



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

JUDICIAL REVIEW CASE NUMBER 21 OF 2022

BETWEEN:

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

CLAIMANT

**MALAWI COMMUNICATIONS REGULATORY
AUTHORITY**

DEFENDANT

CORAM: JUSTICE M.A. TEMBO

Chikondi Chamkakala, Counsel for the Claimant
Mankhambera, Court clerk

ORDER

1. This is the order of this Court on the claimants' application, under Order 19 rule 20 (3) Courts (High Court) (Civil Procedure) Rules without notice to the defendant, for an order for permission to apply for judicial review of the putative defendant's decision not to decide or communicate its decision to the claimant on the claimant's application for the renewal of its private broadcasting licence made on the 3rd April, 2021.
2. If permission is granted, the claimant will seek a declaration that the putative defendant's conduct is unreasonable, infringes on the claimant's legitimate expectation and its right to be heard. The claimant would also seek a

mandatory order directing the putative defendant to communicate its decision on the licence renewal application to the claimant and for the claimant to be allowed to operate in the interim, subject to payment of broadcasting fees.

3. 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.
4. 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*.
5. This Court must therefore consider whether the facts as presented by the claimant 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.
6. This Court observes that the claimant was granted a broadcasting licence by the defendant dated 22nd July, 2016 to run for a period six years. Under clause 35 of the said licence, it was provided that the claimant was required to make an application for renewal at least 12 months before the expiry of the licence. In case there was no renewal, then reasons have to be given by the defendant.
7. The claimant duly filed a licence renewal application on 3rd April, 2021. The claimant laments that the defendant has since then neglected to communicate its decision on the said application to date.

8. This Court observes that during the same period when the claimant applied for renewal of its broadcasting licence, the claimant had defaulted on the payment of the licence fees herein and that led the defendant to revoke the broadcasting licence after engaging the claimant on the default. The revocation of the licence was effected by letter dated 8th June, 2022 which has been referred to in the claimant's document of 10th June, 2022 attached by the claimant to its application and marked as CMC9. That document CMC9 is not appearing anywhere in the narrative of the claimant's sworn statement in support of the claimant's permission application but completes the troubled portrait concerning the situation of the claimant with regard to its failure to pay licence fees contrary to the terms of the broadcasting licence. In view of the document marked MCM9, it is the considered view of this Court that the claimant did not intend to disclose, and in fact suppressed, the material fact that its broadcasting licence herein had been revoked by the time the claimant paid the balance of licence fees due. The claimant then asserted that it paid the balance of the licence fees on 22nd June, 2022. But, it is clear that by then the licence of the claimant had been revoked by the defendant for breach of the terms of the licence regarding payment of licence fees.
9. The facts as narrated above disclose to this Court that the claimant's case is hopeless and not fit for further investigation at a full hearing. The claimant was in breach of its broadcasting licence by failing to pay licence fees. The defendant engaged the claimant on the same during the same period within which the claimant put in the renewal application as required by the broadcasting licence. In such circumstances, the view of this Court is that the claimant could not reasonably expect the defendant to decide and communicate on renewal of the claimant's broadcasting licence when the claimant was failing to honour the licence fees obligations on the subsisting broadcasting licence. The current broadcasting licence was eventually revoked on 8th June, 2022. After the said revocation, the obligation to communicate the decision on the licence renewal application lapsed because there was nothing to be renewed. The claimant cannot therefore legitimately expect the defendant to consider renewal of a licence that was revoked. That makes the present application inapt.
10. In the foregoing premises, this Court is compelled to decline the claimant's application for permission to apply for judicial review for being unfit for

further consideration at a full hearing for judicial review, as envisaged in the case of *Ombudsman v Malawi Broadcasting Corporation* [1999] MLR 329.

Made in chambers at Blantyre this 8th July 2022.

M.A. Tembo
JUDGE