



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**JUDICIAL REVIEW CASE NUMBER 131 OF 2018**

**BETWEEN:**

**THE STATE**

**AND**

**DIRECTOR, DEPARTMENT OF ROAD TRAFFIC AND  
SAFETY SERVICES**

**1<sup>st</sup> DEFENDANT**

**CHIEF DIRECTOR FOR MINISTRY OF TRANSPORT  
AND PUBLIC WORKS**

**2<sup>nd</sup> DEFENDANT**

**MINISTER OF TRANSPORT AND PUBLIC WORKS**

**3<sup>rd</sup> DEFENDANT**

**EX PARTE: CHARLES MAKREZA AND 28 OTHERS**

**CLAIMANTS**

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

Mthewa, Counsel for the Claimants

Mankhambera, Court clerk

**EX-PARTE ORDER**

This is an order of this Court on the claimants' application, under Order 19 rule 20 (3) Courts (High Court) (Civil Procedure) Rules, for an order for permission to apply for judicial review of the defendants' decisions, namely, the decision reverse a

decision to employ the claimants as Assistant Road Traffic Officers and to re-advertize the said post in the Directorate of Road Traffic and Safety Services.

The claimants contend that the impugned decision by the defendants violated the claimants' right to administrative justice as enshrined in section 43 of the Constitution due to the fact that the claimants were denied an opportunity to be heard and no reason was given by the defendants for their decision. And that the defendants' decision was unlawful and ultra vires the defendants' powers. Further, that in the circumstances in this matter no reasonable officer would have reversed the decision to employ the claimants. And lastly, that the decision herein violated section 30 of the Constitution.

If granted permission, the claimant seeks the following reliefs

1. A declaration that the defendants decision is illegal, ultra vires, irrational, procedurally improper and unconstitutional and therefore invalid.
2. A like order to certiorari quashing the said decision.
3. If permission is granted, an interim relief of injunction restraining the defendants from taking any steps to invite or employ any person to the position in issue in this matter and directing the defendants to withdraw the re-advertisement of the position in issue herein.
4. Damages.
5. That the matter be expedited
6. And costs.
- 7.

The case of the claimants, as presented in their application for permission to apply for judicial review, is as follows.

The claimants were invited to interviews for the position of Assistant Road Transport Officer on 28<sup>th</sup> February 2018 following an advertisement of a vacancy of that position by the defendants.

Thereafter, the claimants were invited by the Secretary for Transport and Public Works to a meeting on 18<sup>th</sup> April 2018.

The claimants state that at the meeting, held in the morning, they were briefed by the 2<sup>nd</sup> defendant. They state that the 2<sup>nd</sup> defendant indicated that the claimants were

successful at the previous interviews and were picked for the position in issue in this matter.

The claimants state further, that the 2<sup>nd</sup> defendant told them that some of them had lower qualifications than those required on the post in issue but that they were nevertheless considered on the understanding that they should have the required qualifications within the year of employment. Further, that the 2<sup>nd</sup> defendant concluded that the claimants would get offer letters in the afternoon.

Surprisingly to this Court, the claimants next state that missing in the morning briefing was the 2<sup>nd</sup> defendant and as a result the meeting was rescheduled to the afternoon to confirm the claimants' qualifications and give them offer letters.

The claimants state that in the afternoon, the 2<sup>nd</sup> defendant checked their qualifications individually but she told them to wait for communication from her office.

As the claimants were waiting for the communication of offer letters they heard that five of those who attended the meeting of 18<sup>th</sup> April 2018 had reported for duties on the post in issue herein. The post has subsequently been re-advertised.

This Court is aware that 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 *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.

This Court is further aware that 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 permission 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 at the hearing of the application for judicial review. See *Ombudsman v Malawi Broadcasting Corporation*.

This Court notes that section 43 of the Constitution provides that

Every person shall have the right to

(a) lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and

(b) be furnished with reasons in writing for administrative action where his or her rights, freedoms, legitimate expectations or interests are affected or threatened if those interests are known.

This Court must therefore consider whether the facts as presented by the claimant show that there is an arguable case for further investigation at a full hearing. 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 permission should be granted.

According to the claimants' sworn statement in support of the application for permission, they indicate that the 2<sup>nd</sup> defendant briefed them in the meeting on the morning of 18<sup>th</sup> April 2018 that they were picked for the position. The claimants however also indicate in the same statement that the 2<sup>nd</sup> defendant was missing from the morning meeting of 18<sup>th</sup> April 2018.

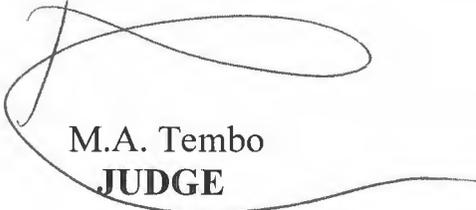
In the circumstances of this case, it is not possible for this Court to conceive that the defendants created any legitimate expectation for the claimant to base any judicial review proceedings.

There are no credible facts to support the assertion that the defendant indeed said they were picked for the position given that the evidence on that aspect is self-contradictory. In one statement, the 2<sup>nd</sup> defendant is said to have been in the meeting and in another statement the 2<sup>nd</sup> defendant is said to have been missing in the same meeting.

In the foregoing premises, this Court finds that there is no case suitable for consideration at a full hearing and that permission to apply for judicial review should not be granted. The applicant's application for permission is accordingly declined and so too the prayer for ancillary reliefs.

This Court also wishes to point out that the claimant must note that the correct citation of the parties on a matter like the instant one is *State (On the application of insert claimant's name) v Defendant (insert name of officer or authority whose decision is being challenged)*.

Made in chambers at Blantyre this 11<sup>th</sup> May 2018.



M.A. Tembo  
**JUDGE**