

Malawi: Lawyer faults Banda on MBC appointment

By Gregory Gondwe: @Kalipochi

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Justin Dzodzi, a private lawyer, has faulted President Joyce Banda's decision to fire [Malawi Broadcasting Corporation](#) (MBC) CEO Bright Malopa and replace him with veteran broadcaster Dr. Benson Tembo.



"...The power to hire and fire the director general of MBC reposes in the board and the president," said Dzodzi, who says he is faulting the manner in which the president terminated the services of the MBC head as well as the manner in which she appointed his replacement.

Malopa was fired alongside government spokesperson and information and civic education minister Patricia Kaliati, in a move president Banda said was to spruce up the image and the dignity of her newly installed government.

Dzodzi said the law mandates the board of MBC to do so.

"Furthermore, her decision may be legally challenged by the affected party by way of judicial review process. If the court finds that the president didn't have the power to fire the former director and hire the current director may be quashed accordingly," he said.

Kunkuyu defends Banda

In an interview, the newly government spokesperson and information and civic education minister, Moses Kunkuyu said, president Banda did not make any mistake in her decision.

"The president being the head of the civil service has the power to make appointments," said Kunkuyu, in defence of his boss.

Public Procurement Act

Dzodzi argued that the powers of the president, in so far as MBC management is concerned, are limited to the appointment of the board of directors.

"Furthermore, modern corporate governance rules on employment of senior public officers require open and competitive recruitment. This is also consistent with Malawi's national procurement principles espoused by the Public Procurement Act," Dzodzi further argued.

He said that at the minimum, the board of directors should have advertised for the position and allowed qualified candidates to compete for the position.

"This would also ensure the operational independence of the office holder, unlike when such officers are hand-picked. It is very unlikely that a person employed under the current circumstances can discharge his duties with professional impartiality and integrity," he said.

Is this the norm?

A senior media practitioner said he is surprised that people are making a fuss over this appointment when it has been the 'norm' ever since Malawi became independent that MBC heads are appointed and fired by the president.

Jokingly he wondered, "We have had three presidents in this country who have been doing this, is the fuss coming now because she is a female president?"

In the first place, the practitioner said Malopa cannot even challenge his dismissal because this is exactly how he was appointed.

Dzodzi agrees that this indeed has been the trend but insisted that the principles of respect for the rule of law require that the only correct way to discharge a public function is to do it within the confines of the law.

"These appointments simply show that our presidents feel entitled to break the laws of the land when it suits them. Otherwise, there are very clear procedures and laws governing literally every manner of discharging public duties at all levels. I really do not see any excuse why any president should not follow the law," said Dzodzi in a question and answer interview with Weekend Nation.

Governed by specific acts

Constitutionally, he said the appointment of the director general of MBC, just as it is true of most other statutory corporations, is not governed by the Constitution in the strict legal sense.

"These matters are governed by specific acts of parliament that establish and set up the particular parastatal. So, in the case of MBC, the appointment is governed by the Communications Act 1998," said Dzodzi.

He explained further that the establishment and management of MBC is provided for in Part IX, Sections 86-96 of this act which has Section 92 (1) providing as follows:

"The Board of MBC shall appoint a director general, who shall be the chief executive officer of MBC and, subject to the general supervision and control of the board, shall be responsible for (a) the day to day operations of MBC;... (c) the administration, organisation and control of staff of MBC."

Dzodzi says this provision is clear enough so much so that he does not see in it any ambiguity which may lead the president into thinking that s/he is the one mandated by the law to the appointments.

Adherening to the law

"Generally speaking, where a matter is by law governed by a set of procedures, any person who attempts to do it differently does not create any legal consequences. In this sense, the removal of the director general by the president would be null and void in law," he said.

He explained that this means that legally, the fired director general still remains an employee of MBC until such a date when the board may terminate his services.

"So, the right thing to do now is for the board of MBC to terminate the employment of the director general in accordance with his conditions of service and labour laws of this country," Dzodzi offered a solution to legalise the new appointment.

Dzodzi said if the law treats that exercise as null and void, then there is nothing else advantageous about that. He said the president can be held accountable for her actions considering that democracy is premised on the strict observance of rule of law.

Dzodzi insisted that every public officer can only do those things which the law mandates him or her to do because the discharge of public functions is governed by specific laws and everyone must simply abide by those that is best practice in a democratic government.

Dzodzi said he is not against the use legal means of doing this and therefore the president must lead by example by an overt and strict adherence to the rule of law.

Malopa accepts dismissal

Asked about his dismissal, Bright Malopa himself welcomed the change, saying it was time to move on.

"It's an executive decision; and for me, it is time to move on," he said before commenting on his replacement, "Tembo is a seasoned broadcaster and I have interacted with him in a number of TV projects. I wish him good luck and good health."

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