**REPUBLIC OF MALAWI**

**IN THE HIGH COURT OF MALAWI**

**ZOMBA DISTRICT REGISTRY**

**JUDICIAL REVIEW CAUSE NO 03 OF 2021**

**(Before Honourable Justice Mzonde Mvula)**

**BETWEEN**

**THE STATE**

**(On the application by HM (guardian) on behalf of CM (minor).....CLAIMANT**

**AND**

**THE HOSPITAL DIRECTOR OF QUEEN ELIZABETH CENTRAL.....1ST DEFENDANT**

**THE MINISTER OF HEALTH.....2ND DEFENDANT**

**CORAM: HONOURABLE JUSTICE MZONDE MVULA**

Mr. D, Mlauzi, of counsel for the Claimant

Mr. D. Zikagwa, of counsel for the Defendants

Mr. A. Nkhwazi, Court Clerk and Official interpreter.

**RULING ON APPLICATION FOR PERMISSION TO APPLY FOR JUDICIAL REVIEW**

**MVULA, J.**

**1.0 Introduction**

The court heard *inter partes* an application by the claimant. Through counsel, she filed certificate of extreme urgency, and grounds for leave to apply for Judicial Review. The applicant is a minor. She is 15 years old and a form 1 student at Chingazi Secondary School in Zomba. She commences the action through her guardian HM and biological brother. He at the material times, was looking after her,at his house in Blantyre. The decision made by the first defendant through its medical officers at One Stop Centre Clinic (OSCC) at

Queen Elizabeth Central Hospital (QECH) on or about 30th March 2021 denying the applicant access to safe termination of pregnancy (the Decision) is the basis for this decision. This is mere application for leave to apply for Judicial Review against the decision by the defendant.

Ultimately the applicant seeks the following reliefs:

(a) An order quashing the Decision made by the 1st Defendant through the medical officers at the OSCC on or about the 30th March 2021 denying the Applicant access to safe termination of pregnancy

(b) A declaration or a declaratory order outlining the specific circumstances in which victims of sexual offences and/or other deserving women/girls can access safe termination of pregnancy in terms of section **243 of the Penal Code.**

(c) A mandatory order maintaining the 2nd Defendant to promulgate clear guidelines within 6 months which clarifies for providers of health in Malawi the circumstances in which victims of sexual offences can access safe termination of pregnancy in terms of section 243 of the Penal Code

(d) An order for compensation

(e) Any other consequential orders or directions which the court may deem fit in order to resolve the dispute

(f) An order that costs be for the applicant.

**1.1 Grounds for application for leave to apply for Judicial Review by the claimant**

The claimant through counsel deponed a sworn statement. In brief, paragraph number 5 of the application has a brief historical background thereof went as follows:

The applicant was at all material times a student in Form 1 at Chingazi Secondary School in Zomba District. In March 2020, all schools in Malawi were closed following Directive by Malawi Government that all schools should be closed due to Covid-19 Pandemic. Around December 2020, the applicant got pregnant by a Benson Kapindula. He accepted responsibility and the family of

the claimant resolved that the claimant should live with Benson Kapundula. 5 days after, the applicant was dumped by the man responsible for the pregnancy. He has not supported her in any form. This has infuriated HM and CM.

Since becoming pregnant, the applicant has become mentally and physically unhealthy. Both her mental and physical health have deteriorated to the point that suicide has crossed her mind. This resulted in the applicant for safe termination of her pregnancy. Her family has agreed, owing to the fragility of her mental and physical condition she is in at present. As a result, on or around 30th March 2021, the applicant went to OSCC at QECH for this procedure.

The applicant was informed by the medical officers at OSCC that QECH could not perform the procedure because termination of pregnancy is illegal in Malawi. **Sections 149,150, and 151 of the Penal Code** restricts it. However, **section 243 of the Penal Code** makes exceptional in the circumstances where the life of the woman, is in danger because of the pregnancy, and the preservation of a woman's life includes preservation of her mental and physical health. Hence commencement of this application.

The decision of the 1st defendant, according to the applicant is unlawful, as it contravened **section 243 of the Penal Code**. It is the contention of the applicant that the circumstances of the applicant outlined in her sworn statement, fit within the exception in **section 243 of the Penal Code.** This is because her termination of the pregnancy was, and remains, necessary for the preservation of the life of the applicant. This includes her mental and physical health status. Put simply, the first defendant did not apply itself to the circumstances of the Applicant in order to determine whether or not the Applicant fits the exception contained in **section 243 of the Penal Code**. In this regard, the denial by the 1st applicant is unreasonable in the **Wednesbury** sense.

**1.2. Response to the application for leave for Judicial Review by the defendant**

The Respondent opposes the application for leave to Judicial Review. Dr. George Chagaluka deponed a sworn statement to support the opposition. The deponent stated that he is Head of Pediatrics and Child Health at QECH. He confirmed that on 30th March 2021, they received CM at their OSC who was accompanied by a guardian HM. The Police referred them through exhibit "GC 1". The history remains, CM was having an affair with Benson Kapinduka with whom they were having unprotected sex. Consequently she fell pregnant, which was confirmed by a medical report, marked "GC 2". Medical examination, did not make any observation revealing any other co-morbidities that would put her in danger because of the pregnancy. As such CM was referred to the nearest antenatal clinic per standard care. Further to this, during this process of consultation, and counselling, there was no request for termination of her pregnancy. The social welfare report form exhibited as "GC 3" only alluded to the fact that Benson Kaphinduka should be arrested for not supporting her pregnancy.

It is the contention of the defendants that the application is misconceived. This is because the sworn statements in support of the application do not show that CM qualifies to have her pregnancy terminated under **section 243 of the Penal Code,** taking into consideration all the circumstances. In the assessment of the deponent, the physical and mental problems are as a result of lack of care and support towards CM from Benson Kaphinduka as the person responsible for the pregnancy. This problem is sociological. When CM went to live with Benson Kaphinduka, it has not been shown she faced those problems. They only arose when CM was sent to live with Benson Kaphinduka before rejecting her. In the circumstances, CM has a remedy under child maintenance, which she seeks.

In this regard, the Ministry of Health is not privy to the alleged decision by the first defendant to deny CM access to safe termination. The present application for leave for Judicial Review is frivolous, vexations and a waste of court's time. This application, and all the reliefs the claimant seeks together with the application should be dismissed with costs.

## 2.0 The Law

The issue under consideration here is whether the court should give permission to CM to apply for Judicial Review of the decision made by the 1st Defendant through its medical officers at the OSCC of QECH on or about 30th March 2021 denying the applicant access to safe termination.

We begin with the stipulation under the civil procedure rules over matters of this nature. Order 19 rule 20(1) of the Courts (High Court) (Civil Procedure) Rules, 2017 provides that judicial review shall cover the review of:

> "(a) a law, an action or a decision of the Government or a public officer for conformity with the Constitution
> (b) a decision, action or failure to act in relation to the exercise of a public function in order to determine:
> (i) its lawfulness
> (ii) its procedural fairness
> (iii) its justification of the reasons provided, if any: or
> (iv) bad faith, if any
> Where a right, freedom, interests or legitimate expectation of the applicant is affected or threatened."

Section 108(2) of the Constitution of Malawi gives the High Court power that is inherent, and jurisdiction to review acts and actions of public bodies. The provision reads:

> "(2) The High Court shall have original jurisdiction to review any law, and any action or decision of the Government, for conformity with this Constitution, save as otherwise provided by this Constitution and shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law"

In this case, if leave is granted, the Applicant will seek Judicial Review of the Decision of the 1st Defendant in order to review its lawfulness, its justification of the reasons provided, and also if it was unreasonable in the **Wednesbury** sense. The argument shall lie that the decision by the 1st Defendant was unlawful because it contravened **section 243 of the Penal Code**. The applicant will argue that the denial by the 1st defendant on safe termination of pregnancy is unjustified. The 1st defendant failed to apply itmself to the circumstances of the Applicant in order to determine whether or not, the Applicant fits within the

exception contained in **section 243 of the Penal Code.** This is if the claimant passes the first hurdle, to be accorded leave to apply for Judicial Review.

Order 19 Rule 20(2) of the CPR, provides that a person applying for Judicial Review shall have sufficient interest in the matter to which the application relates. *Locus standi* simply means having sufficient standing in the matter under Judicial Review. CM states that the denial to access safe termination of pregnancy at the 1st Defendant is the reason the applicant has right of audience in the court for Judicial Review.

Judicial Review can only lie against persons, or bodies performing public duty, in public law content See **Ridge v Baldwin [1964] AC 40.** In this regard, the court only grants leave for review against public nature of decisions as opposed to private decisions. It finds wider application in the jurisdiction owing to the requirements about the right to administrative justice in section 41(3) of the Constitution. See **Lukongolo v Attorney General 1995 1 MLR 112.** In this vein, the court states that a decision for Judicial Review will lie, where a decision by the defendant as a public body, is made in exercise of its mandate, powers or jurisdiction conferred upon it by statute. Succinctly put, there has to be a decision made by the defendant, following an application, or action by a party who seeks its review coming out of the decision made according to mandate.

Hence, failure to submit nomination papers with a returning officer, which decision the returning officer did not form a decision over, is not a decision on which Judicial Review would lie. There was no action on the part of the doer to which the public body has to react against the doer, to form basis of Judicial Review proceedings. An objection against leave to apply for Judicial Review was accordingly sustained. See **The State and Electoral Commission *ex parte* Sam Lemon Mpasu 2014 MLR 378.**

The applicant bears the onus to establish that s/he suffered detriment or disadvantage personally as a result of a public decision complained of. There must be a decision, actually communicated to the applicant, which is

unreasonable in light of mandate of the decision maker. The decision causes detriment to the applicant for which they seek leave to review before court. See **Longwe v Council of the University of Malawi 2011 MLR 149.** Leave to apply for Judicial Review will not be granted where the applicant has an alternative remedy under law. See **In re Criminal case 42 of 2013 and related matters ex parte Peoples' Trading Center Limited: S v Attorney General (The First Grade Magistrate Anthony C. Banda) 2013 MLR 96.** The court in this matter declined to grant leave to apply for Judicial Review on the ground that the applicant had available to him an alternative remedy under Courts Act. The Criminal Procedure and Evidence Code was open to allow PTC Ltd to resort to and obtain reliefs that it sought for which applied under Judicial Review.

The court has even discussed that review must lie against the decision of a public body which comes to its knowledge in the exercise of public duty. In this regard, any suppression of material facts, or failure for a full and frank disclosure of material facts, which a party was aware of, under an application for Judicial Review forms a basis for review. In this case, the court does not look at the accuracy of the decision *per se*, but the decision making process itself. See **The State v Chief Secretary to the President and Cabinet *ex parte* Muluzi 2011 MLR 357.**

**3.0 Exposition of the Problem and application of legal points to facts**

The claimant argues that decision by the 1st defendant to refuse lawful termination, was unlawful as it contravened **section 243 of the Penal Code**. Despite legal restrictions the law places on **sections 149, 150, and 151 of the Penal Code, section 243** makes exception in the circumstances where the life of a woman is in danger because of the pregnancy. **Section 243 of the Penal Code** reads;

> "A person is not criminally responsible for **performing in good faith** and with reasonable care and skill, a surgical operation upon any person for his benefit or upon an unborn child for the preservation of the mother's life, **if the performance of the operation is reasonable**, **having regard to the patient's state at the time, and all the circumstances of the case**." [Emphasis supplied]

The section is exemption where a medical doctor may perform such a procedure, to terminate a pregnancy lawfully under medical procedure. However, to perform such a procedure, the emphasis must be had to the words of the statute, which provide the qualifiers in the performance of such duty. These are;

(i) That is must be performed in good faith;
(ii) The performance of the procedure must be reasonable;
(iii) Must be done with regard to the state of the patient at that time; and
(iv) Regard should be had to all the circumstances of the case.

It must be appreciated that before **section 243 of the Penal Code** comes to the aid of an applicant, there should be a condition which the medical practitioner examines and makes a decision based on the facts as presented such officer by an applicant. This means, the medical practitioner cannot on his own motion apply the provision of **section 243 of the penal code** against a patient. If this happens, the medical practitioner would not be acting in good faith. Such an act would not be reasonable and a ground for Judicial Review. See **The State v Chief Secretary to the President and Cabinet *ex parte* Muluzi (*supra*)**

The medical practitioner therefore will make the decision based on the facts that are brought by the applicant. The applicant must expressly make known the decision which the medical doctor should independently review, and advise on. In the absence of such express request, the medical doctor has no basis to make a decision against which Judicial Review may lie see **The State and Electoral Commission *ex parte* Sam Lemon Mpasu (*supra*)**. The applicant which needs to use **section 243 of the Penal Code** must meet the conditions that the law has already provided safe guards for. The one alleging must prove. The onus in in this case, rests on CM over how the pregnancy pits the mental or physical health. As if that is not enough, the medical practitioner, may evaluate the pregnancy **for preservation of the life of the mother,** if the state of the patient is unstable to warrant such a procedure to terminate.

Again, all this is only possible if the person willing to undergo such a procedure, demonstrates how the pregnancy is detrimental to her health, and life in general. Most importantly, such a lady must ask for such decision to terminate on medical grounds, of the medical practitioner. The latter makes a decision in accordance with surgical procedure and medical skill for the benefit of the person, if the circumstances allow for it to be had. The section is restrictive as it is not open to each and every lady that is expectant. The qualifier is that there should be a risk to the life of the mother by preserving the unborn child. The law favours preservation, of the life of the mother at the expense of the unborn child. The law thus favours the known over the unknown.

**3.1 Analysis of CM at OSC OF QECH and conduct of the first defendant.**

The sworn statement deponed by Dr. George Changaluka exposes facts which the applicant CM did not disclose to the Court in her application. This is because Dr. Changaluka is the Head of Pediatrics and Child Health at QECH. In this vein all matters of pregnancy and child care fall under his regiment as head of this department at QECH. He is the one, who makes administrative decisions over cases brought to hospital in the department. He confirmed that he received CM the applicant herein, after being referred by Police.

Pausing there, it seems apparent that the applicant already had a remedy by going to Police. The avenue taken, suggests the remedy CM and guardian sought to achieve. The Police has a Victim Support Unit where such "domestic cases" are handled. We look at exhibit "GC 1" the Police referral. The record of the Officer in Charge of Limbe Police Station, under the hand of Inspector Maida, dated 29th March 2021. It referred the applicant herein CM, to the medical officer at QECH because CM had been defiled. The Police referral reads:

> *"The Medical Officer*
> *Queen Elizabeth Central Hospital*
> *P.O Box 95*
> *Blantyre*
>
> *Date 29/03/2021*
>
> ***MEDICAL REPORT FORM***
> *Victim's Name: CM*

*Village: Doyisi T.A Mlumbe*
*District: Zomba*
*Current Location: Makhetha*
*Would you please assist the holder, who complains to have been* ***defiled.*** *Kindly furnish our office with your findings for our investigations and record purposes.*

*Any assistance rendered will be highly appreciated*

*Signed by Inspector Maida*
***FOR OFFICER IN CHARGE***
***LIMBE POLICE STATION"*** [Emphasis supplied]

This report is clear in terms of the act, let alone course of action, that CM and her guardian wish to pursue. They went to Police to report that CM had been defiled. In this regard, CM has opted for a criminal route. She later goes to hospital as the second stage of investigation of such cases. Let us further look at the medical records and history at hospital on authority of exhibit GC1. This is the analysis of exhibit "GC 2", the medial report developed from "GC 1."

Exhibit "GC 2" the medical report for suspected Physical/ Sexual Abuse for use in Malawi health facilities is clear. With regard to CM, dated 29th March 2021 provides a history captured by a Medical clinical under the regiment of the deponent, Dr. George Chagaluka. It provides:

> ***"Mr. HM comes with his niece complaining that she has been having an affair with Benson Kapinduka and now the girl is pregnant of him.***
>
> *C narrates that Benson is her boyfriend and they have been in the relationship since August last year. They have been having sexual intercourse and the last act being in November 2020. Then she discovered that she was pregnant she was pregnant in December 2020 when she had missed her periods. Benson accepted responsibility but it has been discovered that Benson is married and has two children and it now shows that he is no longer cooperating with C's Uncle. Pregnancy test Positive.*
>
> *Signed by M Nawena as clinician"* [Emphasis supplied]

The applicant CM was examined and a series of tests were done. Notably CM is HIV negative *per* page 2 of report prepared by Dr. Chagaluka and tendered as GC2. Most importantly, there is no request to terminate the pregnancy by the medical practitioner at QECH on stated grounds. Exhibit "GC1", speaks to exhibit "GC2" in one vein only. That they report to Police of criminal defilement and the hospital suggests penetration because the CM is pregnant. This finding

is even amplified by exhibit "GC3." This is a Social Welfare Report contained on Social Welfare Form 2 which is standard in these cases.

Under paragraph 21.0 on general observation it states that:

> *"C has been impregnated by her boyfriend however the boyfriend has a wife and 2 children.* ***C says she wants Ben to ne arrested due to the lack of support****"*
> [Emphasis supplied]

The history at Police, at QECH and at Social Welfare Office, they all are connected by a single thread in light of the remedy that CM, through her guardian, seeks. This is material help for the unborn child. This becomes the first intervention. The said Benson Kaphinduka is not cooperating anymore. In this regard, CM and guardian HM seek his arrest in retaliation. That is the second intervention. Action at Police therefore is the desired remedy in this matter. Hence the visit to Police. HM goes to Police and to hospital because CM is pregnant. The one responsible is no longer cooperating. HM seeks to have him arrested. Exhibits "GC 1" to "GC 3" lie in a series of transactions to remedy the situation CM faces.

On the request for termination for the pregnancy, the court finds the request to be outside interventions sought in this matter. It appears to be the third leg. If it was actually pursued, the court should have found that detail in the medical history at QECH taken by Clinician M. Nawena, exhibited in "GC 2". A line by line examination of this medical record provided by CM in the presence of HM her guardian, to the 1st Defendant does not find this to have been intended. The record by the medical practitioner did not record, ever receiving such request. This Court finds. If it were recorded, the Clinician impression/ opinion/ after History and Examination column would have registered what medical procedure needed to be performed in consequence of such request. Instead, the medical practitioner simply records "**history of consensual intercourse**. **Physical examination not done. Pregnancy test positive."**

It becomes abundantly plain that CM and guardian went to the hospital to get record of her pregnancy. They did not seek medically performed termination

because the pregnancy was a threat to the life and limb of the mother as **section 243 of the Penal Code** provides. In the wake of this detail, and the 1st Defendant fails to perform such procedure, this would have been the decision upon which, CM would seek Judicial Review of. After all, it is at a public institution. However, with no such request on record ever made, the 1st Defendant cannot be said to have made any decision in the first place denying it, **unreasonably.** The denial is what CM may rightly seek eview on. See **The State and Electoral Commission *ex parte* Sam Lemon Mpasu (*supra*)**

Secondly, the applicant is pursuing a legal remedy. HM wishes to have Benson Kaphinduka who is responsible for the pregnancy of CM, arrested. Benson Kaphinduka is no longer cooperating with the uncle for the applicant. This is clear from exhibit "GC 2". It has been found that Benson Kaphinduka is already married with 2 children. The medial report "GC2" and the Social Welfare Report "GC3" confirms. The criminal route runs through "GC1", "GC2" and "GC3". This first step of commencement of criminal proceedings is reporting to the Police station. By so reporting, a person alleged to have committed an offence, is liable to arrest by the Police, under **section 20 of the Criminal Procedure and Evidence Code.**

The report at Police which triggered a medical referral to QECH and involvement of Social Welfare Office, confirm the wheels of criminal justice are already in motion The courts sits to determine whether to grant the applicant leave to apply for Judicial Review on same facts re reported at Police. Claimant has already pursued a criminal remedy at law. The applicant has suppressed a material fact that she has pursued the criminal remedy side by side to the present application for leave to ultimately apply for Judicial Review. The applicant therefore has already taken meaningful steps for legal remedy. **In *re* Criminal case 42 of 2013 and related matters ex parte Peoples' Trading Center Limited: S v Attorney General (The First Grade Magistrate Anthony C. Banda) (*supra*).** In any event, as second limb, the Court would not interfere with the decision made at the 1st Defendant. In exceptional circumstances the court would interfere by Judicial Review, if the decision made was so unreasonable, that no reasonable authority

would ever come to it. See **The State v Chief Secretary to the President and Cabinet *ex parte* Muluzi (*supra*).**

The other remedy which can be exercised by the claimant is the civil one. Given the fact that applicant is a minor, it would guarantee that CM has maintenance and financial support for the unborn child. An arrest of Benson Kaphinduka and conviction would leave the alleged perpetrator with prospect of long custodial sentence. If successfully prosecuted, and unable to support his 2 children of his wife and the unborn child along the way with CM, CM would have no financial help. In this regard, application for child maintenance order, in addition to, or in substitution of the present criminal remedy, remains ajar as an addition optional remedy. This falls under **Child Care Protection and Justice Act**, specifically under **section 12**, if desired. Against the foregoing, CM is spoilt for choice of remedies under the Laws of Malawi. It all depends on what CM wishes to achieve in her action and quest for justice, as guided by HM, her guardian.

Courts have refused to grant leave for application in Judicial Review where the applicant has an alternative legal remedy. See **In *re* Criminal case 42 of 2013 and related matters ex parte Peoples' Trading Center Limited: S v Attorney General (The First Grade Magistrate Anthony C. Banda) (*Supra*).** The court in this matter declined to grant leave to apply for Judicial Review on the ground that the applicant had available to him an alternative remedy under Courts Act and Criminal Procedure and Evidence Code which would allow PTC Ltd to resort to and obtain reliefs that it sought for which applied under Judicial Review.

Further to that, this application is misplaced, because the applicant did not meet any of the exceptions under **section 243 of the Penal Code**. She did not apply under it, when she availed herself at OSCC of QECH. She did in as far as she wanted to be examined over defilement whose perpetrator abandoned her.

Having considered the grounds advanced by the claimant for leave for application to apply for Judicial Review, the Court finds that this application is no other than a desperate attempt to open a can of worms. There is no record at Police,

QECH and at Social welfare that the applicant CM wishes to access safe termination of her pregnancy. To qualify under **section 243 of the Penal Code**, the operating conditions in the statute must be met. The onus rests on CM to do so. No such record exists. There is an attempt to appeal to the court that she attempted to commit suicide. It is not clear whether the same emanates from lack of support or other social factors, including the pregnancy at hand. The court finds that CM is in quagmire that the man she thought "loved her", despite being a minor, who got her pregnant, now denies her any form of support.

In this regard, the suicidal thoughts arise out of lack of support, or non-cooperation by Benson Kaphinduka. There is no medical record proving that the pregnancy has put her physiological wellbeing at health risk. This is the main concern by the Court here. In which regard, the examination done under exhibit "GC2" would have picked this up during examination by the clinician who examined her at OSCC of QECH. If it did, the procedure may have lawfully been carried out under **section 243 of the Penal Code**. Anything to the contrary, opens a Pandora's Box. This Court will not offend the moral campus of society by allowing unjustified blanket terminations through application for Judicial Review which are frivolous, vexations and an abuse of process.

The claimant attached a sworn statement of an expert witness to buttress her application. Much as the well detailed submission is on point, but, is not valid for the time being because the claimant did not make any request for termination at OSCC of QECH. Consequently, the 1st defendant did not make any decision to decline the same, to form a basis for application for leave to apply for Judicial Review before this Court of law.

**4.0 Conclusion**

In the facts before me, the applicant did not expressly let alone impliedly ask for termination of pregnancy. If she did, the request would have been recorded in the history of case column at OSC of QECH as prepared on exhibit "GC 2". In this context, one can reasonably state that she has missed the door to her detriment. She skipped to ask for legal termination at OSC of QECH and is

asking for the same at the Court. Its functions to deliver justice under section 9 of the Constitution of Malawi. By Judicial Review, courts only review conduct of a public entity in the decision making process. CM through HM cannot come to court for review that she is unhealthy. The rightful forum CM had to plead her case was at OSC of QECH. Courts do not examine medical cases the same way a medical practitioner conducts a prognosis at hospital. It was there she had to demonstrate that that her condition affects her state of complete physical, mental, and social well-being. Absence of disease or infirmity does not mean one is entirely healthy. As it is, CM is asking court to do what she did not do earlier.

The law should not expressly grant her leave to apply for Judicial Review over something which has not been documented in this matter. Is rather strange that CM does not produce any medical records to ground her application under **section 243 of the Penal Code**. Onus was on her to produce qualifiers under the provision. In the absence of, there is nothing to apply for Judicial Review over. The respondent was never asked, in the first place, to make a decision regarding termination of pregnancy. If it did, then **the section 243 of the penal code** already provides a remedy, with conditions which need to be met first.

Finally, CM is already actively pursuing the remedy at criminal law. She reported to Limbe Police on 29th March 2021. The medical examination report under this process, is already out. Going forward, the applicant remains with another, yet a civil remedy under the child maintenance. With all this history, any application for Judicial Review in addition to the active remedy already under pursuit, therefore, becomes an abuse of process. Judicial review cannot lie while there is already an alternative remedy available. It is abuse of process. This court finds. In this regard, The Minister of Health cannot be privy to the non-decision made in the case of CM. The long and short of it all is that the application for leave for permission to apply for Judicial Review, accordingly, is dismissed with costs.

Made in Court this **15th** day of **June** 2021

**JUDGE.**