



THE MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY

JUDICIAL REVIEW CASE NUMBER 32 OF 2019

BETWEEN

THE STATE (on the application of Tengo Rubadiri on his own behalf and on behalf of the dependents and beneficiaries of David Rubadiri, (deceased)).....CLAIMANT

-AND-

DIRECTOR OF NATIONAL PARKS AND WILDLIFE.....DEFENDANT

CORAM: JUSTICE J. N'RIVA
Mr. S. Imaan, of counsel for the Claimants
Mr C Maulidi, of counsel for the Defendant
Mrs Nkangala, Court Clerk

ORDER

Background

The claimant through counsel commenced the present Judicial Review proceeding following a decision made by the defendant. The claimant, through this proceeding, is contesting the decision of the defendant denying him access to the land registered under deed number 77447 situated in Michiru in Blantyre District which is part of David Rubadiri's estate to which the claimant is a beneficiary.

The claimant seeks the following reliefs:

1. A declaration that the defendant's decision denying the claimant to access land registered under deed number 77447 situated in Michiru in Blantyre District which is part of David Rubadiri's estate to which the claimants is a beneficiary is unreasonable, unlawful and unconstitutional.
2. A mandatory order compelling the defendant to rescind its decision.
3. An order quashing the decision.
4. An award of damages for trespass and for punitive damages.
5. An order for costs of the action and that all necessary and consequential directions be given.

Facts

The facts of the case are that the claimant's father David Rubadiri (now deceased) bought from Government of Malawi a land known as Lot 3 of Mulombwa House situated at Michiru mountain on 30th of March 1999 and was duly registered in his name under Deed Number 77447. The conveyance of the land from Malawi Government to the deceased was to convey to him a freehold estate in the said land. When deceased then died intestate on 15th September 2018 the said land according to the law is/was supposed to be inherited by his immediate family. In 2019, the family sent agents to clear the land and value it. However, the said agents were denied access to the land by the officers of Department of National Parks and Wildlife whose Director is the defendant in this present matter.

On 8th October, 2019 after the claimant made enquiries, the office of the Attorney General informed the claimant's counsel that the said land is located inside the protected area of Michiru.

Parties' arguments

The claimant's submission is that the present application was against the decision by the defendant to deny the claimant entry into the land in dispute without giving the claimant a chance to present his side of the story. The claimant submitted that he has a right to lawful and procedurally administrative action justifiable with reasons where his rights, freedoms, legitimate expectations or interests are affected or threatened. Further, the claimant submits that he has a right to be

furnished with reasons, in writing, for administrative action where his rights, freedoms, legitimate expectations or interests are affected. The claimant, therefore, for the reliefs, I have outlined above, on the basis that the decision that was made by the defendant and the process that was used in making that decision was not in compliance with the law. Further, he argues that the said decision was not communicated to all the parties that were affected by the decision. The claimant submitted that the defendant's action is unconstitutional, unlawful, unjustifiable, unfair and unreasonable as it against section 43 of the Constitution.

The defendant does not dispute the fact that the claimant's father acquired the said land which is within the protected area of Michiru Forest Reserve in 1999. However, the defendant submitted that the Government through operation of law adversely possessed the said land as the claimant did nothing on the land since acquiring it.

The defendant submitted that the Government constructed a fence around the land in dispute and that the claimant's rights to the said land ceased when the Government adversely possessed the same. The defendant thus prays that the Court dismisses the present proceedings as they are premature, baseless and misconceived because the claimant has no rights in the said land.

The law on Judicial Review

The starting point is the Courts (High Court) (Civil Procedure) Rules, 2017. Order 19 rule 20 provides for grounds for judicial review:

(1) Judicial review shall cover the review of__

1. a law, an action or a decision of the Government or a public officer for conformity with the Constitution; or
 2. a decision, action or failure to act in relation to the exercise of a public function in order to determine— (i)its lawfulness;
 1. its procedural fairness;
 2. its justification of the reasons provided, if any;
- or

3. bad faith, if any, where a right, freedom, interests or legitimate expectation of the applicant is affected or threatened.

1. A person making an application for judicial review shall have sufficient interest in the matter to which the application relates.

Disposal of the matter

This Court reminds itself that judicial review, as stated in many cases, is aimed at reviewing the decision-making process and not the merits of the decision itself. The purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected, and that it is no part of the judiciary or individual judges but for that of the authority constituted by law to decide the matters in question.¹ A decision of an inferior court or a public authority, may therefore be quashed where the court or authority acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable or where the decision is unreasonable in the “Wednesbury sense.”² The function of the court is to see that lawful authority is not abused by unfair treatment.³

Further, section 43 of the Constitution provides that every person shall have the right to -

- (a) lawful and procedural fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and
- (b) be furnished with reasons in writing for administrative action where his or her rights, freedoms, legitimate expectations or interests if those interests are known.

In the present matter, the claimant's argument is that the defendant did not furnish him with reasons for their decision denying him access to the land in dispute of which the claimant is the beneficiary. The defendant on the other hand argues that

¹ *Charles Joshi v The Commissioner General of Malawi Revenue Authority* Judicial Review no. 10 of 2019

² *Ibid*

³ *Blantyre City Assembly v Kamwamba & 6 Others* [2008] MLR 21

the Government adversely possessed the said land. Since this Court's task in this present matter is to review the decision-making process and not the merits of the decision itself, the Court agrees with the claimant that failure by the defendant to furnish him with justifiable detailed reasons for their refusal to allow the claimant have access to the land in dispute is an affront to administrative justice contrary to Section 43 of the Constitution.

Determination.

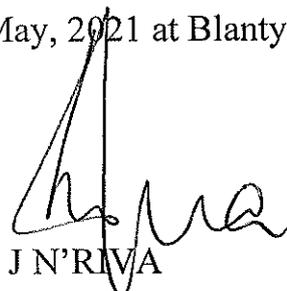
It is, therefore, the finding of this Court that the defendant's failure to furnish the claimant with justifiable detailed reasons for their decision infringed his right to administrative justice as enshrined in Section 43 of the Constitution. The defendant's actions are unconstitutional as they breached the said Section 43 of the Constitution. The decision of the defendant is, therefore, quashed.

On this point, I do not have to consider all the reliefs the claimant sought. I believe that this order materially remedies the claimant's claim.

On damages, since the order is on the decision making process, I believe, the order of damages to trespass is appropriate.

Costs are in the discretion of the Court. I order that each party should bear its own costs.

Made in Chamber, this 27th day of May, 2021 at Blantyre


J N'RIVA
JUDGE