

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL DIVISION**  
**JUDICAL REVIEW CASE NUMBER 6 OF 2023**

**BETWEEN:**

**THE STATE On the application of:**

**THE MALAWI LAW SOCIETY**

**CLAIMANT**

**AND**

**PROSECUTOR LEVISON MANGANI, SACP**

**1<sup>st</sup> DEFENDANT**

**THE CHIEF RESIDENT MAGISTRATE (LILONGWE)**

**2<sup>nd</sup> DEFENDANT**

**THE SECRETARY TO THE PRESIDENT AND CABINET**

**3<sup>rd</sup> DEFENDANT**

**CORAM: JUSTICE M.A. TEMBO,**

P. Mpaka, Counsel for the Claimant  
C. Gondwe and J. Kadzipatike, Counsel for the Defendants  
Makhambura, Court Clerk

**ORDER**

1. This is the order of this Court on the defendant's urgent application seeking an order of this Court to stay the permission that this Court granted a couple of days ago to the claimant to apply for a judicial review of the decisions of the 1<sup>st</sup> defendant, 2<sup>nd</sup> defendant and 3<sup>rd</sup> defendant, respectively, pertaining to the Director of the Anti-Corruption Bureau, Ms. Martha Chizuma. The impugned decisions are, namely, the decision of the 1<sup>st</sup> defendant on 25<sup>th</sup> January, 2023 to charge the Director of the Anti-Corruption Bureau before the

2<sup>nd</sup> defendant of criminal charges of making use of speech related to a certain now publicly well-known audio recording made in January, 2022 and the decision of the 3<sup>rd</sup> defendant on 31<sup>st</sup> January, 2023 to interdict the Director of the Anti-Corruption Bureau from exercising her functions and duties in view of the said criminal charges. The application is made pending the defendants' intended application to set aside the permission that this Court earlier granted to the claimant.

2. The defendants made the application without notice to the claimant. The application is therefore by its very nature, unopposed. However, this Court is duty bound to scrutinize the merits of this application in the usual manner.
3. It is often the case that a defendant who seeks to apply to discharge or to set aside permission to apply for judicial review usually makes that application without first seeking to stay the permission without notice to the claimant. This is what normally happens because permission to apply for judicial review is only granted upon the Court satisfying itself that the claimant's case raises issues worthy of investigation at a full hearing of judicial review. The path taken by the defendants in making the instant application to stay the permission pending their intended application to apply to discharge the permission earlier granted is therefore very highly unusual. The Court can hardly think of a precedent.
4. In terms of legal representation of the defendant public officers, the Attorney General is not appearing in person. He appointed the private practice lawyers appearing, to act for the defendants.
5. The facts on this application are straightforward. A couple of days ago, this Court considered the claimant's application seeking permission to apply for the judicial review of the impugned decisions of the defendants herein. The essential premise for seeking the permission is that the claimant is a statutory body that usually appears before the Courts, pursuant to its statutory mandate under the Legal Education and Legal Practitioners Act (Cap 3:04 of the Laws of Malawi), to engage in court proceedings on legal matters of public interest and significance. The claimant observed that since the audio recording herein became known publicly in February last year, the President of the Republic of Malawi Dr. Lazarus McCarthy Chakwera, who has the mandate to interdict or suspend the Director General of the Anti-Corruption Bureau under the Corrupt Practices Act decided not to suspend the said Director General.

6. The claimant further observed that, in terms of section 22 of the Corrupt Practices Act, the Director General of the Anti-Corruption Bureau is not amenable to any action or other proceedings for acts done in the course of her work and done in good faith. The claimant observed that the impugned decisions of the defendants were taken without any allegation of bad faith against the Director General of the Anti-Corruption Bureau. And further that there is no indication that the decision by the 3<sup>rd</sup> defendant to interdict the Director of the Anti-Corruption Bureau was taken by the President of the Republic of Malawi as mandated under the governing statute, namely, the Corrupt Practices Act.
7. It is in the foregoing context that the claimant sought and this Court granted the permission to apply for a judicial review of the decisions of the defendants to check the legality of the said decisions. This Court also stayed the impugned decisions and restrained, by interlocutory injunction, the implementation of the said decisions.
8. The defendants now seek that the permission be stayed pending their application to discharge the said permission for a number of reasons that they outline in the present application. The defendants justify the making of the present application without notice to the claimant by asserting that the nature of the issues on the present application are urgent and of paramount importance to the nation and to all the parties involved and that a quick resolution of the issues will be in the interest of all the parties involved.
9. On the issue of urgency of this application, this Court is not persuaded that there is any urgency associated the issues within the present without notice application. The issues on this application pertain to an audio recording which has been in the public sphere since January last year, 2022. It is only recently, end January, 2023 which is a year after the audio recording surfaced, that the defendants decided to do something about the said audio recording in relation to the Director General of the Anti-Corruption Bureau. The alleged sense of urgency therefore appears misplaced.
10. This Court however agrees with the defendants that this matter is of paramount importance to this nation as it essentially concerns the monstrous vice that is corruption and the fight against the said vice within the legal framework provided for such a vital fight.

11. The defendants have indicated nine grounds or reasons why the permission granted by this Court to the claimant should be stayed pending the intended application to set aside or discharge the said permission. This Court considers these reasons to determine their merits and see indeed whether a stay must be granted. A stay would be granted if it is just in the circumstances considering the intended later application of the defendants. The nine grounds or reasons are as follows:

- i. The claimant, the Malawi Law Society, lacks *locus standi* or sufficient interest in the matter at hand as there were no demonstrable rights that had been violated in the manner the State commenced the criminal proceedings in Criminal case number 236 of 2023 between *The Republic v Martha Chizuma*.
- ii. The Malawi Law Society, has misread her objectives as provided for under section 26 (1) [to read-section 64] of the Legal Education and Legal Practitioners Act by instituting the present action as her conduct is tantamount to interfering with lawfully and properly instituted criminal proceedings under section 83 of the Criminal Procedure and Evidence Code.
- iii. The claimant's conduct does not protect nor assist the public as her conduct is tantamount to clogging the criminal justice machinery (which is a public good) when there are readily available alternative remedies to the aggrieved or accused person.
- iv. The Order for permission to apply for judicial review was wrongly granted by this Court when the accused person could have availed herself and exhausted the available alternative remedies under section 25 of the Courts Act and section 352 of Criminal Procedure and Evidence Code.
- v. Judicial review could not lie against the 2<sup>nd</sup> defendant's decision as her decision was made in exercise of her judicial functions and therefore protected from any liability in terms of section 61 of the Courts Act and as per the Supreme Court decision in the matter of *The State (On the application of the Malawi Revenue Authority) v*



*The Chairperson of the Industrial Relations Court and another*  
MSCA case number 56 of 2021.

- vi. The High Court Civil Division has no jurisdiction in form of civil judicial review over such a criminal matter as there are alternative remedies available in the High Court Criminal Division.
- vii. The claimant, the Malawi Law Society, is acting like a proper surrogate litigant when the actual aggrieved party is competent to challenge the defendants' conduct and has not challenged nor complained in this matter.
- viii. The issue of interdiction of Ms. Chizuma is a private issue between Ms. Chizuma and her employer, and the proper procedure for remedies is not the institution of judicial review proceedings in the High Court but a proper application in the Industrial Relations Court which has exclusive jurisdiction over employment and labour related matters.
- ix. The Malawi Law Society's action against the defendants was made without a Board Resolution of its members and is therefore contrary to the Supreme Court decision of *Dr. Chaponda and another v Kajoloweka and others* MSCA civil appeal number 5 of 2017.

12. The defendants filed a sworn statement in support of the application. The sworn statement was made by counsel Chancy Gondwe for the defendants. In his statement he stated that this matter is brought as an urgent application considering the nature and the consequences of the interim reliefs granted by this Court through the permission order granted to the claimant. He then stated that the claimant, the Malawi Law Society, is a statutory body created under section 25 (i) of the Legal Education and Legal Practitioners Act and draws her mandate from section 26 of the Legal Education and Legal Practitioners Act.

13. He asserted that the claimant specifically touted [its role under] section 26 (d) of the Legal Education and Legal Practitioners Act, a role which is to protect and assist the public on all matters touching on, ancillary to or incidental to the law. He went on to posit that based on the application for permission to apply for judicial review, there is no demonstration of any harm that the

claimant has suffered as a result of the State commencing a criminal action against the Director General of the Anti-Corruption Bureau, Ms. Chizuma. He added that the aggrieved party has not complained against the decisions and conduct of the defendants and instead the claimant which is acting as a surrogate litigant and a busy body has instituted the present proceedings against the continuation of the criminal proceedings against the Director General of the Anti-Corruption Bureau, Ms. Martha Chizuma.

14. He then indicated that the criminal justice system is a public good and any attempt by the claimant to suffocate the criminal justice system in favour of a party who has not complained is contrary to the claimant's objectives under the Legal Education and Legal Practitioners Act and should be avoided at all costs. He added that the conduct of the claimant in instituting the present proceedings when the aggrieved party has not complained is tantamount to instituting litigation which is unethical, more so when the proceedings are intended to suffocate the public good which is the criminal justice system.
15. He then observed that the aggrieved person, Ms. Martha Chizuma, is yet to be charged and that there are alternative remedies available to her in the course of the criminal proceedings and that the claimant is not an aggrieved party in relation to the criminal proceedings against Ms. Martha Chizuma and her subsequent interdiction.
16. He pointed out that the High Court Criminal Division has got powers under section 25 of the Courts Act and section 362 of the Corrupt Practices Act [that reference to the Corrupt Practices Act must have been an error on counsel's part and should have read Criminal Procedure and Evidence Code] to exercise powers of review in respect of the criminal proceedings brought against Ms. Martha Chizuma. He added that Ms. Martha Chizuma also has a remedy of challenging the charges before taking plea where she feels the same are defective either in form or substance. He added that, the foregoing clearly shows that there are alternative remedies available to the aggrieved party other than riding on the present civil judicial review proceedings.
17. He then asserted that it is not true, as per the grounds on which relief is sought, that there are no alternative or viable remedies available to the aggrieved parties, after all the claimant is not an aggrieved party to the criminal proceedings before the Chief Resident Magistrate Court. He added that even where the claimant alleges that the 2<sup>nd</sup> defendant has very limited jurisdiction

- to resolve issues, the law provides for avenues of redress through reviews before the Criminal Division of the High Court and not before this Court.
18. He then asserted that as regards the Interdiction Order, there is no written law exempting the Anti-Corruption Bureau or its officers from the application of the Public Service Act.
19. Counsel Gondwe then stated that members of the claimant are officers of this Court and that active case management would dictate that the claimant inquire from the Attorney General as head of the Bar for clarification of the only issue, which is, if the 3<sup>rd</sup> defendant was not acting on the direction of or conveying the decision of the President of the Republic of Malawi, Dr. Lazarus McCarthy Chakwera.
20. He then asserted that the commencement of the judicial review proceedings herein by the claimant at the Principal Registry when the matter could have been brought before the Lilongwe Registry where the criminal charges are before the Chief Resident Magistrate Court at Lilongwe is tantamount to forum shopping and as such it would be appropriate that the present proceedings be stayed and transferred to the appropriate forum. He asserted further that the fact that this matter is being prosecuted on pro-bono basis on the part of the Malawi Law Society is not a ground for commencing this matter in Blantyre rather than in Lilongwe and is likely to be interpreted as forum shopping on the part of the claimant. He added that the claimant is making its position even worse considering that it is pursuing a matter in which it has not demonstrated any injury or has not suffered any harm apart from parroting the 'public interest' defence. He also said that the issue of forum shopping has once again manifested in this matter and this Court should strongly condemn such conduct on the part of the claimant as it sets a very dangerous precedent for its members.
21. He then stated that the issue of the interdiction is a private matter between Ms. Martha Chizuma and her employer and that these issues ought to have been brought before the Industrial Relations Court, a court with the requisite jurisdiction to handle labour related matters other than the High Court. He further stated that the claimant has lost its mandate in intervening on purely private matters arising between an employer and her employee instead of protecting and assisting the public on purely matters of law.

22. He then charged that there is no evidence that the Malawi Law Society met and passed a resolution on whether to take up this matter or not.
23. He concluded that considering the grave and serious issues raised herein, it would be in the interest of justice that the permission to apply for judicial review and interlocutory injunction be stayed pending the defendants' application to discharge both the permission and the interlocutory injunction.
24. In addition to the sworn statement, the defendants filed legal arguments in support of their present application. They indicated that an order granted without notice can be suspended without notice, and that it was stated in *Attorney General v Sunrise Pharmaceuticals and another* [2013] MLR 1 that where legality, regularity and excess of a judgment are in issue they constitute sufficient reasons for granting a stay. The defendants asserted that the proceedings before this Court are so irregular that they cannot be a basis for the permission for judicial review and injunction as granted by this Court.
25. The defendants then alluded to sections 25 and 26 of the Courts Act which gives the High Court review as well as general supervisory and revisionary powers over proceedings in the subordinate courts. They quoted Prof. Kapindu J in the case of *The State and others ex parte Jumbe and others* Judicial Review case number 18 of 2015 where the Judge stated as follows:

...according to the rules,...courts will not normally grant judicial review where there is another avenue of remedy available. It has been held that it is a cardinal principle that, save in the most exceptional circumstances, the jurisdiction to grant judicial review will not be exercised where other remedies are available and have not been used.

So here is the conclusion of the whole matter: I cannot grant leave to apply for judicial review because the applicants have an alternative remedial avenue. They can seek review of the matter before a Judge of the High Court under the CP & EC, under the Courts Act or under both pieces of legislation. I therefore direct that if the applicants are still minded to have the decision in the court below reviewed, they should adopt that procedure first. I am mindful that the High Court sitting here at Zomba, as indeed the High Court sitting anywhere else in Malawi, has jurisdiction and would be competent to conduct such a review should the applicants elect to adopt the above-said review procedure.

I opine however that this matter can conveniently be dealt with at the High Court Lilongwe Registry which, in terms of proper judicial administration, has general oversight over the Chief Resident Magistrate's Court at Lilongwe. I therefore order,

for reasons of good and orderly judicial administration, that any such application for review, should the applicants be minded to pursue the same, should not come to this registry unless there be demonstrated compelling reasons why they may not be dealt with by another Judge at the Lilongwe Registry. I dismiss the application for leave to apply for judicial review. I make no order as to costs.

26. The defendants then submitted that it is clear that the allegedly injured person has several alternative remedies which she can pursue. And that these proceedings are an abuse of the court process.
27. The defendants then submitted that the claimant has no *locus standi* or sufficient interest in this matter as contemplated in section 15 (2) of the Constitution. They cited a number of authorities which indicate correctly that only a person who has sufficient interest can commence proceedings before this Court. See *Chitakale Plantations Limited v Mary Woodworths and another* (2) [2010] MLR 62 (SCA).
28. The defendants then observed that section 64 (d) of the Legal Education and Legal Practitioners Act provides that one of the objectives of the Malawi Law Society is to protect matters of public interest touching on, ancillary to or incidental to the law. They however indicated that caution must be exercised in deciding what is in the public interest. They correctly cited the case of *S v Lilongwe Water Board & others, ex parte Malawi Law Society* Judicial Review case number 16 of 2017 where the Judge indicated that where the matter was of public interest it was the duty of the Malawi Law Society to take measures intended to protect the public within the meaning of section 26 (1) of the Legal Education and Legal Practitioners Act, in that case, on an issue that directly touched on environmental law.
29. The defendants asserted that the issues of the charge sheet and interdiction order herein have no public interest dimension and that the claimant cannot have standing to commence these the present proceedings.
30. The defendants then submitted that there is no evidence of any resolution by the membership of the claimant that the claimant commence the present proceedings and that the executive committee of the claimant was never delegated authority to commence these proceedings as required under section 72 of the Legal Education and Legal Practitioners Act which states that the society may delegate its powers to any one of its officers. They added that the

Malawi Law Society Rules also provide for delegation of the powers of the Society. They indicated that the case of *Chaponda and another v Kajoloweke and others* is authority for the proposition that for membership organizations its officers must obtain authority before acting as the claimant did herein.

31. Lastly, but not least, the defendants asserted that the proceedings herein are improper because the 2<sup>nd</sup> defendant cannot be sued before a court of law as provided in section 61 of the Courts Act. The defendants also alluded to the decision of the single member on a stay application pending judicial review in matter of *The State (On the application of the Malawi Revenue Authority) v Chairperson of the Industrial Relations Court and another* MSCA civil appeal number 56 of 2021.

32. This Court will deal with this last issue of impropriety of these proceedings first. The statement made concerning section 61 of the Courts Act and that judicial officers within the Magistracy cannot be sued and therefore are not amenable to judicial review was considered when this Court made its decision on the judicial review application in issue. This Court found that the statement by the single member of the apex court was made without consideration of all necessary legal texts on the matter since the jurisdiction of the High Court to hear judicial review of decisions of Magistrates Courts is statutory and is unaffected by section 61 of the Courts Act which prohibits suits against judicial officers. Judicial review is not a suit. It is a review of a decision and does not attach to the judicial officer as such. Section 61 of the Courts Act therefore does not bar judicial review. This is what this Court said after the judicial review was done in *The State (On the application of the Malawi Revenue Authority) v Chairperson of the Industrial Relations Court and another* Judicial review case number 52 of 2021 (High Court) (unreported):

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.



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.

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.

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.

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 61 of 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.

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.



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.

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.

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.

33. In view of the foregoing, it is the considered view of this Court that there is nothing improper in these judicial review proceedings being had in relation to a matter before the Magistracy. This Court's firm view is therefore that there is no merit in ground number v. raised by the defendants that judicial review could not lie against the 2<sup>nd</sup> defendant's decision as her decision was made in exercise of her judicial functions and therefore protected from any liability in terms of section 61 of the Courts Act and as per the Supreme Court decision in the matter of *The State (On the application of the Malawi Revenue Authority) v The Chairperson of the Industrial Relations Court and another* MSCA case number 56 of 2021.

34. This Court next deals with grounds i to iv as advanced by the defendants on the present application. By those grounds the defendants assert that the claimant, the Malawi Law Society, lacks *locus standi* or sufficient interest in the matter at hand as there were no demonstrable rights that had been violated in the manner the State commenced the criminal proceedings in Criminal case number 236 of 2023 between The Republic v Martha Chizuma. That the Malawi Law Society, has misread her objectives as provided for under section 26 (1) [to read-section 64] of the Legal Education and Legal Practitioners Act by instituting the present action as her conduct is tantamount to interfering with lawfully and properly instituted criminal proceedings under section 83 of the Criminal Procedure and Evidence Code. That the claimant's conduct does not protect nor assist the public as her conduct is tantamount to clogging the criminal justice machinery (which is a public good) when there are readily available alternative remedies to the aggrieved or accused person. And, that the Order for permission to apply for judicial review was wrongly granted by this Court when the accused person could have availed herself and exhausted the available alternative remedies under section 25 of the Courts Act and section 352 of Criminal Procedure and Evidence Code.

35. It is clear to this Court that these four grounds are advanced by the defendants at a complete cross purposes to the reasons supporting the application for

permission to apply for judicial review which this Court considered before granting the said permission. The Malawi Law Society clearly seeks to protect on a matter of law of public significance or importance to do with the operations of the Anti-Corruption Bureau as established under the Corrupt Practices Act. The case of the claimant is that under the Corrupt Practices Act, only the President of the Republic has power to suspend the Director of the Anti-Corruption Bureau and that this is not what happened in this case. And that, on the contrary, it is the 3<sup>rd</sup> defendant who sought to effect such a suspension and this impairs the scheme set up by Parliament to regulate the suspension of the Director General of the Anti-Corruption Bureau. Further, that there is the issue of immunity from action.

36. In such circumstances, this Court is not persuaded by the defendants' contention that the claimant lacks sufficient interest or *locus standi* in this matter. The claimant appears to be within its statutory remit of protecting on matters of public interest pertaining to the law, in this case, to do with the working environment of the Anti-Corruption Bureau in its fight against corruption under the Corrupt Practices Act. The claimant adds that the Director General of the Anti-Corruption Bureau is immune from action or other proceedings for official acts done in good faith. What the claimant is asserting in these proceedings accords with the decision of this Court in the case of *S v Lilongwe Water Board & others, ex parte Malawi Law Society* Judicial Review case number 16 of 2017. In view of the foregoing, the defendant's contention cannot stand that the claimant's interests have not been harmed and that therefore the claimant has no sufficient interest in this matter. The claimant proceeded in line with its statutory mandate under section 64 (d) of the Legal Education and Legal Practitioners Act to protect on matters of public interest touching on the law.

37. In the same vein, the defendants' contention that the Malawi Law Society, has misread her objectives as provided for under section 26 (1) [read- section 64] of the Legal Education and Legal Practitioners Act by instituting the present action as her conduct is tantamount to interfering with lawfully and properly instituted criminal proceedings under section 83 of the Criminal Procedure and Evidence Code cannot stand. It is the view of this Court that the claimant

has not misread her mandate. Further, the defendants' assertion that the claimant's conduct does not protect nor assist the public as her conduct is tantamount to clogging the criminal justice machinery (which is a public good) when there are readily available alternative remedies to the aggrieved or accused person cannot stand. The claimant is doing what it is mandated to do by statute to protect on matters of law of public interest.

38. Similarly, the defendants' contention is untenable, namely, that the Order for permission to apply for judicial review was wrongly granted by this Court when the accused person could have availed herself and exhausted the available alternative remedies under section 25 of the Courts Act and section 352 of Criminal Procedure and Evidence Code. The reason is that the claimant in the present matter is exercising an important statutory mandate which should not be conflated with the remedies available to Ms. Martha Chizuma personally. The logic behind the exercise of this statutory function lies in the fact that the issues at hand in these proceedings are beyond the personal interests of Ms. Martha Chizuma. As such, this warrants a statutory body with the requisite mandate, namely, the Malawi Law Society to intervene where it feels that a matter of great importance to the nation, to use the words of the defendants, is concerned. The defendants cannot insist that these issues are confined to the personal remit of Ms. Martha Chizuma. The case of the claimant is that the issues in these proceedings are about the legality of how to deal with a Director General of the Anti-Corruption Bureau, who could be anyone other than Ms. Martha Chizuma in the long run.

39. To put the foregoing contention beyond doubt, this Court wishes to point out that there are a number of cases of public legal importance in which the Malawi Law Society has commenced proceedings to similarly vindicate the rule of law even when the supposed aggrieved party has not taken any action personally. Fresh in our memories is the recent case in which the Office of the President and Cabinet wanted to send a Chief Justice and a Justice of Appeal on leave pending retirement in questionable circumstances and it was the Malawi Law Society and others and not the Chief Justice or the Justice of Appeal who went to Court to commence proceedings to interrogate the legal architecture surrounding the important question of exercise of power to send

a head of a branch of Government and the next most senior Justice of Appeal on leave pending retirement. See *The State (On the application of the Human Rights Defenders Coalition and The Association of Magistrates in Malawi and the Malawi Law Society) v The President of the Republic of Malawi and The Secretary to the President and Cabinet (Also styled Chief Secretary to the Government)* Judicial Review case number 33 of 2020 (High Court) (Unreported). This Court would caution that it is dangerous and unlawful to now attempt to restrain the Malawi Law Society from exercising its very critical statutory mandate in this regard by questioning that statutory mandate without any grounds as the defendants seek to do here.

40. The preceding contention similarly applies with equal force to make untenable grounds number vi, vii and viii on this application. By grounds number vi, vii and viii the defendants contend that as follows: the High Court Civil Division has no jurisdiction in form of civil judicial review over such a criminal matter as there are alternative remedies available in the High Court Criminal Division; the claimant; the Malawi Law Society, is acting like a proper surrogate litigant when the actual aggrieved party is competent to challenge the defendants' conduct and has not challenged nor complained in this matter; and, that the issue of interdiction of Ms. Chizuma is a private issue between Ms. Chizuma and her employer, and the proper procedure for remedies is not the institution of judicial review proceedings in the High Court but a proper application in the Industrial Relations Court which has exclusive jurisdiction over employment and labour related matters.
41. Given the exercise of the statutory function by the Malawi Law Society herein, the Malawi Law Society aptly stated on seeking permission to apply for judicial review that the most suitable mode of proceeding with the matter at hand is by way of judicial review as stated above. The Malawi Law Society has no alternative remedy as suggested by the defendants and the alternative remedy argument cannot apply to the Malawi Law Society in the circumstances. While exercising its statutory mandate in the present circumstances, the Malawi Law Society cannot appear in criminal review proceedings before the Criminal Division of the High Court as Ms. Martha Chizuma would. The situation of the Malawi Law Society is unique to its rule

in the statutory scheme. As earlier stated, the issues at hand to do with the Director General of the Anti-Corruption Bureau are not strictly private contractual issues. The issues are regulated by the Corrupt Practices Act and that brings them squarely within public law, that is outside the private law. In the end, in the foregoing premises, grounds number vi, vii and viii on this application are untenable.

42. The last, but not least, ground to be considered on this application is ground number ix, namely, that the Malawi Law Society's action against the defendants was made without a Board Resolution of its members and is therefore contrary to the Supreme Court decision of *Dr. Chaponda and another v Kajolowe and others* MSCA civil appeal number 5 of 2017.

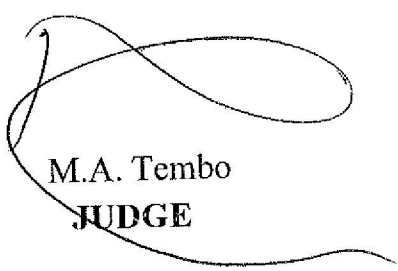
43. This Court agrees with the defendants that indeed the Malawi Law Society delegates its authority to its officers from time to time. The premise from which the defendants proceed is that the officers of the Malawi Law Society herein have no such authority to carry out the mandate of the Law Society to protect on matters of public interest touching on the law. One would expect that it is the membership of the Malawi Law Society that should raise this issue rather than the defendants. In any event, notwithstanding the *Chaponda and another v Kajolowe and another* decision alluded to by the defendants, there is nothing in the Courts (High Court) (Civil Procedure) Rules requiring organizations like the Malawi Law Society to bring evidence of resolutions to so proceed before commencing judicial review proceedings. As such, this Court would wish to hear both parties, including the Malawi Law Society, fully on this aspect at an appropriate time before being persuaded by the argument of the defendants. In the meantime, this Court remains unpersuaded by the force of this ground.

44. Lastly, this Court would reserve its comments on the question of forum shopping and some other issues as they do not form the basis of this application and only appeared in the arguments except to say that the Malawi Law Society lawyers are based in Blantyre and for that reason when this Court exercised its mind to the issue it did not find it untoward that the Malawi Law

Society decided to file this matter in Blantyre which would be more convenient to it as a claimant in the circumstances.

45. In the final analysis, this Court finds that the present application by the defendants lacks merit and it is declined accordingly.

Made in chambers at Blantyre this 8<sup>th</sup> February, 2023.



M.A. Tembo  
**JUDGE**