



**IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
MISCELLANEOUS CIVIL CAUSE NO. 4 OF 2015**

BETWEEN

THE STATE

VS

**THE MINISTRY OF EDUCATION,
SCIENCE AND TECHNOLOGY.....RESPONDENT**

EX PARTE:

**ELSIE JEKE & OTHER CONCERNED RURAL
PRIMARY SCHOOL TEACHERS IN
MACHINGA AND BALAKA DISTRICTS.....APPLICANTS**

CORAM: HON. JUSTICE RE KAPINDU

- : Prof. Nkhata, Counsel for the Applicants**
- : Mr. Mandala, Counsel for the Applicants**
- : Ms. Mwafulirwa, Counsel for the Respondent**
- : Mrs. L. Mboga, Court Reporter**
- : A. Nkhwazi, Official Interpreter**

JUDGMENT

Kapindu, J

1. INTRODUCTION

- 1.1 This is the Court's final decision on the application for judicial review brought by the Applicants herein. The Application was brought in terms of Order 53 of the Rules of the Supreme Court.

- 1.2 The Applicants are challenging the decision of the Ministry Responsible for Education, Science and Technology to refuse, neglect or ignore to implement the Rural Teachers' Hardship Allowance payable to the applicants despite the fact that the applicants fall within the eligibility criteria.

- 1.3 The also challenge the decision of the District Education Manager for Machings, directing the posting, with immediate effect, of Elsie Jeke and Golden Makunganya from Machinga LEA to Milala Primary School.
- 1.4 The Applicants therefore seek:
- (a) A like Order to that of Mandamus compelling the Respondent to immediately and forthwith implement the payment of the hardship allowance to the applicants;
 - (b) A declaration that the decision of the District Education Manager for Machinga to post with immediate effect, Elsie Jeke and Golden Makunganya from Machinga LEA to Milala Primary School is illegal.
 - (c) An Order that damages payable to the Applicant be assessed;
 - (d) An Order for costs.
- 1.5 The matter herein was commenced by Elsi Jeke on her own behalf and on behalf of other concerned rural primary school teachers at St. Theresa Primary School, Liwonder LEA School, Ferry Primary School and Machinga LEA School all in Machinga District; and at M'manga Primary School in Balaka District. The Full list of the concerned teachers was exhibited to the affidavit in support of the application and marked as Exhibit "CT1".
- 1.6 The Applicants aver that in or about June 2010, the Respondent introduced a rural teachers hardship allowance aimed at motivating teachers in rural areas of the country. The state that at a meeting held on 16 June 2010, held at the Malawi Institute of Management (MIM) in Lilongwe, the parameters to be used in defining what a rural area would be for the purpose of the implementation of the hardship allowance were drawn and agreed. They state that such parameters include the lack of, if not all, of the following basic amenities: running water, rental houses for teachers, good access roads and transportation system, and health facilities.
- 1.7 The Applicants state that the Respondent have never disputed that the applicants' areas lack most of these amenities hence they are eligible to receive the hardship allowance.
- 1.8 The Applicants state that soon thereafter, the scheme was rolled out but that payments started in August 2010. They state that it was however no until February 2011 that teachers from Machinga LEA School were paid the allowances. The Applicants further state, though, that the teachers at Machinga LEA School have never been paid again since then. They proceed to state that teachers at other schools concerned,


such as St Theresa, Liwonde LEA, Ferry and M'manga primary schools have never received any hardship allowance since the rolling out of the scheme.

- 1.9 Counsel Prof. Nkhata graphically painted a picture of the unreasonableness and arbitrariness of the policy by pointing out that at Liwonde for instance, there are school on the one side of the Kamuzu Barrage where teachers were being paid hardship allowance whilst those on the other side of the Barrage were not being paid. He submitted that the policy in this regard was unreasonable, arbitrary and discriminatory.
- 1.10 The Applicants state that they have engaged the respondent at various levels on numerous occasions but to no avail. They went as far as taking industrial action after following various preliminary procedural steps in that regard.
- 1.11 The Applicants state that by a letter dated 9th July 2014, the Respondent informed the applicants that the Respondent were re-examining the whole issue of hardship allowances and that a decision on the matter would be made shortly. The Applicants state however, that to date, the Respondent have not yet communicated that decision to them. After a while, the Applicants ended their industrial action, but with their concerns unresolved. They state that their legal counsel has advised them that from the representations made by the Director of Basic Education, it is clear that continuing to engage with the responsible ministry on the implementation of the hardship allowance for them is an exercise in futility; hence these proceedings.
- 1.12 The Applicants have also averred that the posting of the 1st Applicant and Mr. Makunganya was clearly because these two were leaders in discussions with the Respondent on the implementation of the hardship allowance for the teachers in the various schools herein.
- 1.13 After full hearing and listening to the representations made by Counsel Prof. Nkhata on behalf of the applicants, Counsel for the Respondent, Ms. Mwafulirwa, was unequivocal at the end in admitting that there are indeed some unreasonable and discriminatory aspects of the criteria for payment of the hardship allowance to teachers in rural areas. She stated that the Respondent is aware of these anomalies and that the criteria is currently under review. Thus, in the end, Counsel Mwafulirwa conceded to the Applicants' claims in toto. She further added that the respondent's decision to concede was informed by the earlier decision of this Court in the case of **The State v Ministry of Education, Science**

and Technology, Ex Parte Charles Tamimu & Other Concerned Rural Primary School Teachers in Machinga District, Miscellaneous Civil Cause No. 12 of 2011 (HC, ZA) where the applicants challenged by way of judicial review the decision of the Respondent (exactly the same Respondent as in the instant matter) to refuse or neglect or ignore to implement Rural Teachers' Hardship Allowances, payable to the Applicants in that case despite the Applicants falling within the eligibility criteria followed for awarding the allowances which had been introduced by the Respondent Ministry as a way of motivating teachers who work in the rural areas of the country.

- 1.14 Counsel Mwafulirwa stated that that case was on all fours with the instant case and it was firmly decided in the Applicants' favour.
- 1.15 In view of the concession by the Respondent, this Court therefore enters judgment in favour of the Applicants and grants all the reliefs sought by the Applicants.
- 1.16 Even if Counsel for the Respondent had not conceded, this Court would still have found that, based on the facts placed before this Court and the arguments advanced by the Applicants through their Counsel; the policy was indeed unreasonable, arbitrary and discriminatory in its implementation; and therefore also unlawful.
- 1.17 Judgment is for the Applicants and all reliefs sought are hereby granted.
- 1.18 Costs are awarded to the Applicants.

Made in Open Court this 6th Day of January 2017



RE Kapindu, PhD
JUDGE