



IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
JUDICIAL REVIEW CASE NUMBER 3 OF 2022

BETWEEN
GERTRUDE ROY..... CLAIMANT
AND
MALAWI UNIVERSITY OF BUSINESS AND APPLIED
SCIENCES.....DEFENDANT

Before Justice Jack Nriwa, Judge
Chiutula of counsel for the claimant
Chikabvumbwa of counsel for the defendant
Nkangala Court Clerk

RULING

The claimant sought permission to commence judicial review proceedings against the decision of the claimant withdrawing her from the final year and to award her a diploma (instead of a degree). The defendant made the decision on the ground that the claimant had exhausted her period of stay at the university.

She claims the decision contravened principles of natural justice as well as her right to education. She further argued that the respondent did not follow the right procedure in making the decision.

The respondent opposed the application.

The sworn statement by Yamikani Chilinde, the respondent's Assistant Registrar (Academic) was to the effect that the claimant sought the permission out of time. She argued that the defendant made the decision in July 2021 in a letter that she was ineligible to proceed to year 4 of her studies and also informed her that she would be getting a diploma and not a degree. From the arguments, the claimant

had exhausted her years of study at the University. The claimant filed the application for the review in January, 2022. Furthermore, the defendant's Assistant Registrar argued that they provided the claimant the decision and the reasons she would not get a bachelor's degree.

There were other procedural aspects that the defendant relied on in support of the opposition to the granting of the permission to commence the judicial review proceedings. These are for example that the claimant did not comply with the direction of the Court as to when she was supposed to make the application for the permission.

I have decided to consider the central issue to the application as opposed to the issue failure to comply with the Court's direction. The is CT whether the claimant sought the permission out of time. Copy. According to Order 19 rule 20(5),(6) of the Courts (High Court)(Civil Procedure) Rules, ("procedure rules") an application for permission for judicial review must be made promptly and not later than three months; the Court can, though, extend the period.

In response to the defendant's opposition to the application, the claimant argued that there was a series of decisions and not only the letter dated July, 2021. The argument was that the final decision complained about was the one withholding her results and withdrawing her from the degree program and awarding her a diploma instead.

I have looked at the application herein. The centre of the contention is the decision of the defendant to award the claimant a diploma and not a degree. My appreciation of the facts before me is that that decision was indeed made in July, 2021. The defendant has argued that it was an anomaly for the claimant to proceed to the other year, and that the anomaly was detected, but the claimant did not go to a meeting concerning that issue.

From this, I am of the opinion that the matter of contention was the decision the defendant made in July 2021. I believe that all the other decisions followed this decision. I believe all the claimant is challenging is the decision to be awarded a diploma and not a degree.

The claimant raises her arguments on the right to education and the right to a fair administrative action.

Judicial review covers the review of, in one set, a law, an action or a decision of the Government or a public officer. In the other scenario, it covers review of a decision, action or failure to act in relation to the exercise of a public function. The aim of the review is to determine the lawfulness or procedural fairness or bad faith, if any, where a right, freedom, interests or legitimate expectation of the applicant is affected or threatened. [Order 19 ryle 20(1) of the procedure rules.]

I remind myself that judicial review is concerned with reviewing not the merits of the decision in respect of which the application was made, but the decision-making process itself: *Jamadar v Attorney-General (Dept of Immigration)* [2000–2001] MLR 175. The Court will only interfere with a decision where the authority has acted without jurisdiction, or failed to comply with rules of natural justice, or abused its powers *Kalumo v Attorney-General* [1995] 2 MLR 669; *Khembo v The State (National Compensation Tribunal)* [2004] MLR 151 *Chipula v Attorney General* [1995] 1 MLR 76; *Taulo and others v Attorney General and another* [1994] MLR 328.

On that premise, the question is whether the defendant made the decision in contravention of the tenets of natural justice (*i.e.*) the right to be heard, or be furnished with reasons for an administrative action (section 43 of the Constitution). I am als

I find that the claimant in this matter approached the Court long after the expiry of the three-month period when the decision was made. I also find that it would mere argumentative to suggest that the decision in question was the one made at the later stage. The action made at the later stage was in fulfillment of the earlier decision made. It would, therefore, be unreasonable to suggest that the claimant was not heard when she received and signed for the letter suggesting that she had exhausted her period of study at the university.

Moreover, the claimant proceeded with her studies when she had gotten the information about her status from the defendant. If the defendant made an error, it would be unfair for the claimant to take advantage of that when the defendant had made a prior decision on the same issue. Perhaps, it would have been different had the defendant let the claimant proceed with her studies and make that decision at the very last hour.

In this matter, I do not find that the argument that the claimant was not heard is plausible. On that point, I dismiss the application for permission to commence judicial review proceedings. Secondly, the application was made later than three months.

The application is dismissed.

Each party shall meet their costs.

MADE the 18th day of March, 2022

A handwritten signature in black ink, appearing to read 'J. Nriva', written in a cursive style.

J NRIVA
JUDGE