



**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISC CIVIL CAUSE NO 39 OF 2015**

BETWEEN:

THE STATE

AND

CHIEF SECRETARY TO THE GOVERNMENT-----RESPONDENT

EX PARTE: GIDEON NYIRONGO-----APPLICANT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Malera, for the Applicant

Makata, for the Respondent

Mr Itai, Official Interpreter

JUDGMENT

This is the respondent's summons to discharge leave for judicial review and stay order under Order 32 Rule 6 as read with Order 53/1-14/34 of the Rules of the Supreme Court. There is an affidavit in support of the application deponed by Mr Ben Botolo Secretary for Natural Resources, Energy and Mining. There are also attached skeleton arguments in support of the application. In a nutshell, the respondents would like to have leave for judicial review and stay order discharged

on the grounds that the applicant's application is frivolous, vexatious and an abuse of the court process.

In arguing this matter, counsel Makata for the respondent emphasized that the applicant's case is on judicial review of redeployment from the department of energy to planning and policy. Counsel submitted that redeployment in the civil service is common and what matters is that an officer is redeployed to a relevant department. I have noted that what counsel has submitted herein is exactly is contained in the affidavit of Mr Ben Botolo.

In response to this submission, counsel for the applicant Mr Ian Malera argued that the decision being challenged here is that of the Chief Secretary and it was therefore very strange that Mr Ben Botolo the Secretary to for Natural resources, Energy and Mining was the deponent. Counsel Malera further submitted that the current application did not address the core issues as put in the application for leave for judicial review which application had satisfied the court to order for judicial review. Counsel referred to several issues which were not addressed by this application such as the relationship between the applicant and Mr Ben Botolo and also the issue of the applicant being a member of the Economic Planning Common Service and that the Principal Secretary Economic Planning being the in-charge. The other issue is whether the Principal Secretary Energy has the authority without the involvement of the Principal secretary Economic Planning is in order, or whether the Chief Secretary has the authority.

In response to this, counsel for the respondent submitted that Mr Ben Botolo had the authority to swear the affidavit in his capacity as Principal Secretary Energy. With regards to the affidavit in support of the application for judicial review,

counsel Makata submitted that the allegations in that affidavit do not take away the fact that in the civil service, redeployments are common and are part of the engagement. The controlling officer does not require to give reasons for redeployment. On the issue of bad blood between the applicant and the Principal Secretary Energy, counsel submitted that the decision to redeploy was not made by Mr Ben Botolo.

Having listened to both parties and having gone through the skeleton arguments submitted by both parties, I make the following findings and order as follows:

1. I see nothing wrong in Mr Ben Botolo being the deponent. Government Ministries/Departments operate like an orchestra. It is therefore not strange for the Principal Secretary Energy to swear this affidavit although the decision in issue is that of the Chief Secretary. It should also not be forgotten that the recommendation to have the applicant redeployed had originated from the office of the Principal Secretary Energy. Therefore it does not come as a strange thing that Mr Ben Botolo has the facts at his fingertips hence him being paraded as the deponent.
2. I do agree with counsel for the respondent that in the Malawi Civil Service, redeployments are the order of the day. I however totally disagree with counsel that controlling officers can redeploy as it pleases them. The Republic Constitution in Section 43 which deals with Administrative Justice, has entrenched natural justice fundamentals. The applicant is therefore bringing this matter within the purview of this section.

3. I note that in his application for judicial review, the applicant is actually challenging whether the respondent could re-assign the applicant duties of Director of Policy and Planning based on the claims made by the Secretary for Natural Resources Energy and Mining before according the applicant a fair opportunity to give his side of the story. This is clear manifestation here that the issue of procedural fairness as provided for in Section 43 of the Constitution is in issue.
4. Therefore to say that this application for judicial review is frivolous, vexatious and an abuse of the process is unfortunate.
5. I therefore dismiss the respondent's summons to discharge leave for judicial review and stay order with costs.

MADE THIS DAY OF JUNE 2015 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE