IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

JUDICIAL REVIEW CASE NUMBER 52 OF 2021

BETWEEN:

THE STATE (On the application of MALAWI

REVENUE AUTHORITY) **CLAIMANT**

THE CHAIRPERSON OF THE INDUSTRIAL RELATIONS COURT **DEFENDANT**

ROZA MBILIZI **INTERESTED PARTY**

CORAM: JUSTICE M.A. TEMBO

Mpaka, Counsel for the Claimant
Maulidi, Counsel for the defendant
Mickeus, Counsel for the Interested Party
Mankhambera, Court clerk

ORDER

1. This is the decision of this Court made under Order 19 Rule 20 (1) Courts (High Court) (Civil Procedure) Rules, on an application by the Malawi Revenue Authority for judicial review of the defendant's decision, namely, the decision of the defendant dated 18th August, 2021 re-instating the interested party to the full pay and benefits in the claimant's employment by staying the decision of the claimant summarily dismissing the interested party and granting such an Order ex-parte as interim relief pending determination

of the interested party's claim before the defendant. The application is contested by the defendant and the interested party.

2. At the time my brother Judge granted the claimant the permission to apply for judicial review, the other ground for seeking judicial review was that the defendant sat alone when he made the impugned decision. At the material time, the law required that on matters where issues of fact arose the defendant was to sit with panelists and the contention was that the impugned decision had factual implications over which the defendant had no jurisdiction siting alone. That position has however since changed by legislation which no longer requires panelists to sit with the defendant where factual issues are in contention. As such, at the hearing of this application, the claimant abandoned that ground and it shall not be considered by this Court.
3. By this application for judicial review, Malawi Revenue Authority seeks the following reliefs, namely,

    1) A declaration that the defendant is bound to strictly follow the dictates as read together of the Constitution, the Labour Relations Act, the Employment Act, and the Rules made thereunder and has no inherent or unlimited original jurisdiction in seeking to exercise jurisdiction over labour disputes.
    2) A declaration that on the true construction of sections 65, 67(1), (3), and (4) of the Labour Relations Act as read with section 63 (1) of the Employment Act and Rules 25 (1) (m) and 25 (4) of the Industrial Relations Court (Procedure) Rules and with section 110 (2) of the Constitution, the defendant sitting on an ex parte application or at all has no authority and/or jurisdiction to reinstate and restore full pay and benefits to a dismissed employee by staying an employer's decision to dismiss an employee or ordering reinstatement of full employment benefits.
    3) A declaration that on the true construction of sections 65, 67(1), (3), and (4) of the Labour Relations Act as read with section 63 (1) of the Employment Act and Rules 25 (1) (m) and 25 (4) of the Industrial Relations Court (Procedure) Rules and with section 110 (2) of the Constitution, the power of the Industrial Relations Court to order interim relief does not confer authority and/or jurisdiction to the defendant on an ex parte motion to micro-manage an employment relationship pending

resolution of labour disputes before the Court or to reinstate and restore full pay and benefits to a dismissed employee by staying an employer's decision to dismiss an employee.

4) A declaration that it is unreasonable in the *Wednesbury* sense and *ultra vires* for the defendant to make the decision complained of herein on an ex parte motion.
5) An order akin to certiorari quashing the decision of the defendant.
6) An order for costs and all the consequential orders that may be given.

4. The essential facts on this matter are not contentious. The claimant, a tax authority, employed the interested party as Deputy Commissioner General. She indicated before the defendant that she had a year remaining on her contract when she got reassigned to work at the Ministry of Finance where she says she was told to work from home. She indicated that she was later suspended and called to a disciplinary hearing which led to her summary dismissal. She claimed before the defendant that her dismissal was unfair in that it was fraught with irregularities in terms of the hearing leading to the summary dismissal. Consequently, the interested party applied to the defendant, on an ex-parte motion, that is without notice to the claimant, for an order staying the decision of the claimant summarily dismissing her from employment. The defendant granted the interim relief sought and reinstated the interested party to her employment but on suspension with full benefits pending the filing and determination of her claim in IRC Form 1 before the defendant within seven days. The defendant also ordered the interested party to file a with notice application for continuation of the interim relief within seven days.
5. The claimant is therefore aggrieved by the decision of the defendant herein and was granted the permission by my brother Judge to seek a judicial review herein. The matter was then transferred to my Court for the hearing of this application and one other earlier application by the claimant discharging the stay, which application was not granted. The interested party appealed to a single member of the Supreme Court of Appeal who reinstated the stay order made by the defendant.
6. The grounds for the judicial review application by the claimant are as follows. The claimant indicated that under section 74 of the Labour Relations Act, the

Industrial Relations Court cannot proceed to hear and determine any matter before it in the absence of any party to proceedings before it unless proof of service of notice is given and no good cause is shown why a party is absent. Section 74 of the Labour Relations Act provides that if a party fails to attend or to be represented at the proceedings of the Industrial Relations Court without good cause, the Industrial Relations Court may proceed in the absence of that party or representative.

7. The claimant then indicated that under section 63 (1) (a) of the Employment Act, the Industrial Relations Court can order reinstatement whereby an employee is to be treated in all respects as if he had not been dismissed. It observed that before making such an order, the Industrial Relations Court is required by law to find that an employee's complaint of unfair dismissal is well founded. It asserted that such a finding involves interrogation of facts and evidence and can usually be arrived at after hearing the parties in accordance with section 74 of the Labour Relations Act. Section 63 (1) (a) of the Employment Act provides that if the Court finds that an employee's complaint of unfair dismissal is well founded, it shall award the employee one or more of the following remedies- an order of reinstatement whereby the employee is to be treated in all respects as if he had not been dismissed.
8. The claimant then observed that contrary to the foregoing, the defendant on 18th August, 2021 heard an application without notice to the claimant and issued an order reinstating the interested party to employment and consequently restoring her full pay and benefits while holding her on suspension from the claimant's employment on the basis of a letter of suspension dated 15th September, 2020.
9. The claimant exhibited the ex parte application and the order made by the defendant. It pointed out that the Order does not make an express finding of unfair dismissal to warrant the reinstatement of the interested party and does not state reasons why it was made. The claimant asserted that in the premises there is no basis for the Order.
10. The claimant then asserted that by making the impugned Order in the foregoing circumstances, the defendant implied that the complaint of unfair dismissal is well founded. It then asserted that the defendant obscured certain facts namely that:

i) On or around 16th July, 2018, the interested party entered into a contract of employment with the claimant subject to the terms and conditions of the said employment. The claimant exhibited a copy of the contract.

ii) Under clause 16 of the said contract, the interested party could be redeployed to other duties within Government and that the interested party was in fact redeployed under the same terms of service. The claimant exhibited the letter of redeployment.

iii) Pursuant to the contract and its terms, the interested party was called before the Disciplinary Committee of the claimant on due notice, heard on specific charges of misconduct and summarily dismissed on due proof of charges. The claimant exhibited the notice of disciplinary hearing, duly acknowledged and the letter of dismissal.

11. The claimant asserted that these are facts which would need to be properly investigated by the Industrial Relations Court before an assumption of a finding of unfair dismissal to warrant reinstatement of the interested party is established. The claimant observed that instead, the defendant proceeded to sit without notice to the claimant and assumed these facts to be incorrect before entering a final remedy when such a remedy is at law only due to an employee after due process of hearing before the Industrial Relations Court and due finding of unfair dismissal.
12. The claimant further asserted that by issuing the impugned Order, the defendant effectively issued an injunction stopping the claimant from effecting the decision to terminate employment in spite of due disciplinary process and despite valid reasons reflected in the notice of disciplinary hearing and letter of dismissal. And that the defendant entered on micromanagement of the claimant as an employer.
13. The claimant then pointed out that it will be noted that, in the limited circumstances in section 54 of the Labour Relations Act when the Industrial Relations Court can issue an injunction, in relation to strikes and lock outs in Part V of the Labour Relations Act, it is notable that such power is ordinarily exercisable on notice to the respondent of at least 48 hours unless the acts in question to be addressed by the injunction would endanger life, safety or health of any person and where the respondent has been afforded a reasonable

opportunity to be heard. The claimant noted that the motion herein was not presented under Part V of the Labour Relations Act.

14. The claimant then asserted that in the premises, the impugned Order of the defendant has no foundation in fact and in law and is made *ultra vires*, without justification and without due notice to the claimant. It added that the defendant gave the final remedy prescribed by section 63 of the Employment Act to be given after full trial and after actual finding of unfair dismissal.
15. The claimant then observed that it has no alternative remedy to judicial review. It observed that the impugned Order does not state whether it decides matters of law or fact. However, that the impugned Order assumes certain facts such as that there was an unfair dismissal and that as such no appeal lies on factual findings of the defendant in terms of section 65 (2) of the Labour Relations Act. It added that in terms of section 65 of the Labour Relations Act and section 20 of the Courts Act there is no automatic right of appeal against an ex parte order of the defendant. It added further that even if the right of appeal existed, the same would be controlled by the same defendant whose dealings reflect remarkable departure from basic principles and that judicial review is the only effective remedy for the claimant in the circumstances with the ancillary order of stay that was dealt with by this Court. It also asserted that the judicial review decision in this matter will properly guide the defendant when dealing with ex parte applications.
16. The defendant's and the interested party's view was that the defendant properly exercise his powers under the Labour Relations Act and the Employment Act.
17. The defendant and the interested party raised a number of preliminary issues which this Court determined as a matter of case management that they should be resolved at once together with the application. The first preliminary issue was whether judicial decisions of lower courts such as the defendant are subject to judicial review and the defendant and interested party submitted that the defendant's decision is not amenable to judicial review. The second issue was that the claimant had an alternative remedy to appear at the inter partes hearing ordered by the defendant and that therefore judicial review is not open to the claimant in this matter.
18. The first preliminary issue is dealt with, namely, whether judicial decisions of lower courts such as the defendant are subject to judicial review. As indicated,

the defendant and the interested party submitted that the decision of the defendant is not amenable to judicial review. At the oral hearing, the interested party appeared to shift her position and she stated that the decision of the defendant would only be subject to judicial review if bad faith was shown to have motivated the same.

19. In this regard, the defendant and the interested party relied on section 61 of the Courts Act which provides that:

> No judge, magistrate or other person acting judicially shall be liable to be sued in any court for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

20. The interested party and the defendant pointed out that the single member of the Supreme Court of Appeal on the stay proceedings herein pointed out as much that the defendant's decisions cannot be amenable to judicial review on account of section 61 of the Courts Act. They further pointed out that if the defendant's decisions are amenable to judicial review then judicial independence would be lost and the judicial officers would be compelled to make sworn statements and be subject of cross-examination on the same.

21. The claimant correctly observed in the view of this Court that section 61 of the Court's Act is not relevant to the issue of judicial review. It is not applicable. The reason is that section 61 of the Court's Act bars suits against judicial officers in respect of judicial decisions. It must be appreciated that judicial review proceedings and suits are different. By barring suits against judicial officers in relation to judicial decisions, section 61 of the Courts Act does not extend to judicial review proceedings in its application. The distinction between a suit and judicial review proceedings must be appreciated.

22. The claimant correctly noted that it has been held that a suit and judicial review proceedings are different. See *State v Privatization Commission and another ex parte Mwamondwe and another* [2005] MLR 450 (HC). As such, when section 61of the Courts Act refers to protecting a judicial officer from a

suit it means precisely that and does not extend to bar judicial review proceedings against decisions of judicial officers.

23. The interested party and the defendant also noted that the single Member of the Supreme Court indicated on the stay of appeal decision herein that older decisions that allowed judicial review against decisions of lower courts were wrong and they relied mostly on Order 53 of the Supreme Court Rules that are no longer applicable. Something was said about there being no inferior courts in Malawi that can have their decisions subject to judicial review.

24. On the contrary, this Court observes that the jurisdiction of this Court on judicial review is not based on the Rules either old or current. It rather emanates from statute, being the Statute Law (Miscellaneous Provisions) Act. Part VI of the Statute Law (Miscellaneous Provisions) Act is the law that grants this Court power to make like orders of certiorari, mandamus and prohibition that are usually sought on judicial review applications like the instant one. Such jurisdiction is specifically conferred in section 16 (2) of the Statute Law (Miscellaneous Provisions) Act. It is very instructive to note that section 17 (3) Statute Law (Miscellaneous Provisions) Act specifically provides for the maximum periods for application for judicial review of judgments and orders and seeking orders akin to certiorari to quash the same. The Rules of procedure as represented in the old Rules of Supreme Court and in the current Courts (High Court) (Civil Procedure) Rules are procedure rules only made to regulate judicial review proceedings as provided in section 17 of Statute Law (Miscellaneous Provisions) Act but the jurisdiction to conduct judicial review proceedings pertaining to lower court decisions is statutory. There is also be a Constitutional dimension there in that the High Court may in proper cases be asked to review such lower court decisions for compliance with the Constitution.

25. This Court does not believe that the judicial officers in the lower courts will lose their judicial independence when their decisions are subject to judicial review. This Court when dealing with any judicial review considers carefully whether to allow cross-examination of a deponent. And as a matter of practice rarely will judicial review of a lower court decision involve contention of fact such that the fear of loss of judicial independence due to potential to subject such judicial officers to cross-examination is rather exaggerated.

26. In the premises, this Court finds that the first preliminary issue was not well taken by the defendant and the interested party. The Statute Law (Miscellaneous Provisions) Act settles the matter. No argument can be made against the provisions of the Statute that is not yet repealed and not yet found to be contrary to the Constitution. This Court also wishes to state that it is not bound by the views expressed obiter by the Single member of the Supreme Court of Appeal on the stay appeal herein since those views were expressed without hearing the parties on the propriety of judicial proceedings against judicial officers within the lower courts. This is because this issue was not in the appeal, the only issue on appeal being about the stay. The views were also made with no reference to the relevant statute being Part VI of the Statute Law (Miscellaneous Provisions) Act which settles the matter.
27. The second preliminary issue was that the claimant had an alternative remedy to appear at the inter partes hearing ordered by the defendant and that therefore judicial review is not open to the claimant in this matter.
28. The claimant indicated that it has no leeway of appealing against the factual findings on the defendant's decision. However, that is beside the point. That does not address the point why the claimant did not attend the inter partes hearing where it could have raised the fact that the ex parte decision was wrongly made for the reasons now advanced at this judicial review application.
29. The claimant then directly addressed the matter. It indicated that what is critical is that at the time of the intended inter partes hearing before the defendant, the impugned ex parte Order was subsisting and the defendant was not going to hear anything until after a month later and that this created difficulty in terms of what the claimant should do and the claimant was left exposed. The defendant and the interested party did not counter this argument but insisted that the claimant should have waited for the inter partes hearing. The claimant also indicated that the decision of the defendant was clearly *ultra vires* as it departed from the then requirement that the defendant sit with panelists on matters involving factual determinations and that it was absurd that the claimant had to appear before the same court that markedly departed from the requirements on its constitution.

30. This Court notes that Judicial review may be allowed in the face of alternative remedy where the decision at first instance is manifestly *ultra vires.* See *R v Hillingdon Council, ex p Royco Homes Ltd* [1974] 1 QB 720.
31. Clearly, the defendant had an alternative remedy available at the intended inter partes hearing. The question then becomes whether there are factors that will persuade this Court that there are exceptional circumstances warranting overlooking the alternative remedy and to compel this Court to still proceed and determine the judicial review application. In the case of *Henry W. Ntalika and others v Manager, South West Education and another* [2010] MLR 147 (HC) at 152 it was stated, on this issue, that

> In R v Epping and Harlow General Commissioners, ex p Goldstraw [1983] 3 All ER 257 at 262 Donaldson MR said that:
> "It is a cardinal principle that, save in exceptional circumstances, that jurisdiction will not be exercised where other remedies were available and have not been used."
> This principle was also applied in R v Birmingham City Council, ex parte Fertero Ltd [1993] 1 All ER 530.
> In R v Paddington Valuation Officer, ex p Peachey Property Corp Ltd [1965] 2 All ER 836 at 840, [1966] 1 QB 380 at 400 Lord Denning MR, with the agreement of Danckwerts and Salmon LJJ, held that certiorari and mandamus were available where the alternative statutory remedy was "nowhere near so convenient, beneficial and effectual".
> In R v Hillingdon London Borough, ex p Royco Homes Ltd [1974] 2 All ER 643 at 648, [1974] QB 720 at 728 Widgery CJ said ". . . it has always been a principle that certiorari will go only where there is no other equally effective and convenient remedy."
> In R v Hallstrom, ex p W [1985] 3 All ER 775 at 789 - 790, [1986] QB 824 at 852 Glidewell LJ, said:
> (a) Whether the alternative statutory remedy will resolve the question at issue fully and directly,
> (b) Whether the statutory procedure would be quicker, or slower, than procedure by way of judicial review.
> (c) Whether the matter depends on some particular or technical knowledge which is more readily available to the alternative appellate body; these are amongst the matters which a Court should take into account when deciding whether to grant relief by way of judicial review when an alternative remedy is available. I believe these are the questions that will

> determine if there is an exceptional circumstance so as to overlook the alternative remedy.

32. In the circumstances of this case, where the defendant was not going to hear the inter partes application until after a month or so, as asserted by the claimant, it appears that this is a factor that put judicial review as a faster and more convenient remedy than the one offered by the defendant. See *Henry W. Ntalika and others v Manager, South West Education and another* [2010] MLR 147 (HC) at 152 *Henry W. Ntalika and others v Manager, South West Education and another* [2010] MLR 147 (HC) at 152. There also existed another factor that compelled the claimant to seek judicial review in the circumstances where it would be exposed to a decision that appeared to the claimant to be manifestly *ultra vires* at a time when the Industrial Relations Court was not properly constituted to make a factual finding of unfair dismissal to warrant reinstatement and which court decided to make a decision that the claimant felt was not in line with the dictates of both procedure and substantive law in terms of service on the claimant and the nature of the remedy.
33. In the foregoing premises, this Court will exercise its discretion to proceed to determine the judicial review application notwithstanding that an alternative remedy existed by way of the intended inter partes hearing considering that the same was going to be a slower process than the judicial review process and also that the impugned decision was, from the claimant's view, at first instance made manifestly *ultra vires* the requisite constitution of the lower court.
34. This Court now considers whether the decision of the defendant herein staying the summary dismissal of the interested party must be quashed on account of the grounds advanced by the claimant.
35. Firstly, this Court considers the procedure followed by the defendant of considering and granting interim relief on ex parte basis, that is without notice to the claimant. This Court agrees with the submission of the claimant that when the Labour Relations Act provides for the procedure for granting of an injunction in relation to strikes and lockouts, the rule is that there must be at least 48 hours' notice to the respondent with a reasonable opportunity to be heard being given to the respondent.

36. The Rule under which interim relief is allowed to be provided for by the Industrial Relations Court (Procedure) Rules does not provide for ex parte or without notice applications. Rule 25 (1)(m) (i) of the Industrial Relations Court (Procedure) Rules provides that the Industrial Relations Court shall grant urgent interim relief pending a decision by the Court after a hearing. There is no provision that the grant shall be made ex parte or be without notice. The default position is therefore that the applications shall be heard on notice to the respondent.
37. If applications for injunction on weighty matters such as a strike or a lock out require notice under section 54 of the Labour Relations Act, this Court agrees with the claimant that applications for interim relief must similarly come with notice unless life and the like is similarly at risk as indicated with regard to injunctions. Interim relief cannot just be granted without hearing the respondent who, in this case, was condemned without being heard on the allegation of unfair dismissal. That is not the scheme under the Labour Relations Court Rules. The defendant could not therefore on an ex parte basis without explaining exceptional circumstances grant the urgent interim relief. This grant of the impugned Order was therefore not in line with Rule 25 (1)(m) (i) of the Industrial Relations Court (Procedure) Rules. It was *ultra vires.* Such applications ought to be heard on notice.
38. Rule 25 rule 4 of the Industrial Relations Court (Procedure) Rules alluded to by the defendant and the interested party does not excuse the defendant at all. That Rule provides that the Industrial Relations Court in exercise of its powers and discretion and in the performance of its functions, may act in such a manner as it may consider expedient in the circumstances in order to achieve the objectives of the Act and in so doing it shall have regard to substance rather than form, as is otherwise provided in the Act.
39. Whilst the defendant is entitled to regard substance over form, the defendant must observe the dictates of the Act which clearly do not point to urgent reliefs being granted on ex parte or without notice basis unless life or the like is at risk as stated with respect to injunctions. The end result is that the manner in which the defendant proceeded is that the defendant assumed that the claimant unfairly redeployed and later disciplined the interested party. This was highly unusual and prejudicial having been assumed without hearing the claimant. The urgency not to have a with notice hearing was simply not demonstrated.

40. The next point taken up by the claimant is that the remedy of reinstatement is meant to be granted after the defendant was satisfied that the claim of unfair dismissal is well founded. That is in terms of section 63 (1) (a) of the Employment Act. It is instructive to observe that section 63 (2) of the Employment Act requires that an order of reinstatement be made taking into account the circumstances of the dismissal, including the extent, if any, to which the employee caused or contributed to the dismissal. This Court agrees with the claimant that, without hearing the claimant, it was not open to the defendant to order reinstatement on an urgent interim basis ex parte since the defendant had not had occasion as dictated by the Employment Act to assess to what extent the interested party contributed to the summary dismissal if at all. This could only be assessed upon hearing both sides including the claimant.
41. The next point for consideration is whether the Industrial Relations Court has no authority at all to order reinstatement as an urgent interim relief. In that regard, it is important to observe the wording of Rule 25 (1)(m) (i) of the Industrial Relations Court (Procedure) Rules which provides that the Industrial Relations Court shall grant urgent interim relief pending a decision by the Court after a hearing. The difficulty here is that the nature of urgent interim relief is not defined. Perhaps, advisedly. The claimant's view is that, in terms of section 63 of the Employment Act, final relief can be an award of reinstatement or re-engagement or compensation. And that such final relief would only be ordered after a hearing of a case by the Industrial Relations Court.
42. The scope of urgent interim relief is not defined under the Industrial Relations Court (Procedure) Rules. The only certainty is that the said Rules are subject to the Labour Relations Act under which they are made. The Employment Act however sets out what final reliefs or remedies are and the circumstances in which they are to be awarded.
43. This Court has thought long and hard about this matter and notes that although Rule 25 (1) (m) (i) of the Industrial Relations Court (Procedure) Rules leaves open the possibility of the Industrial Relations Court granting such final reliefs or remedies as reinstatement, re-engagement and compensation on an urgent interim basis, a true construction of the Employment Act gives the impression that such remedies can only be made, in terms of section 63 of the

Employment Act, after a hearing by the Industrial Relations Court. After such a hearing, the Industrial Relations Court will consider the wishes of the employee and the circumstances in which the dismissal took place including the extent, if any, to which the employee caused or contributed to the dismissal. The defendant therefore has no jurisdiction to grant reinstatement, which is a final relief, as an urgent interim relief. However, anything short of reinstatement, re-engagement and full compensation must qualify as urgent interim relief as it leaves room for a final award to be made by the Industrial Relations Court after a hearing.

44. Our situation must be contrasted with the position in other jurisdictions, such as in England. Here in Malawi there is no elaborate procedure regulating urgent interim relief apart from one rule in Rule 25 (1) (m) (i) of the Industrial Relations Court (Procedure) Rules. In contrast, in England interim relief applications are provided for in section 128 of the Employment Rights Act of 1996 which is of no application to Malawi and whose provisions are not similar at all to Rule 25 (1) (m) (i) of the Industrial Relations Court (Procedure) Rules. According to section 128 Employment Rights Act, 1996 England interim relief is available only in certain automatically unfair dismissal claims, in particular certain dismissal claims to do with health and safety, representatives performing activities on behalf of the workforce in working time matters, employee representatives and whistleblowing. The time for bringing such applications is limited to seven days from date of dismissal and the employer is entitled to seven days' notice. The test applied on such applications is set out in section 129 of the Employment Rights Act, 1996 that being where it appears to the tribunal likely that on determining the complaint the claimant is likely to find the reason for dismissal to be one of the automatic unfair dismissal reasons specified in the Act. If the application is successful, the claimant is reinstated or re-engaged unless the employer refuses. On such refusal the employee can secure an order for continuation of the contract of employment by which the employee is entitled to a certain amount of pay from the date of dismissal to the date of determination of the claim by the Employment Tribunal. See section 130 of the Employment Rights Act, 1996. All these elaborate provisions are contained in the English Act. See Malcolm Sargeant and David Lewis, Employment Law, Pearson Longman (2010) at 125. This Court wishes to strongly caution that it would

be unfortunate and untenable to import these English provisions into Malawian Law by virtue only of a single rule of procedure, namely, Rule 25 (1) (m) (i) of the Industrial Relations Court (Procedure) Rules which simply says, the Industrial Relations Court may grant urgent interim relief.

45. An examination of the impugned Order herein shows that the defendant ordered the interested party to be treated as if she had not been dismissed and to remain on suspension with full pay and all benefits. That was reinstatement and it is not available as an urgent interim relief on ex parte basis or at all.
46. Consequently, this Court grants the claimant all the relief's sought numbering 1 to 5 inclusive.
47. Costs are in this Court's discretion that ought to be exercised with reason. No order for costs shall be made in the circumstances considering that what was under review was a decision of a court and it would not be in the interests of public policy to order a court to pay such costs.

Made in open court at Blantyre this 6th May 2022.

M.A. Tembo
JUDGE