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Effective system for handling sexual harassment complaints/psychological injuries.

In a recent case, the High Court of Malawi has held that an employer can be held liable in negligence and/or for breach of statutory duty if his or her employee is subjected to sexual harassment committed by a fellow employee in the workplace. An employer could be liable in such circumstances if the court finds that the employer did not have an effective system for handling sexual harassment complaints. The court further held that a complainant can successfully bring a claim for psychological injuries sustained following sexual harassment incidents without sustaining any physical injuries and the said psychological injuries can be presumed without any medical evidence. An appeal to the Malawi Supreme Court of Appeal against whole decision is currently pending.

Gender Equality Act

The Gender Equality Act, 2013, ("**Act**") prohibits sexual harassment in workplaces and places certain obligations on employers. Although the above case was brought under the law of negligence and not the Act, it is important to be cognisant of the duties placed on employers under the Act. According to the Act, the government is required to ensure that employers develop and implement appropriate policy and procedures which are aimed at eliminating sexual harassment in the workplace. The said policy and procedures are supposed to have the following effects:

- (i) entitle all persons who have been subjected to sexual harassment in the workplace to raise a grievance about its occurrence and be guaranteed that appropriate disciplinary action shall be taken against perpetrators;
- (ii) entitle a non-employee who has been subjected to sexual harassment to lodge a grievance with the employer of the perpetrator where the conduct giving rise to the complaint has taken place at the workplace or in the course of the perpetrator's employment;
- (iii) entitle all employees, job applicants and other persons who have dealings with the workplace to be treated with dignity; and
- (iv) oblige the person in charge of the workplace to
 - (a) implement the policy and procedures and impose disciplinary action against employees who do not comply;
 - (b) deal seriously, expeditiously, sensitively, and confidentially with all allegations of sexual harassment;
 - (c) protect employees against victimization, retaliation for lodging grievances and from false accusations;
 - (d) explain the procedure which shall be followed by persons who are victims of sexual harassment;
 - (e) communicate the sexual harassment policy and grievance procedures effectively to all employees; and
 - (f) designate a person outside of line management whom a person who has been subjected to sexual harassment may approach for confidential advice and counselling.

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