



JUDICIARY

**IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
CIVIL CAUSE NUMBER 22 OF 2008**

BETWEEN:

THE SATEPLAINTIFF

- AND -

**THE MALAWI NATIONAL
EXAMINATIONS BOARDDEFENDANT
EX – PARTE: MAWILA PRIVATE
SECONDARY SCHOOLAPPLICANT**

CORAM: THE HONOURABLE MR JUSTICE J S MANYUNGWA
Mr T. Ngwira, of Counsel, for the plaintiff
Mr Chokotho, of Counsel, for the respondent
Mrs M. M. Ndanga – Official Interpreter

RULING

Manyungwa, J

This is the ex – parte applicant’s inter – parties summons on application for leave to move for judicial review of the respondent’s decision dated 26th March 2008. The application is made pursuant to Order 53(3) of the Rules of the Supreme Court 1999 Edition, and is supported by an affidavit of Mr Benedict Devisoni Mazula, Headmaster of the ex – parte applicant Secondary School. I must state at the outset that on 4th April, 2008, the ex – parte applicant made an ex – parte application to my brother judge Potani, J who eventually ruled that the ex – parte application should come inter – parties and when the matter was brought here Justice Chipeta, who was to hear the matter was reportedly away hence my handling of the matter. When counsel for both parties appeared before me on 15th April, 2008, Mr Chokotho for the respondent indicated to me that the respondent had no

problems with the leave for judicial review that was being sought by the ex – parte applicant but that the respondent had problems with the interim reliefs of the order of stay and injunction that were being sought by the ex – parte applicant alongside the application for leave to move for judicial review. As there was agreement on this point as conceded by Mr Ngwira for the ex – parte applicant, the court proceeded to grant the ex – parte applicant leave to move for judicial review, and reserved its decision on the ex – parte’s application for stay of the respondent’s decision of 26th March, 2008.

The gist of the plaintiff’s case is that the ex – parte applicant secondary school was registered under the Business Names Registration Act¹ on 12th June, 1998 by Mr Mussa Wyson Chalimba, then sole proprietor of the ex – parte applicant private secondary school. On 24th June 1998 and 25th July 1998 the said Mr Mussa Wyson Chalimba was joined by four business partners and a further 4 business partners respectively namely Billy Thom Njobvu, Imaan Wyson Chalimba, Steven Chitera Nkwanda, Baxter Finly Chitimbe, David Nangoma, Geoffrey Saiti Chalimba, Omar Nookdin Fiday Kapyepye and Elias Wilson Ngulinga as is evidenced by exhibit “BNM1”, a copy of Certificate of Registration dated 12th June 1998 and that since then the school has been run by the above named business partners. In 2006, the ex – parte applicant private secondary school was duly registered by the respondent as an Examination Centre and in 2007 it was registered as a cluster examination centre. On 22nd February 2008 the Executive Director of the respondent wrote a letter addressed to the Headmaster of the ex – parte applicant to the effect that the respondent’s Board of Directors had agreed to deregister the ex – parte applicant school as an examination centre due to the fact that Mr Imani Chalimba one of the Directors of the school was arrested, in connection with some of the 2007 leaked MSCE papers on 18TH October 2007 and subsequently convicted in respect of the same, and the same letter went on to state that the respondent’s Board of Directors had no doubt that Mr Chalimba had therefore bought the leaked papers in order to benefit candidates from ex – parte applicant school. Further, in the same letter the Executive Director of the respondent requested the ex – parte applicant to send a written representation by way of defence of the respondent’s intention to deregister the ex - parte applicant school as an Examination Centre by 7th March, 2008 as is borne out by exhibit “BNM2”. The ex – parte applicant’s headmaster duly sent the said defence to the respondent on 4th March, 2008 in which it was argued that de - registering the ex – parte applicant school on the sole ground of Mr Chalimba’s

¹ Business Names Registration Act, Cap 46:02

conviction was unreasonable and unfair as his decision was unilateral and not sanctioned by the other Directors since the said Mr Chalimba was not the sole proprietor of the school, and that he was charged and convicted as an individual with no links to the school. On 11th March, 2008 whilst waiting for the respondent's response the headmaster went to Machinga District Education office to collect 2007 MSCE results for the ex – parte applicant school and whilst there he discovered that there were no nominal rolls for the 2008 examinations for the ex – parte applicant school and upon enquiry, and when on 13th March, 2008 he telephoned the respondent's Executive Director, the said Executive Director responded that the missing of the nominal rolls was not in any way connected with Mr Chalimba's conviction. Later the headmaster was able to collect the said nominal rolls on instructions from Mr Harawa, the respondent's security officer who instructed Mr Mtambalika to release the same. However, on 26th March 2008, the Headmaster of the ex – parte applicant school received a letter from the Executive director of the respondent which informed him that the Board of Directors of the respondent had resolved that the ex – parte applicant school had to be de – registered with immediate effect as an Examinations Centre and that they had to re – register their 18th April, 2008. It is this decision by the respondent to re – register their students as external candidates by 18th April, 2003.

It is this decision by the respondent to de – register the ex – parte applicant school as an Examination Centre that the Ex – Parte applicant want stayed until the hearing of Judicial Review.

ISSUES(S):

The main issue for the determination by this court is whether the respondent's decision of 26th March, 2008 de – registering the ex – parte applicant school should be stayed or not.

THE LAW:

Under Order 53/14/7 of the rules of the Supreme Court it is stated as follows:-

“It is possible to apply for an interim relief e.g. a stay pending the hearing an application for judicial review. (Order 53, r 3(10) (a) or an interlocutory injunction (Order 53, r 3(10)(b) and r 8. It is also possible to apply for other

orders of an interlocutory nature such as discovery, interrogations or leave to cross – examine a deponent.”

In the instant case, leave to move for judicial review was granted by consent of both parties. Leave having been granted, it will in my judgement be unfair to deny the ex – parte applicant the order that it is seeking since clearly the conviction of Mr Chalimba was in no way connected to the school. The situation would have been different if, the school was connected and in any case, if the order sought is refused, it is the students that would suffer and it would be tantamount to determining the substantive proceedings at this stage, which, admittedly is not the duty of this court at this stage. The ex – parte applicant was already given nominal rolls for this year’s examinations which by all standards gave the impression that the ex - parte applicant school was going to be used as an Examination Centre. Of course, the court appreciates that there could be a genuine basis for the decision that was taken by the respondent, but I think, the decision, at this stage works more to the disadvantage of the ex – parte applicant and its students than that of the respondents.

CONCLUSION:

In these circumstances and by reason of the foregoing, it is my considered opinion that the interim relief sought by the ex – parte applicant should be granted. I therefore grant the ex – parte applicant an order of stay of the respondent’s decision of 26th March 2008 in de – registering the ex – parte applicant’s school as an Examination Centre until the determination of the substantive judicial review proceedings herein or until further order of the court. In the meantime the respondent should extend the registration period for the students of the ex – parte applicant school so as to enable them sit for their examination this year.

I make no order as to costs.

Pronounced in Chambers at Principal Registry this 17th April, 2008.

Joseph S. Manyungwa
JUDGE

