



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
MZUZU DISTRICT REGISTRY  
CIVIL DIVISION  
JUDICIAL REVIEW CAUSE NO. 5 OF 2021  
BEFORE HONOURABLE JUSTICE KONDOWE  
BETWEEN

THE STATE  
(ON APPLICATION OF FLATLAND TIMBERS LIMITED) .....CLAIMANT

- AND -

DEPARTMENT OF FORESTRY (DIRECTOR OF FORESTRY) .....DEFENDANT

**CORAM: HONOURABLE JUSTICE MAUREEN KONDOWE**  
DIKIYA, COUNSEL FOR THE CLAIMANT  
CHISIZA, COUNSEL FOR THE DEFENDANT  
MR B. MANDA, OFFICIAL INTERPRETER

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**RULING**

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**1. BACKGROUND TO THIS APPLICATION**

1.1 The Claimant filed an application for permission to apply for judicial review and stay of decision without notice. The application is made under Order 10 rule 1 and Order 19 Rule 20 of the Courts (High Court) (Civil Procedure) Rules, 2017 (“the 2017 Rules”). Through this application the Claimant sought permission to apply for judicial review and stay of the decision of the Defendant, its servants, its officers and/or agents made on an unstated date allegedly in January 2021 through which they allegedly stopped, prohibited and prevented it from harvesting and sawing timber. This court directed that the application would be heard interpartes.

1.2 Through this application the Claimant sought the following reliefs:

- a) A declaration or order that the Defendant's decision is an alleged violation of the Claimant's right to be heard;
- b) A declaration or order that the decision allegedly violates the Claimant's constitutional right under section 43, particularly its right to be given reasons in writing for the decision made against it;
- c) A declaration that the decision violates the Claimant's legitimate expectations;
- d) A declaration or order setting aside the decision for being unreasonable in the Wednesbury sense and/or being an arbitrary deprivation of its property;
- e) An order setting aside the decision for being *ultra vires*;
- f) A like order of *certiorari* quashing the decision of the Defendant;
- g) An interim order staying the Defendant's decision;
- h) Further or other relief as the court may deem necessary;
- i) An order of costs on an indemnity basis; and
- j) An order that all necessary and consequential directions must be given.

1.3 The Claimant filed a sworn statement verifying the facts on which it relied in support of its application for permission to apply for judicial review and for an order of stay of the decision of the Defendant. This sworn statement was sworn by the Operations Director of the Claimant.

1.4 The Claimant also filed skeleton arguments dated 5<sup>th</sup> February, 2021. Those filed by the Defendant are dated 30<sup>th</sup> March 2021.

1.5 The notice of application for permission to apply for judicial review and an order of stay of the decision of the Defendant has a Factual Background.

1.5.1 Paragraph 5.1.1 of the factual background to this matter states that the Claimant is a limited company whose main line of business is importing, exporting and/or supplying timber, furniture and other wood products.

1.5.2 Paragraph 5.2.1 of the factual background states that the Defendant is a Department and/or Head of Department within the Government of Malawi.

1.5.3 Paragraph 5.2.2 of the factual background states that the Defendant is among others responsible for guiding, planning, coordinating, facilitating and promoting active participation of all stakeholders in the sustainable development and utilization of

forest resources, goods and services for social-economic development in this country.

- 1.5.4 Paragraph 5.3.1 of the part entitled the cause of action states that in January 2020, the Defendant granted the Claimant a Special Licence to harvest and saw timber valid for 12 months.
- 1.5.5 Paragraph 5.3.2 of the part entitled the cause of action states that the Defendant paid to harvest and saw timber on two compartments named N109 Aid and N109 Aiic.
- 1.5.6 Paragraph 5.3.3 of the part entitled the cause of action states that the conditions of the licence and/or past conduct were that the money paid was for the specific quantity of timber on the two compartments.
- 1.5.7 Paragraph 5.3.4 of the part entitled the cause of action states that on 31<sup>st</sup> October 2020 the Claimant requested the Defendant to renew its licence with effect from January 2021. This was allegedly due to the COVID 19 pandemic which made it impossible for the Claimant to harvest all the timber it paid for. Its operations allegedly either stopped or were massively scaled down both locally and internationally.
- 1.5.8 Paragraph 5.3.5 of the part entitled the cause of action states that despite express assurances from the Defendant that the licence would be renewed the Defendant allegedly sent Forest Rangers and/or its officers/agents onto the two compartments.
- 1.5.9 Paragraph 5.3.6 of the part entitled the cause of action states that the Defendant and/or its officers/agents forcefully stopped the operations of the Claimant and ordered it to leave the compartments.
- 1.5.10 Paragraph 5.3.8 of the part entitled the cause of action states that despite pleas and requests for amicable settlement or resolution of this matter the Defendant adamantly evicted the Claimant from the compartments.
- 1.5.11 Paragraph 5.3.9 of the part entitled the cause of action states that no hearing or reasons in writing for the decision the Defendant made were given to the Claimant.

## **2 ALLEGATIONS IN THE SWORN STATEMENT VERIFYING THE FACTS RELIED ON TO SUPPORT THE APPLICATION FOR PERMISSION TO MOVE FOR JUDICIAL REVIEW**

The sworn statement confirmed the facts contained in the factual background as alleged.

### **3 OPPOSING SWORN STATEMENT ALLEGATIONS**

3.1 The Defendant appeared online briefly during the online hearing of this application due to challenges it had with its internet connectivity. The Defendant filed an opposing sworn statement to this application sworn by Custom Nkhamoza Nyirenda, the Chief Plantations Officer and Plantation Manager for Viphya Plantations Division of the Department of Forestry. Through this opposing sworn statement the Defendant stated the following matters:

- 3.1.1 The Claimant has not disclosed material facts for this court to determine this application;
- 3.1.2 The Claimant made an application for a Licence and not a Special Licence by letter dated 2<sup>nd</sup> May 2019;
- 3.1.3 For reasons that are currently unknown the Defendant granted the Claimant a Special Licence for one year for the duration 6<sup>th</sup> January to 31<sup>st</sup> December 2020 to harvest and saw timber at the Viphya Plantations of the Chikangawa Forest Reserve;
- 3.1.4 A one-year licence holder must complete all operations and leave the forest within this agreed period;
- 3.1.5 Procedurally a harvesting area (compartment) is allocated to a licensee. An invoice is then raised which a licensee must pay and settle before harvesting begins;
- 3.1.6 The Claimant was allocated compartments from which it harvested timber in 2020, the year it held a licence to do so;
- 3.1.7 The Defendant has a harvesting calendar. Through the calendar the Tree Harvesting Licensing Season normally operates between May and October;
- 3.1.8 No one is allowed to harvest trees between October and May unless they hold a Special Licence. The Claimant was allowed to harvest and saw timber between October and May under the Special Licence it had. This was so despite that it was not entitled to it. A Special Licence is for concessionaires and operators who sign Forest Management Agreements in line with departmental practice;

- 3.1.9 The Claimant started harvesting and sawing timber from 2019. It did so early this year too. It harvested and sawed more than 30, 000 planks with respect to which the Defendant issued Conveyance Certificates for the duration between September 2019 and February 2021. The Conveyance Certificates allowed the Claimant to transport the planks after it harvested and sawed them in the two compartments it was allocated;
- 3.1.10 The Claimant made an application for renewal of the Special Licence. In its response to this application the Defendant gave the Claimant a 2 months licence as a special consideration. The Claimant was given the reasons for this decision in writing;
- 3.1.11 The Claimant rejected this 2 months licence and insisted on being given a one-year licence;
- 3.1.12 The Defendant responded with written reasons in acknowledgement of the Claimant's rejection of the two months licence.
- 3.1.13 The above-mentioned rejection meant that the parties failed to agree on how the plea by the Claimant for a one-year licence during a closed season for harvesting and sawing timber could best be dealt with. The initial licence the Claimant got granted expired. For this reason there was no contract between these parties. This was what prompted the Defendant to evict the Claimant from the two compartments.
- 3.1.14 The Claimant subsequently threatened to commence a legal action against the Defendant for an alleged refund of the charges for harvesting and sawing that it paid. The application for permission to apply for judicial review was served on the Defendant prior to it responding to the threatening letter it received from the Claimant.
- 3.1.15 The Defendant denies the allegation that it made assurances to the Claimant about the renewal of its licence. The Defendant is a Government Department whose communication is written.
- 3.2 The Claimant filed a sworn statement in reply to the sworn statement in opposition the Defendant filed. Through its sworn statement in reply the Claimant alleged the following matters:
- a) It only began harvesting and sawing timber in September 2020;

- b) Some Conveyance Certificates the Defendant issued to it expired before being used. This was allegedly due to some unspecified COVID-19 challenges the Claimant faced;
- c) Some Conveyance Certificates were used by it to transport planks it allegedly bought from some other alleged suppliers in Mzuzu to finalize its alleged unfinished contracts;
- d) It allegedly only harvested roughly three quarters of one compartment described as N109A IIC Saligna of total area + 39.96 hectares;
- e) It had allegedly not yet started harvesting or sawing compartment N109A IId of an alleged total area of 10.08 hectares;
- f) It allegedly paid fees to the Defendant for standing trees, area and volume for each compartment. These fees were allegedly not based on the timber transported.

#### **4 THE EVIDENCE**

4.1 Through its facts verifying sworn statement the Claimant produced and exhibited the Defendant's invoice B No. 076088 dated 11<sup>th</sup> December 2019, an ineligible copy of the expired Special Licence to Harvest and Saw Timber dated 6<sup>th</sup> January 2020 whose conditions of issue were stated to be overleaf but were not copied by it, the Defendant's General Receipt J No. 7614034 dated 14<sup>th</sup> January 2020, the Defendant's General Receipt J No. 6722948 dated 30<sup>th</sup> June 2020 and letter dated 29<sup>th</sup> October 2020 from the Claimant to the Defendant.

4.2 In its opposing sworn statement to the application for permission to apply for judicial review and to stay its decision, the Defendant produced and exhibited copies of a letter dated 2<sup>nd</sup> May 2019 from the Claimant to the Defendant, particulars of the Conveyance Certificates the Defendant issued to the Claimant between 27<sup>th</sup> September 2019 and 8<sup>th</sup> February 2021, the Claimant's expired Special Licence to Harvest and Saw Timber dated 6<sup>th</sup> January 2020 with its legible conditions of issue overleaf, letter dated 4<sup>th</sup> February 2021 from the Defendant to the Claimant, letter dated 11<sup>th</sup> February 2021 from the Claimant to the Defendant, letter dated 23<sup>rd</sup> February 2021 from the Defendant to the Claimant and letter dated 24<sup>th</sup> February 2021 from the Claimant to the Defendant.

#### **5 THE LAW ON JUDICIAL REVIEW**

5.1 Section 108 (2) of the 1994 Constitution of the Republic of Malawi ("the Constitution") gives the High Court original jurisdiction to review any law and any action or decision of the Government, for conformity with it.

5.2 Order 19 of the 2017 Rules deals with particular proceedings. Judicial review is dealt with in Order 19 rule 20 (1) of these rules which states that judicial review covers the review of:

- a) A law, an action or a decision of the Government or a public officer for conformity with the Constitution; or
- b) A decision, action or failure to act in relation to the exercise of a public function in order to determine– (i) its lawfulness; (ii) its procedural fairness; (iii) its justification of the reasons given, if any; or (iv) bad faith if any, where a right, freedom, interests or legitimate expectations of the applicant are affected or threatened.

5.3 Order 19 rule 20 (2) of the 2017 Rules states that an applicant for judicial review must have sufficient interest in the matter to which the application relates.

5.4 Order 19 rule 20 (3) of the 2017 Rules states that an application for judicial review can be commenced *ex parte* with the permission of the court.

5.5 Order 19 rule 20 (5) of the 2017 Rules states that an application for judicial review must be filed promptly within three months of the decision an applicant urges a court to review.

5.6 Order 19 rule 23 (1) of the 2017 Rules states that an application for judicial review must specify the grounds on which it is made and must be supported by a sworn statement.

5.7 Order 19 rule 23 (2) (c) of the 2017 Rules states that an application for judicial review must name as a Defendant for an order about a decision, the person who made the decision.

5.8 Order 19 rule 23 (3) (a) of the 2017 Rules states that an application for judicial review must be served on a Defendant within 28 days from the day of its filing.

## **6 THE LAW ON LEGITIMATE EXPECTATIONS**

6.1 Section 43(a) of the Constitution states that every person has a right to lawful and procedurally-fair administrative action which is justifiable in relation to reasons given where rights, freedoms, legitimate expectations or interests are affected or threatened. Section 43(b) of the Constitution states that every person has a right to be furnished with reasons in writing for administrative action where rights, freedoms, legitimate expectations or interests are affected or threatened.

6.2 Order 19 rule 20 (1) of the 2017 Rules is clear that where legitimate expectations are affected or threatened judicial review of a decision, action or failure to act in relation to the exercise of a public function comes to the aid of a claimant. This is so to determine the lawfulness, procedural fairness, justified reasons for a decision a decision maker made or to see if there was any bad faith on the part of the decision maker in arriving at the decision.

6.3 In the case of **The State (On Application of Jamison Chakuma & 16 Others) v Judicial Service Commission Judicial Review Case No. 22 of 2018** the High Court stressed that legitimate expectations arise where a decision maker leads a person affected by any decision to legitimately expect that a specified procedure will be followed in reaching a decision or that a generally favourable decision will be made. A decision can be quashed if a court finds that the legitimate expectations of a claimant have been unlawfully frustrated.

## **7 THE LAW ON THE STAY OF THE DECISION OF THE DEFENDANT**

7.1 The Claimant brought its application pursuant to Order 10 rule 1 and Order 19 rule 20 of the 2017 Rules. The latter order specifically deals with applications for judicial review as confirmed in sub-paragraphs 5.2 through 5.8 of this ruling.

7.2 The application the Claimant brought does not state the authority of law on the basis of which the prayer for an order of stay of the decision of the Defendant is made before this court. However, paragraph 3.7 of the skeleton arguments the Claimant filed alleges that the Claimant seeks an automatic stay of the decision pursuant to Order 19 Part III rule 20 of unspecified law(s).

7.3 The law on stay of a decision as it relates to applications for permission to apply for judicial review is best understood by reference to its other legal status. Order 53 rule 10(a) of the Rules of the Supreme Court stated that where leave to apply for judicial review is granted then if the relief sought is an order of prohibition ... and the court so directs the grant operated as a stay of the proceedings to which the application related until the determination of the application or until the court ordered otherwise. In the case of **The State v Malawi National Examination Board ex parte Mawila Private Secondary School Civil Cause No. 22 of 2008** the applicant sought the interim relief of an order of stay of the decision of the respondent to de-register it as an Examination Centre and directing it to re-register as such pending the



determination of the substantive application. The High Court quoted Order 53/14 /7 of the Rules of the Supreme Court which provided as follows:

“It is possible to apply for an interim relief e.g. a stay pending the hearing of an application for judicial review (Order 53 rule 3 (10) (a).”

The clear and straight -forward position of the law on stay of a decision in judicial review proceedings as articulated under Order 53 of the Rules of the Supreme Court quoted above must be examined against what the law is under Order 19 rules 20 (1) through Order 19 rule 25 of the 2017 Rules. Nowhere in Order 19 rules 20 (1) through rule 25 of the 2017 Rules is any reference made to the right of a Claimant to seek an order to stay a decision of a Defendant.

## **8 OTHER LAWS OF RELEVANCE TO THIS APPLICATION**

8.1 Section 4 of the Forestry Act Cap. 63:01 of the Laws of Malawi states that the Director of Forestry is an officer in public service.

8.2 Section 3 (1) of the Civil Procedure (Suits by or against the Government or Public Officers) Act Cap. 6:01 of the Laws of Malawi states that save as may otherwise expressly be provided by any Act, suits by or against the Government shall be instituted by or against the Attorney General. Section 3 (3) of this Act states that all documents which in a suit of the same nature between private parties would be required to be served on the Defendant shall be delivered at the office of the Attorney General or **other person authorized to act on behalf of the Government in respect of such judicial proceedings.**

8.3 Section 4 of the Civil Procedure (Suits by or against the Government or Public Officers) Act states that no suit shall be instituted against the Government, or against a public officer in respect of any act done in pursuance, or execution, or intended execution of any Act or other law, or of any public duty or authority, until the expiration of three months next after notice in writing has been, in the case of the Government, delivered to or left at the office of the Attorney General and in the case of a public officer, delivered to them at their office, stating the cause of action, the name, description and place of residence of the claimant and the relief they claim.

8.4 Order 34 rule 1 of the 2017 Rules states that **subject to the Civil Procedure (Suits by or against the Government or Public Officers) Act,** these rules apply to civil proceedings by or against the State or a public officer.

8.5 Order 34 rule 2 (b) and (e) of the 2017 Rules states that where by reason of these Rules or court order the State is permitted or required to make a sworn statement or to discharge any other procedural obligation that function shall be performed by the Attorney General.

8.6 Order 8 rule 19 (1) of the 2017 Rules states that all documents required to be served on the Government for the purpose of, or in connection with any proceeding by or against the Government shall be served on the Attorney General **or upon another public officer or Government Department, expressly authorized by a written law to institute or defend the proceedings in question on behalf of the Government.**

In the case of **The Anti-Corruption Bureau v Amos Chinkhadze and Another MSCA Civil Appeal No. 1A of 2003** the Supreme Court of Appeal emphasized that it is common knowledge that where the legislature wants to confer legal capacity it expressly provides for it.

## **9 DETERMINATION OF THE APPLICATION OF THE CLAIMANT**

9.1 There are two issues that this court needs to determine in this application. These are as follows:

- (a) Whether or not the Claimant must be granted permission to apply for judicial review against the Defendant; and
- (b) Whether or not the decision of the Defendant must be stayed.

9.2 This court declines to grant the Claimant the permission to apply for judicial review and for an order to stay the decision of the Defendant for the following reasons:

9.2.1 This application is misconceived. Section 4 of the Civil Procedure (Suits by or against the Government or Public Officers) Act is clear that it is mandatory to notify the Attorney General about civil proceedings prior to their commencement in writing three months before they are commenced. The mandatory requirement of three months written notice must therefore be fully complied with. The justification for this legal requirement is clear. It allows the Defendant to investigate allegations against him and to form a sound legal opinion on their possible just resolution at the earliest stage possible. Compliance with this mandatory legal requirement also allows Counsel to establish the true facts about any allegations and to obtain necessary evidence so a sound legal opinion

can be formed about any contemplated litigation to address the questions whether or not such litigation is worthwhile and what its viable nature is.

9.2.2 Orders 8 rule 19 (1) and 34 rule 1 of the 2017 Rules read together with section 3 (1) of the Civil Procedure (Suits by or against the Government or Public Officers) Act are clear that it is appropriate to pursue the Attorney General. More so when section 3 (3) of this Act and Order 8 rule 19 (1) of the 2017 Rules are considered in the particular context of their application to the Department of Forestry (Director of Forestry). Section 4 of the Forestry Act is clear that this office is public. However, this Act has given this department no legal capacity through which it can sue and be sued in its own name. The person that is pursued in any court proceedings must not only be a legal person but must also have legal capacity to sue and to be sued. In the case of **JZU Tembo and Another v The speaker of the National Assembly MSCA Civil Appeal No. 1 of 2003** the Supreme Court of Appeal made the following apt remarks: “A decision regarding which party to sue is an important decision which is made by a party or his Counsel after careful consideration of the facts of the case. The task of which party to sue must be performed by a litigant and not the court. It is no business of a court to assist a litigant in choosing for him the correct party to sue. Where a litigant is represented by Counsel it would not be proper for a court to assist Counsel in making a decision regarding the correct party to sue.”<sup>11</sup> Therefore the requirement that an application for judicial review must name as a Defendant for an order about a decision the person who made the decision that Order 19 rule 23 (2) (c) of the 2017 Rules provides for becomes redundant in cases such as this one in which the pursued party has no legal capacity to sue and to be sued in its own name.

9.2.3 The case of **The State and the Attorney General and Another ex parte Allackson William on his own behalf and on behalf of other Members of the Chinkazichina Family Judicial Review Cause No. 109 of 2010** held that the Attorney General cannot be a party to judicial review proceedings unless it is shown that this office was privy to a decision that

is being challenged. The earlier case of **The State v Attorney General (Ministry of Education) Miscellaneous Civil Cause No. 49 of 2006** held that judicial review applications are distinct from legal suits as had earlier also been held in the case of **In the Matter of the State and Attorney General ex parte Mapeto Wholesalers and Faizal Latif Civil Cause No. 253 of 2005**. These cases emphasized that in legal suits the Government is sued through the Attorney General who is its principal Legal Advisor. In contrast to this the Supreme Court of Appeal held in the case of **The President of Malawi and Another v R.B. Kachere and Others MSCA Civil Appeal No. 20 of 1995 (Being Civil Cause No. 2187 of 1994)** that there is no reason why “civil suits” should have a limited interpretation. There are situations other than where tort or contract are concerned when the Government can be sued. The Supreme Court of Appeal specifically singled out cases of judicial review as such situations.

9.2.4 The Claimant’s own reasons for its failure to harvest and saw timber on the allocated compartments were two-fold. Firstly, its machines allegedly broke down and spare parts were allegedly hard to import from Poland. Secondly, work stopped allegedly due to COVID-19 preventive measures. The exhibit marked “JK3” attached to the verifying sworn statement the Claimant filed is clear on this. Surprisingly, the application for permission to apply for judicial review is totally silent on the alleged issue of the broken-down machinery. The correspondence the Claimant exchanged with the Defendant predates this application. The Claimant never produced and exhibited all of this correspondence choosing instead to falsely argue before this court that the Defendant never heard it and never gave it any written reasons for its decision. The exhibits marked “AG4”, “AG5”, “AG6” and “AG7” attached to the opposing sworn statement are self-evident as regards the issue of hearing. The Claimant was clearly heard. Issues 1.1 and 1.2 in its grounds for seeking relief which relate to the allegation that it was not heard are without merit. They consequently fall away. The oral arguments that Counsel for the Claimant

made during the hearing of this application were also clear that this claim got abandoned.

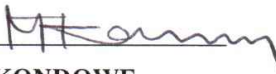
- 9.2.5 Issue 1.3 in its grounds for seeking relief which relates to the allegation that the Claimant's legitimate expectations were violated is without merit. The opposing sworn statement has disclosed the unofficial manner and context in which these alleged legitimate expectations got raised. No wonder the Claimant did not bring before this court any evidence relating to the identity of the person who gave it these alleged assurances, when they did so, how they did so and the legal capacity in which they did so.
- 9.2.6 The issue of the reasonableness of the decision the Defendant made does not arise given the fact that the licence that the Claimant sought to renew was obtained illegally. The Defendant made the decision it did after its expiry to address the troubling gap in compliance with the law on the grant of a Special Licence that the conduct of the Claimant brought to light. The Claimant was neither a concessionaire nor an operator which signed a Forest Management Agreement with the Defendant.
- 9.2.7 The Claimant used the Conveyance Certificates the Defendant issued to it to transport timber it admittedly got from other suppliers in Mzuzu. One clear condition stated on the back of the licence was that it was to be used only for harvesting of wood for timber sawing. Illegally opting to use the Conveyance Certificates to transport timber other than timber that was harvested and sawed on the two compartments was a costly choice the Claimant made. Its conduct in this respect was not only fraudulent but also unlawfully licence-abusive. For this reason the Claimant is not permitted to turn around and argue that it did not harvest and saw all the timber on the two compartments.
- 9.2.8 The prayer for an order of stay of the decision of the Defendant lacks sufficient particularity and its authority of law. It is without merit. There is in any case no decision to stay given the refusal of this court to grant the Claimant the permission to apply for judicial review.
- 9.3 Given the matters stated in paragraph 9.2, 9.2.1 through 9.2.8 of this ruling this court dismisses the application of the Claimant for permission to apply for judicial review

and for an order to stay the decision of the Defendant. It is so ordered. Section 30 of the Courts Act Cap. 3:02 of the Laws of Malawi states that the costs of court proceedings are in the discretion of a court. Order 31 rule 3 (a) (b) and (c) of the 2017 Rules amplifies this matter. The Claimant is ordered to pay the Defendant the costs of this application. It is so ordered.

**10 THE CLAIMANT'S RIGHT OF APPEAL AGAINST THIS DECISION**

This court has dismissed the application the Claimant brought by refusing to grant it the permission to apply for judicial review of the decision the Defendant made and for an order to stay that decision. This case clearly shows that the decision the Defendant made not to renew an illegal and illegally-obtained licence was not only lawful but was also made after the Defendant heard the Claimant. These facts compel this court to further decline to grant the Claimant leave to appeal against this order to the Supreme Court of Appeal. It is so ordered.

Delivered at Mzuzu this .....30<sup>th</sup>.....day of .....April..... 2021



**M. KONDOWE**

**JUDGE**