



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**JUDICIAL REVIEW CASE NUMBER 21 OF 2019**

**BETWEEN:**

**THE STATE (On the application of)**

**FRANK MIJOSO AND SEVEN OTHERS**

**CLAIMANTS**

**SHADRECK MANGWIRO**

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

**KAMIA KALUMA SULUMBA**

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

**ONE VILLAGE ONE PRODUCT SECRETARIATE  
(MINISTRY OF INDUSTRY AND TRADE)**

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

**REGISTRAR OF COOPERATIVE SOCIETIES**

**4<sup>th</sup> DEFENDANT**

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

Kamkwasi, Counsel for the claimants  
Mankhambera, Court clerk

**WITHOUT NOTICE 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 putative defendants' decision, namely, the decision to remove the claimants from membership of the Board of the Registered Trustees of Zakudimba Producers Cooperative and organizing elections to elect new office

bearers before the expiry of the term of office of the claimants and without following the procedure laid down in the Zakudimba Producers Cooperative Constitution and the Cooperative Societies Act.

The claimants contend that the decision by the putative defendants is unlawful, procedurally unfair and unreasonable because it was made contrary to the Constitution of Malawi, the Constitution of Zakudimba Producers Cooperative and the claimants were never heard.

If granted is permission, the claimant will seek the following reliefs

1. A like order to certiorari quashing the decision of the defendants removing the claimants from their positions in the Zakudimba Producers Cooperative Board of Trustees and holding elections.
2. An order requiring the defendants to recognize the claimants as lawful office bearers in the Zakudimba Producers Cooperative Board of Trustees.
3. An injunction restraining the defendants from recognizing the newly elected Board Chair, Vice Board Chair, Treasurer, Secretary and Vice Secretary and other Board members of the Zakudimba Producers Cooperative Board of Trustees.
4. An order staying the decision of the defendants recognizing the new Board members herein.
5. And costs.

The case of the claimants, as presented in their application for permission to apply for judicial review, is really that they were removed from their Board membership by the defendants contrary to the Constitution of the Zakudimba Producers Cooperative.

The Zakudimba Producers Cooperative is a cooperative with limited liability and registered under the Cooperative Societies Act.

The claimants claim that, in removing the claimants without a hearing, the putative defendants improperly exercised their delegated supervisory authority under section 67 of the Cooperative Societies Act as public officers representing the Registrar of Cooperative Societies so as to render their conduct unreasonable, procedurally unfair, and unlawful and in bad faith.



The claimant referred to the case of *Chioza v Board of Governors of Marymount Secondary School* [1996] MLR 109 where it was held that although the Board of Governors performed private law functions in running the school it did perform public law functions in admitting and expelling students from the school and that this constituted the public law function that was amenable to judicial review.

The claimants then contended that the defendants perform supervisory functions delegated to them by the Registrar of cooperatives under section 67 of the Cooperative Societies Act. And that the Registrar of cooperatives is a public officer in terms of section 3 of the Cooperative Societies Act.

In the premises, the claimants contended that the defendants perform public law functions and their actions are amenable to judicial review where the demands of justice require.

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 must therefore consider whether the facts as presented by the claimants 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.

This Court notes that as correctly pointed out by the claimants those bodies or persons performing administrative functions under public law are amenable to judicial review of their exercise of those functions or failure to so act. This is trite law.

This Court also notes that section 67 of the Cooperative Societies Act provides that

Any officer, agent, servant or member of a registered society who is required by the Registrar, or any person authorized in writing by the Registrar, so to do shall, at such place and such time as the Registrar may direct, produce all the moneys, securities, books, accounts and documents the property of, or relating to the affairs of, such society which are in custody such officer of such society, agent, servant or member and which are under his control.

The claimants claim that, in removing the claimants without a hearing, the putative defendants improperly exercised their delegated supervisory authority under section 67 of the Cooperative Societies Act as public officers representing the Registrar of Cooperative Societies so as to render their conduct unreasonable, procedurally unfair, and unlawful and in bad faith.

A reading of section 67 of the Cooperative Societies Act does not import the meaning ascribed to it that would lead to the conclusion that the defendants herein had delegated powers under that provision of the Act in proceeding to do what they did herein.

Section 67 of the Cooperative Societies Act is about the Registrar of societies under that Act herein requiring production of some items as indicated under that provision. It has nothing to do with the alleged delegation of authority by the Registrar to the putative defendants to do what is being challenged herein as asserted by the claimants.

Section 2 of the Cooperative Societies Act defines a cooperative as an autonomous association of persons united voluntarily to meet their common economic and social needs in accordance with cooperative principles through a jointly owned and democratically controlled enterprise.



Section 2 of the Cooperative Societies Act also defines a society with limited liability as

A society the liability of whose members is limited by its by-laws to-

- (a) The amount if any unpaid on the shares respectively held by them; or
- (b) Such amount as the members may each undertake to contribute to the assets of the society in the event of its being wound up.

The definition of cooperative societies with limited liability shows that they are private entities. So that there is a private entity that has not performed any public law function.

All that the cooperative in question did was to deal with its Board of Trustees under its constitution. That is not a public law function. It is a private law function under the cooperatives' own constitution. The authority relied on by the claimants of *Chioza v Board of Governors of Marymount Secondary School* [1996] MLR 109 is therefore not helpful to the claimants' case.

In the foregoing premises, this Court finds that since no public law function was performed herein there is no case suitable for consideration at a full hearing. Permission to apply for judicial review should therefore not be granted.

The claimants' application for permission to apply for judicial review is accordingly declined and so too the prayer for ancillary reliefs.

Made in chambers at Blantyre this 30<sup>th</sup> April 2019.



M.A. Tembo  
**JUDGE**