IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY

MISCELLANEOUS CAUSE NO.73 OF 2007
(IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW)

BETWEEN

THE STATE

***EX-PARTE*: PINDANI KAMWAZA--------------------APPLICANT**

AND

TRADITIONAL AUTHORITY DAMBE ----------1ST RESPONDENT
DISTRICT COMMISSIONER, MCHINJI ------- 2ND RESPONDENT
SECRETARY FOR LOCAL GOVERNMENT ----3RD RESPONDENT

CORAM : HON. JUSTICE SINGINI, SC.

: Mr. Chipao of counsel for the Applicant
Mr. Kachule and Miss Kalebe for Attorney General of counsel for the Respondents
Mr. Gonaulinji, Court official

RULING

The applicant, one Pindani Kamwaza, has made an *ex-parte* application under Order 53/3 of the Rules of the Supreme Court to obtain leave of this Court for him to make an application for judicial review against the respondents in respect of the respective roles they played in their public duties in installing the chieftainship of Group Village Headman Kakunga on one Masulani Malisoni under Traditional Authority Dambe in Mchinji District. The applicant claims that he is the rightful person to have been installed the chieftainship. The notice of application for leave was filed in this Court on 25th July, 2007.

Realising that the application for leave was out of time, counsel for the applicant filed notice applying for extension of time within the Court's discretion, as allowed under Rule 4(1) of Order 53, on the ground that the applicant had good reason in delaying to make the application for leave.

The Attorney General, as counsel for the respondents, opposes both applications.

I heard counsel in chambers on 9th August, 2007. At the hearing I gave directions that I would hear both the application for extension of time within which to apply for leave and the application for leave itself and would make my determination on both applications in one ruling. This is therefore my ruling on both applications.

In considering the application for leave to apply for judicial review, I remind myself of the statement of law as stated in Order 53/14/19 that the remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision-making process itself. As in the words of Lord Hailsham L.C. (in *Chief Constable of North Wales Police v. Evans* [1982] 3 All E.R.141 at 143), "It is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority he has been subjected to and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question.".

Further, I refer to Order 53/14/21 where it is stated as a matter of law, in accordance with Rule 3 of Order 53, that no application for judicial review

can be made unless leave to apply for judicial review has been obtained and that the purpose of the requirement of leave is: (a) to eliminate frivolous, vexatious or hopeless applications for judicial review without the need for an *inter-partes* judicial review hearing; and (b) to ensure that an applicant is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further investigation at a full *inter-partes* hearing.

Having heard counsel for the applicant and considered the affidavit and skeleton arguments in support of the application, I ask myself if the applicant has disclosed a case fit for further investigation at a full *inter-parte* hearing by this Court. I note from the applicant's affidavit that the public authorities against whom judicial review would lie did actually engage an investigative process in which the applicant was heard on his claims to the disputed chieftainship, except that he has remained dissatisfied with their decisions. He however has not pointed out in what way he was unfairly treated in that decision making process, except to dispute the accuracy of the minutes of one of the consultative meetings held at the District Commissioner's office, which he attended, prepared by the officials of the office. He disputes the minutes to the extent that he has refused to sign them, claiming that they contain distortions weighing in favour of the standing of Masulani Malisoni in the disputed chieftainship. The minutes presented the record on the basis of which, according to the affidavit of the applicant, the Ministry of Local Government proceeded to make its decision confirming Masulani Malisoni to have been properly installed as the Group Village Headman Kakunga. I consider that there must be finality to the official record of the minutes, and I hold that the minutes must be taken on their face value as being accurate. In any event, I do not consider that the accuracy of the minutes is a proper matter to be resolved at the judicial review hearing.

I do not see therefore that there would be any further matter to be investigated at a full judicial review hearing, for which the applicant seeks leave, about the decision making process engaged by the respondents.

It is also a requirement under Order 53/4 (1) that an application for leave to apply for judicial review shall be made promptly and in any case within three months from the date when the grounds for the application [for judicial review] arose unless the Court considers that there is good reason for extending the period within which the application for leave shall be made.

On the issue of promptness in applying for leave in the present case, it will be noted from the applicant's affidavit that Masulani Malisoni was installed Group Village Headman Kakunga in 1998 by Traditional Authority Dambe, the 1st Respondent, when, according to the affidavit, Masulani Malisoni was placed on Government payroll and thus became duly recognised by the Government. That must be taken to be the time when the ground for seeking judicial review by the applicant first arose. The office of the District Commissioner, the 2nd Respondent, later became involved in settling the disputed chieftainship. The office investigated the dispute with members of the community including the applicant and in June, 2005, the District Commissioner made the decision confirming Masulani Malisoni to have been properly installed to the disputed chieftainship. The District Commissioner even advised the applicant to co-operate and work with Masulani Malisoni as Group Village Headman Kakunga.

The applicant also states in his affidavit that after the decision by the District Commissioner he continued to dispute the installation of Masulani Malisoni and the dispute escalated to the Ministry of Local Government, the 3rd Respondent, which adjudicated over the dispute in March, 2006, again

confirming Masulani Malisoni to have been properly installed the Group Village Headman Kakunga. The applicant was still not satisfied.

The applicant gives as the reason for his delay in applying for leave to apply for judicial review against the respondents that he was unaware of the availability of legal aid services through the Department of Legal Aid. It is the Department of Legal Aid which is providing legal representation to the applicant in these proceedings.

On the question of delay by the applicant in applying for leave, that this was due to the applicant being unaware of the existence of the Legal Aid Department, it is to be observed that the Department exists by law, having been established by an Act of Parliament, the Legal Aid Act (Cap. 4:01 of the Laws of Malawi), which is very much part of the statute book in Malawi, having been enacted in 1964 and revised in 1966. I hold that ignorance of the existence of a law cannot be recognised as a reasonable excuse for the delay in this case and I uphold the principle that all persons are to be taken to have knowledge of the law and to be aware of the existence of published laws. In any case, the right to seek judicial review, and therefore the requirement to first obtain leave to apply for judicial review, exist and operate regardless of the existence or availability of the services or statutory functions of the Department of Legal Aid.

The requirement in law of promptness in applying for leave for judicial review must be affirmed and enforced as far as possible. It is rooted in the importance to avoid unsettling what have become settled or established situations that have come about or that result from decisions of public authorities made in the due exercise of their public functions.

In the present case, the latest time that the ground for seeking judicial review arose was in March, 2006, when the Ministry of Local Government, as the final authority in the administrative chain of decision making over matters of chieftainship, gave its decision confirming Masulani Malisoni to have been properly installed as Group Village Headman Kakunga. I find the delay since then to 25th July this year when the applicant filed his application for leave to be inordinate and not to have been reasonably explained. I decline to extend the time within which to apply for leave.

Accordingly, I dismiss both the application for extension of time and the application for leave to apply for judicial review.

MADE in Chambers at the Lilongwe Registry this 10th day of August, 2007.

JUSTICE E.M. SINGINI, SC.

J U D G E