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Prohibitions against unlawful forced labour and child labour in Malawi

As reported recently by an online newspaper, a court action was commenced in the High Court in London against a multinational company allegedly operating in Malawi (“Defendant”) through alleged connected parties. The action against the Defendant was commenced on behalf of claimants who allegedly farm tobacco in Malawi and whose crops are stated to be sold to leaf-buying companies. The leaf buying companies allegedly sell the crops to the Defendant. The claimants are being represented by an external law firm which is alleging that the claimants are subjected to unlawful forced labour and child labour. The external law firm is equating the allegations of forced labour to modern slavery.

This action raises issues relating to unlawful forced labour and child labour in the context of Malawi. It is important for parties operating in Malawi to be aware of the Malawi laws on unlawful forced labour and child labour as well as for the laws to be applied justly considering the context of Malawi.

Forced Labour

- Section 27 of the Constitution of the Republic of Malawi provides that no person shall be held in slavery or servitude. It further provides that no person shall be subject to forced labour or to tied labour that amounts to servitude.
- Section 4 of the Employment Act prohibits forced labour. Forced labour is defined in section 3 of the Employment Act as *“any work or service that is exacted from any person under the threat of any penalty and is not offered voluntarily”*.

Unlawful Child Labour

- Section 23 of the Constitution provides that children should be protected from economic exploitation or work that is, or is likely to – (a) be hazardous; (b) interfere with their education; (c) or be harmful to their health or to their physical, mental or spiritual or social development.
- Section 82(c) of the Child Care, Protection and Justice Act 2012 prohibits **forcing** *“a child into providing labour for the income of a parent, guardian or any other person.”*
- Section 21 of the Employment Act provides that no person under the age of fourteen shall be employed or work in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof. The section however states that this provision does **not apply to work done in homes**, vocational technical schools or other training institutions.

Observation

We are not aware of any Malawi cases in which the court discussed whether a child assisting their parent in a home with some work in Malawi would contravene the above provisions. Such an issue would have to be deliberated upon while cognisant of the societal, cultural and public policy considerations specific to Malawi, rather than those of any foreign country.

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