



IN THE HIGH COURT OF MALAWI
 CIVIL DIVISION
 PRINCIPAL REGISTRY
 JUDICIAL REVIEW CASE NUMBER 63 OF 2021

BETWEEN

THE STATE (ON THE APPLICATION OF CORPORATE TRADING LIMITED).....APPLICANT

AND

MINISTER OF LANDS, HOUSING AND URBAN DEVELOPMENT.....FIRST DEFENDANT

AND

MALAWI HOUSING CORPORATION.....SECOND DEFENDANT

Before Honourable Justice Jack N’riva
 Mr A Kauka, of counsel for the claimant
 Mr F Matola of counsel for the defendants
 Ms D Nkangala, Court Clerk

ORDER

The claimant holds title to Blantyre Central 291/1.

On April 1, 2020, the Town and Planning Committee of Blantyre City Council approved development plans submitted by the claimant in relation to the land in question. On 6th September, 2021, the claimant received a letter from Malawi Housing Corporation (MHC) being the lessor. The letter communicated that the Minister of Lands, Housing and Urban Development had directed that all the developments on the land should be stopped immediately and that the lease thereon should be revoked. Further, the claimant had to move out of the site immediately. MHC cited the reason that the lease was created illegally.

On 27th September, 2021, the claimant sought clarification, but received no reply, on

- i. the law under which the decision was made
- ii. the irregularity in the creation of the plot
- iii. whether there would compensation.

The claimant formed the opinion that the decisions of the Minister and MHC were

- i. beyond their powers and
- ii. unconstitutional.

The claimant, therefore, commenced these proceedings for judicial review. During the hearing, counsel representing the defendants argued that under the Statutory Bodies (Control of Contracts) Act (Chapter 18:07), the Minister has an oversight and control powers of contracts entered into by statutory bodies. Thus, the argument was that the Minister acted within his powers to intervene on the lease granted to the claimant.

In a sworn statement by the second defendant's representative, it was stated that there was no approval for the lease and, therefore, that the lease was illegally created by the landlord.

The claimant argued that the Minister had no power under the Statutory Bodies (Control of Contracts) Act over the issue in this review. The further argument was that even if the Minister had powers, he had to hear the claimant's side of the story.

Thus, simply put, the question for determination is whether the Minister had powers to advise MHC to make the decision it made. Did the Minister act within the law?

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.

The defendants relied on Statutory Bodies (Control of Contracts) Act (Chapter 18:07), Laws of Malawi. This is a 1966 legislation giving power to Ministers to approve contracts. Under that law, Ministers also have powers to disapprove contracts, where public interest so requires.

No doubt, Minister of Lands would be an overseer of issues concerning land in Malawi in many aspects including contracts. In the cited Act, in the interpretation provision, "Appropriate Minister", "in relation to any statutory body, means the Minister for the time being charged by the President with responsibility for that body". However, reading through the Act, the transaction in this matter would not amount to a contract for purposes of the law under the Statutory Bodies (Control of Contracts) Act. As counsel for the claimant argued, in the Act, "contract" means a contract for the supply of goods or services or for the construction of any building or other works, whether such contract is made or intended to be made within or outside Malawi.

There is nothing in the transaction, under dispute, to suggest that it concerned supply of goods or service or construction of a building or other works between the claimant and the MHC. Therefore, the Minister could not rely on this law. In any event there is no evidence that the Minister used this law or any other law.

Therefore, there seems to be no law which the Minister used to direct MHC to cancel the title in contention.

The Minister, therefore acted without jurisdiction. If he relied on the Statutory Bodies (Control of Contracts) Act, that law does not confer the Minister the power to act the way he did. Were it the case that the Minister had powers to make the decision, and in any event, it is a basic constitutional and administrative tenet that the Minister had to afford the claimant a right of hearing. One, especially, public officials, cannot by law, make adverse decision towards a subject without offering the subject reasons for the decision.

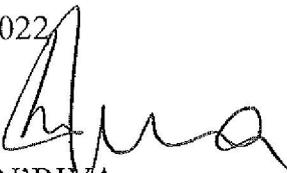
Every person has, according to section 43 of the Constitution, the right to lawful and procedurally fair administrative action where his or her rights, freedoms, legitimate expectations or interests are affected or threatened. Furthermore, the right extends to the right to be furnished with reasons in writing for administrative action where one's rights, freedoms, legitimate expectations or interests are affected if those interests are known.

One other argument the claimant advanced was that the land in question falls under the Town Planning Committee of Blantyre City Council according to the Town Planning Act. Counsel, therefore, argued that it was not clear why the Minister had to direct the MHC to make the decision herein. The defendants did not challenge this line of argument.

In summary, therefore, I agree with the claimant and declare that the acts of the defendants were made without legal authority. The Minister had no legal authority to order MHC to make the decision against the claimant. Further, the defendants did not afford the claimant a hearing. There was breach of the Constitution on that aspect; that also affected the claimant's right to own property. These two aspects render the decision made in this dispute to be wanting constitutionally. The Court, therefore, quashes the decision that the Minister made. That means the decision that the second defendant made is also declared invalid, and quashed, having been made under an illegal order.

The first defendant shall meet the costs of this I review.

MADE the 26th day of May, 2022



J N RIVA

JUDGE