



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**JUDICIAL REVIEW CASE NUMBER 139 OF 2017**

**BETWEEN:**

**THE STATE (On application of  
MARY JINAZALI and GERALD JINAZALI t/a Kadengu  
Hotel and Catering Management)  
AND**

**CLAIMANT**

**THE EXECUTIVE DIRECTOR OF TEVETA**

**DEFENDANT**

**CORAM: JUSTICE M.A. TEMBO**

Phokoso, Counsel for the Claimants  
Gondwe, Counsel for the Defendant  
Mpasu, Official Court Interpreter

**ORDER**

This is the order of this Court on the claimants' inter partes application for permission to apply for judicial review of the decisions of the defendant, namely, to deregister the claimants' school from hosting students who were previously selected and sent to the claimants by the defendant and to transfer current students from the applicant to other schools affiliated with the defendant. And a further decision to exclude the claimant from attachment of students currently selected in the 2018-2019 academic year.

The claimants also seek injunctive relief pending judicial review to stop implementation of the defendant's decision herein.

The application for permission was initially and properly made ex parte, that is, without notice to the putative defendant, as provided in Order 19 rule 20 (3) Courts (High Court) (Civil Procedure) Rules. After this Court perused the ex parte application it was not certain that it should or should not grant the said application.

This Court therefore ordered that the application for leave be made inter partes, that is, on notice to the putative defendant as is provided in Order 19 rule 20 (4) Courts (High Court) (Civil Procedure) Rules.

As rightly pointed out by the putative defendant, the purpose of a permission application like the instant one is firstly to eliminate at an early stage, applications which are either frivolous, vexatious or hopeless and secondly to ensure that an application is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration. See on the similar previous requirement for leave to apply for judicial review in *State and Governor of the Reserve Bank of Malawi ex parte Finance Bank of Malawi* Miscellaneous Civil cause number 127 of 2005 (High Court) (unreported), *Ombudsman v Malawi Broadcasting Corporation* [1999] MLR 329 and *Inland Revenue Commissioners v National-Federation of Self Employed and Small Businesses Limited* [1981] 2 All ER 93.

As rightly observed by the putative defendant, permission to apply for judicial review will be granted if the Court is satisfied that there is an arguable case for granting the relief claimed by the applicant.

At this stage, there is no need for this Court to go into the matter in depth. Once the Court is satisfied that there is an arguable case then leave should be granted. The discretion that the court exercises at this stage is not the same as that which the court is called on to exercise when all the evidence in the matter has been fully argued on at the hearing of the application for judicial review. See *Ombudsman v Malawi Broadcasting Corporation* [1999] MLR 329.

The claimants are proprietors of the hotel and catering school.

The defendant is the Executive Director of the Technical, Entrepreneurial and Vocational Education and Training Authority (TEVETA), an Authority created under the Act with the same name.

The case of the claimants is that their school was registered as a Technical, Entrepreneurial and Vocational Education Institution in September 2016 under section 11 (1) of the Technical, Entrepreneurial and Vocational Education and Training Authority Act and the Technical, Entrepreneurial and Vocational Education and Training (Registration of Education and Training Institutions) Regulations.

The school was registered in the E category to provide hotel and catering courses. The claimants also signed a memorandum of understanding with the TEVETA and TEVETA started selecting students and sending them to the claimants for training.

At the time of the impugned decision the claimants had 14 students.

The claimants indicated that they applied to TEVETA for an upgrade from category E to category A. This meant that TEVETA was supposed to assess the claimants' school to decide on the application. Their application was however not responded to.

The claimants indicated that on 22<sup>nd</sup> September 2017, their school principal was reported sick and they ended up asking the sole teacher to teach. And that coincidentally, inspectors from TEVETA came to inspect the claimants' school and without any notice.

The claimants allege that the TEVETA inspectors indicated to students at a neighbouring competitor school to the claimants' that they would not upgrade the claimants' school and would deregister and close the claimants' school because the claimants do not pay kickbacks to the said inspectors. Further, that they would transfer the claimants' current students away. And that the reason for such action would be that the claimant has no principal and that the claimants were also teaching.

The claimant asserted that the actions of the defendant would be based on irrelevant considerations and the actions of the inspectors are ultra vires as they have no such powers.

The claimants exhibited a copy of the 2018-2019 academic year pre-apprenticeship national selection list released by TEVETA which shows that the claimants' school is not one of the schools to host the selected students.

The claimants further exhibited a report of the inspectors who came to visit their school. The report shows that TEVETA assigned the inspectors, as per the TEVETA Act and the Regulations thereunder, to inspect the claimants' school. The report further shows that inspectors comprised the TEVETA secretariat personnel as well as personnel from the Department of Human Resource Management and Development, from Ministry of Labour and Vocational Training and from the Ministry of Education, Science and Technology.

The report also indicates that the inspectors were unable to access the school premises as they were closed. And that a random interview of the students revealed that students never had laboratory practical training for food production since January 2017.

The report ended with certain recommendations to TEVETA, namely, that TEVETA should relocate the claimants' food production students to other schools, that TEVETA should not send any more students to the claimants' school until the school demonstrates capacity to train students and that TEVETA should review the claimants' school registration status.

In opposition to the application for permission herein, the defendant stated that he does not make decisions as claimed herein. Rather that TEVETA makes its decisions through its Board as per the section 5 (1) of the TEVETA Act.

The defendant indicated that it is true that TEVETA inspectors were mandated to inspect the claimants' school. The defendant denied the allegation that the inspectors stated that they would take adverse action due to failure of the claimants to pay kickbacks and asked that such a matter should have been reported to the Anti-Corruption Bureau.

The defendant added that at this point no decision has been made by the TEVETA Board on the recommendations of its inspectors. And that once a decision is made the same will be communicated to the claimants. The defendant asserted that therefore the present application is premature as no decision has been made warranting judicial review.

The defendant then asserted that there are selected students on reserve who would be selected to the claimants' school so long as the claimants school rectifies some shortfalls that have been observed by TEVETA. The defendant added that the decision to reserve students and reasons for that decision were communicated to the claimants.

This Court is convinced that what is on the ground are only recommendations by the TEVETA Board's inspectors. Decisions are yet to be made on the said recommendations. This is true with respect to the recommendation to relocate claimants' school students and to review the registration status of the claimants' school.

The claimants' application to review alleged decisions on those two recommendations is indeed premature as there is no decision in that regard by the TEVETA Authority.

The only decision that is ripe for review at the moment is the decision taken by the TEVETA Board not to select students to the claimants' school for the 2018-2019 academic year. However, the application to review that decision runs into problems too as correctly contended by the defendant.

This Court is convinced that, as correctly argued by the defendant, the mandate to make the impugned decisions in this matter vests in the TEVETA Board and not the defendant. The correct party to these proceeding should therefore have been the TEVETA Board and not the defendant.

It is trite that only the public office or officer who made the impugned decision can be a proper party to judicial review proceedings. See *State v Attorney General ex parte Chilumpha* [2005] MLR 414.

The defendant did not make any decision in this matter. If anything, the decision to reserve students for the claimants for the 2018-2019 academic year was made by the TEVETA Board.

For that reason, the application for permission is declined for having been sought against an officer who did not make the impugned decisions.

The application for permission is accordingly declined because the application is premature with respect to two of the impugned decisions, namely, to deregister the

claimants' school from hosting students who were previously selected and sent to the claimants by the defendant and to transfer current students from the applicant to other schools affiliated with the defendant.

And the application is also declined for having been made against an officer that never made the alleged three decisions.

In the circumstances, the present application for permission to commence judicial review does not disclose a case fit for further investigation at a full hearing for judicial review and is accordingly dismissed.

Costs are for the putative defendant.

Made in chambers at Blantyre this 13<sup>th</sup> December 2017.



M.A. Tembo  
**JUDGE**