



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

JUDICIAL REVIEW CASE NUMBER 11 OF 2018

BETWEEN:

**THE STATE (On application of
SIMEON VITO ROSS LUNDU)
AND**

CLAIMANT

SENIOR CHIEF MALEMIA

1st DEFENDANT

GROUP VILLAGE HEADMAN MBETA

2nd DEFENDANT

PAUL SUMANA

3rd DEFENDANT

DISTRICT COMMISSIONER NSANJE

4th DEFENDANT

CORAM: JUSTICE M.A. TEMBO

Sitolo, Counsel for the Claimant
Kapoto, Counsel for the Defendants
Mankhambera, Official Court Interpreter

ORDER

This is the order of this Court on the defendant's objection against the hearing of the claimant's application for judicial review on the ground that the application is time barred having been made three months after the decision complained against.

the concerned Lundu Village Headman and royal family is unfair, deceitful, wrongful and unlawful and was done without thorough and proper consultation with the Lundu royal family and current Village Headman Lundu.

- b. A declaration stopping the splitting of the current Lundu Village until the matter is determined or an amicable settlement is reached in liason with the Lundu royal family.
- c. An order stopping the 1st defendant from installing Mr Paul Sumana as Village Headman for Lundu 1 village, and assuming and using the name and title of Lundu 1 for the proposed new village.

The claimant then indicated the facts as grounds for seeking the relief herein.

This Court will deal with the defendants' objections first.

The first objection is that the application for judicial review was commenced more than three months after the impugned decision and that this is contrary to Order 19 rule 20 (5) of the Courts (High Court) (Civil Procedure) Rules which provides that an application for judicial review shall be filed promptly and not later than three months.

The claimant applied for permission to apply for judicial review on 16th April 2018 in relation to the impugned decision of September 2017.

The defendants pointed out that the filing of an application of judicial review must in the first place be prompt and that such promptness depends on the circumstances of the case. And that the three months period is the maximum. See *The State v Malawi Revenue Authority ex parte Merman and others* Judicial review case number 44 of 2014 (High Court) (unreported).

The defendants then noted that, of course, the court has power to extend that time in line with Order 19 rule 20 (6) of the Courts (High Court) (Civil Procedure) Rules.

The defendant submitted further that the court will consider whether the granting of the extension of time to apply for permission will cause substantial hardship or prejudice not only to the parties but to the wider public and whether it will be detrimental to good administration. See *The State v Malawi Revenue Authority ex parte Merman and others*.

The claimant then referred to the case of *R v University College of London, ex parte Ursula Riniker* [1995] ALL ER 213, 215 in which it was said that discretion to extend time will be exercised if a claimant has not slept on his rights but has pursued them by other legitimate means and that no prejudice or hardship will be occasioned to other parties by reason of such extension of time. He also referred to *R v Dairy Produce Quota Tribunal, ex parte Carswell* [1990] 2 AC 738.

He reiterated that the delay on his part in commencing judicial review proceedings is understandable in the circumstances of this case and it cannot be said that he did not act promptly.

This Court has examined the circumstances in this matter. It agrees with the claimant that he did not just sit on his rights but commenced an ordinary action to vindicate his rights. The only problem was that he used the wrong procedure and his ordinary action was dismissed. It is only then that he commenced the present judicial review proceedings.

This Court has considered the time that has elapsed since the ordinary action and the commencement of the present proceedings soon after the ordinary action was dismissed in March 2018 and has concluded that an extension of time would be appropriate to allow the claimant's judicial review proceedings out of the three months' period stipulated by the Rules.

This Court has considered whether the granting of the extension of time to apply for permission will cause substantial hardship or prejudice not only to the parties but to the wider public and whether it will be detrimental to good administration.

This Court has found that no substantial hardship or prejudice to the parties or to the wider public will be caused. And further that it will not be detrimental to good administration if the impugned decisions are reviewed.

This is not only because the impact of the impugned decision is important to the claimant and the community concerned but also because there is no proof offered by the defendants to point to the fact that substantial hardship or prejudice will be occasioned to the parties or the wider public by the judicial review herein.

The objection to the proceedings herein for having been commenced out of time is therefore not sustained. And time for applying for permission to apply for judicial

the claimant is Acting Village Headman and Lundu 1 Village for which the 3rd defendant was installed as Village Headman.

This Court bears in mind that the splitting of the Lundu Village into two was as a result of the conflicts between the claimant's clan and that of the 3rd defendant over succession to the office of Village Headman Lundu. And that previously both clans ascended to the office of Village Headman Lundu.

There is also evidence from the Senior Chief, which evidence is denied by the claimant, that the two clans herein proposed the splitting of the Lundu village into two as a result of the conflict over succession. Of course, the claimant has narrated a long story disputing the allegation that the Lundu Village split was proposed by the disputing clans themselves.

The claimant is concerned that his office of Village Headman Lundu is being diluted by the splitting of the Lundu Village and particularly because the Senior Chief communicated to the District Commissioner that the 3rd defendant is installed as Village Headman Lundu 1 as a result of the demise of the previous Village Headman Lundu. Hence his prayer for the injunction.

This Court is aware of the principles that govern the granting of interlocutory injunctions as submitted by both parties on this matter.

This Court will grant an interlocutory injunction where the claimant discloses a good arguable claim to the right he seeks to protect.

This court will not try to determine the issues on sworn statements but it will be enough if the plaintiff shows that there is a serious question to be tried. See Order 10 rule 27 (a) Courts (High Court) (Civil Procedure) Rules 2017.

The result is that the court is required to investigate the merits to a limited extent only. All that needs to be shown is that the claimant's cause of action has substance and reality. Beyond that, it does not matter if the claimant's chance of winning is 90 per cent or 20 per cent. See *Mothercare Ltd v Robson Books Ltd* [1979] FSR 466 per Megarry V-C at p. 474; *Alfred Dunhill Ltd v Sunoptic SA* [1979] FSR 337 per Megaw LJ at p. 373.

This Court observes that this matter concerns an office and privileges attendant to that office of Village Headman.

Damages would therefore not be an adequate remedy to either the claimant if the injunction is wrongly refused or to the defendants if the injunction is wrongly granted.

Since damages are not an adequate remedy in the circumstances, the last issue for consideration is whether granting the order of interlocutory injunction herein would be just. See Order 10 rule 27 (c) Courts (High Court) (Civil Procedure) Rules 2017.

On this aspect, this Court observes that the claimant might insist correctly that he is entitled to protect the office of Village Headman Lundu as originally constituted before the splitting of the said office into two, namely, Lundu Village and Lundu 1 Village.

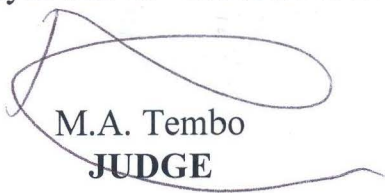
However, the Senior Chief has stated that the reason leading up to the splitting of the village was to avert the conflicts and hostility that developed between the two clans. In the determination of the Senior Chief it was vital that he exercise his statutory powers under the Chiefs Act to appoint another Village Headman to avert the hostilities herein.

Faced with the two contrasting positions, this Court is of the view that it would not be just to grant the injunction at this point. This is particularly true given the high likelihood that there were hostilities.

In which case, the only lawful way of averting the hostilities appears to be the splitting of the villages. Grave injustice will be done if these facts are ignored and the claimant is imposed on the 3rd defendant's clan and hostilities escalate to unmanageable levels.

The application for injunction is accordingly declined with costs. A scheduling conference shall be had soonest on a date to be fixed by this Court.

Made in chambers at Blantyre this 13th November 2018.



M.A. Tembo
JUDGE

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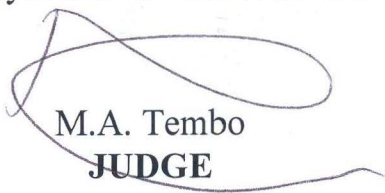
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