13.10.2016)	Civil Procedure law -concurrency of jurisdiction-High Court and Supreme Court of Appeal-
18.	<i>Rachel Sophie Sikwese v Gracian Zibelu Banda</i> MSCA Civ. Appeal No. 76 of 2015 (unrep.) (29.11.2016)	Constitutional law -human rights law-women’s rights Property law -constitutional interpretation-principles for determining property rights under the Constitution Family law -distribution of matrimonial property
19.	<i>The State v Malawi Revenue Authority Ex parte Blantyre Printing and Publishing</i> HC Judicial Review Case No. 5 of 2017 (unrep.) (07.02.2017)	Tax law -interim relief against tax enforcement-the limits of enforcement rights for the Revenue Authority-judicial review of administrative action under tax

		law-injunction pending review-key considerations in tax matters
20.	<i>Kumbatira t/a Taringa Enterprises v FDH Bank Ltd (Ex parte)</i> HC Com. Bankruptcy Case No. 3 of 2016 (unrep.) (08.02.2017)	Insolvency law -bankruptcy-bad faith in prosecution of bankruptcy-debtor's good faith-setting aside bankruptcy notice.
21.	<i>Masiye Chafukira v. Blessings Salamu and Others</i> HC Civ. Cause No. 505 of 2015 (unrep.) (30.08.2017)	Company law -corporate veil-lifting the corporate veil-circumstances-fraud Property law -deceased estates-administration-distribution meetings-transparency Professional Negligence -legal practice-scope of liability for professional negligence.
22.	<i>EA v. IC</i> HC Matrimonial Cause No. 1 of 2016 (07.09.2018)(01.07.2020)	Child justice law -parental alienation-custody of children Custody of children -considerations and terms for child custody-variation of terms of custody-effect of parental alienation findings Maintenance of children -divorced parents-considerations and terms for maintenance of children.
23.	<i>The State v Malawi Revenue Authority ex parte Blantyre Printing and Publishing</i> HC Judicial Review Case No. 5 of 2017 (unrep.) (12.10.2017)	Tax law -corporate tax-withholding tax-fringe benefit tax-value added tax-pay as you earn - distress of tax-the limits of enforcement rights for the Revenue Authority-judicial review of administrative action under tax law
24.	<i>The State v Deputy Governor of the Reserve Bank of Malawi Ex parte NBS Bank Ltd</i> HC Judicial Review Case No. 91 of 2016 (unrep.) (25.01.2018)	Bank regulation - Registrar of Financial Institution and Governor of Reserve Bank of Malawi-the distinction Financial services law -judicial review-administrative action-the limits of interface of central bank and Registrar of Financial Institution Contract law -banking services-banker-customer contract-repudiation or cancellation by regulation--enforcement of contractual rights and obligations
25.	<i>The State v The Registrar of Financial Institutions Ex parte Malawi Law Society and Insurance Association of Malawi</i> HC Judicial Review Cause No. 68 of 2014 (unrep.) (22.02.2018)	Legal profession -regulation of law practice in financial services and insurance related claims
26.	<i>Cotton Ginners Africa Ltd and Abdul Kader Patel v Standard Bank Malawi Ltd, Ecobank Malawi Ltd, National Bank of Malawi Ltd, CDH Investment Bank Ltd and Export Development Fund</i> HC Insolvency Case No. 1 of 2017 (unrep.) (27.02.2018)	Insolvency law -company re-organization-grounds-basis for-inability to pay debts-real prospect of rescue Business Rescue law -re-organisation plan-burden of proof of potential satisfaction of attainment of going concern status, better result or orderly realisation Insolvency law and practice -comparison with English administration and American Chapter 11 Bankruptcy
27.	<i>Premier Leaf Ltd & Others v Fincom Bank of Malawi Ltd and Odinga Hara</i> HC Com. Case No. 109 of 2013 (unrep.) (13.03.2018)	Law of receivership -appointment of receiver under the Companies Act and the Registered Land Act Law of securities -realisation of security under the Registered Land Act- the duty to

		act in act good faith-independent advice
28.	Jean Chirwa v Noreen Chirwa, FDH Bank, NBS Bank Ltd, E&E Construction & Alexka Holdings Ltd HC Civ. Cause No. 523 of 2012 (unrep.) (28.05.2018)	Civil Procedure - fraud-limitation of action -pleading and proof of Deceased estates -administration of-effect of fraud Property law -land-rectification of land register-grounds for and proof-fraud
29.	Malawi Bureau of Standards v. Bulldog Spares and Suppliers MSCA Civil Appeal No. 36 of 2017 (18.11.2018) and HC Commercial Case No. 74 of 2012	Competition law -key elements anti-competitive practices-what may amounts to anti-competitive trade practices-under Malawi law Damages law -quantum and proof of damages in competition law.
30.	Duncan Kaonga v Electoral Commission and Hon. Uchizi Mkandawire HC Electoral Matter No. 44 of 2019 (unrep.) (31.01.2019)	Electoral law -scope of constitutional jurisdiction of the High Court-procedure for electoral petition
31.	Blantyre Printing and Publishing Co. Ltd v Commissioner General of the Malawi Revenue Authority HC Revenue Cause No. 15 of 2017 (unrep.) (11.03.2019)	Tax law -judicial review-ground for-legitimate expectation-bad faith-proportionality of tax enforcement measures-
32.	Oil & Protein Co. Ltd v NBS Bank Ltd v. John Bizwick and Aubrey Chalera HC Com. Case No. 308 of 2015 (unrep.) (25.07.2019)	Banking law -exchange control and regulation-property in money held in a bank account Banking law -banker-customer relations, standard of skill and care and the scope of the duty of care Contract law -law of torts-elements and proof of contract-freedom of contract-interface between contractual and tortious duty of care Law of torts -negligence-tests for imposing duty of care-and voluntary assumption of risk
33.	Simama General Dealers v. FDH Bank Limited -MSCA Civil Appeal No 41 of 2018 (21.07.2020)	Construction law - damages-construction contracts-breach and relief
34.	Football Association of Malawi v. Ernest Mtawali MSCA Civil Appeal No. 40 of 2018 (21.07.2020)	Defamation law - pleading and proof of key aspects-defences to a defamation suit
35.	NBS Bank Plc v. CFAO Malawi Limited HC Com. Case No.159 of 2019 (20.11.2020)	Unjust enrichment -recovery and measure of benefits-reversed judgements of lower courts-liability to pay compound interest-applicable rates

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