



IN THE HIGH COURT OF MALAWI  
CIVIL DIVISION  
PRINCIPAL REGISTRY  
JUDICIAL REVIEW CASE NO. 15 OF 2021  
(Before Justice Rachel Sophie Sikwese)

BETWEEN:

STATE, THE, (ON APPLICATION OF MIKE SAMBAKUNSI).....APPLICANT

AND

COUNCIL OF THE UNIVERSITY OF MALAWI.....RESPONDENT

CORAM

HON. JUSTICE RACHEL SOPHIE SIKWESE

Messrs Golden & Law; Counsel for the Applicant

Counsel for the Respondent

Mithi; Official interpreter

ORDER ON AN EX PARTE APPLICATION FOR PERMISSION TO APPLY FOR  
JUDICIAL REVIEW

Under Order 19 Rule 20 (3) of Courts (High Court) (Civil Procedure) Rules 2017

SIKWESE J

Background

1. On 1 April 2021, the Applicant filed this ex parte motion seeking leave to apply for judicial review of the Respondent's decision contained in a letter of 10<sup>th</sup> March 2021 terminating his

employment on the ground that the subject of a disciplinary hearing was based on a wrong premise that he was employed as a Staff Associate and/or that his employment was subsisting as an Assistant Lecturer and yet he was employed as Lecturer since he holds a professional qualification which is equivalent to a Masters' Degree.

### Considerations

2. Leave for judicial review shall be granted, if on the material before the Court, it appears that, without going into the matter in depth, there is an arguable case for granting the relief claimed by the Applicant. The requirement that leave must be obtained is to enable the Court to sieve out what might turn out to be frivolous or misconceived claims, *Malawi Revenue Authority v Kivuyo*<sup>1</sup>.
3. The issue at this stage in the proceedings is therefore not to determine the matter on the merits but rather to decide whether a *prima facie* case has been made out requiring the Court to order the matter to go for further investigation at a judicial review hearing.
4. Pursuant to Order 19 Rule 20 (1)(b) and (c), at a judicial review hearing the Court is required to review a decision of the Government or a public officer for conformity with the Constitution or a decision, action or failure to act in relation to the exercise of a public function in order to determine its lawfulness, its procedural fairness, its justification of the reasons provided, if any; or bad faith, if any, where a right, freedom, interests or legitimate expectation of the Applicant is affected or threatened.
5. Based on this requirement, the role of the Court at this stage is to determine whether the Applicant has disclosed on the papers a case that shows on the face of it that a decision of the Respondent is not in conformity with the Constitution, is unlawful, procedurally unfair, unjustified or in bad faith.
6. It is also the duty of this Court to determine at this stage in the proceedings whether it has competence/ jurisdiction in accordance with the Constitution and other relevant laws and jurisprudence to handle the matter.
7. This is a labour matter concerning termination of employment. The parties are a staff member of the Malawi Polytechnic and the Council of the University of Malawi.

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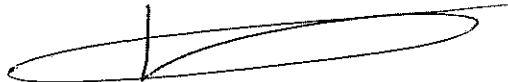
<sup>1</sup> High Court, Revenue Cause Number 1 of 2017 (unreported)

8. Pursuant to section 110(2) of the Constitution, the Industrial Relations Court, subordinate to the High Court, shall have original jurisdiction over labour disputes and such other issues relating to employment.
9. Under section 110(4) of the Constitution, appeals from subordinate courts shall lie to the High Court, unless provided in the Constitution or by an Act of Parliament.
10. The effect of these provisions on this application is that the matter shall be determined by the Industrial Relations Court, as a court of first instance with specialised original jurisdiction over labour matters. The High Court shall have competence to handle the matter as an appellate court.
11. The Claimant has not provided any exception to these Constitutional provisions that allow him to lodge his claim and in particular file a motion in this Court when he ought to bring the action in the subordinate court aforementioned.
12. In the absence of any justification in law for filing this application in the High Court instead of the Industrial Relations Court, the application must be denied, see, *State (the) (Hiwa) v Office of the President and Cabinet and Secretary to the President and Cabinet* (Judicial review cause number 42 of 2020 (unreported) (High Court)).

#### ORDER

13. The application for permission to apply for Judicial Review is denied.

Made this 6<sup>th</sup> day of April 2021 at **High Court (Civil Division) Blantyre.**



Rachel Sophie Sikwese

**JUDGE**