



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION
JUDICIAL REVIEW CAUSE NO. 18 OF 2021
(Before Honourable Justice Mambulasa)

BETWEEN:

THE STATE (ON THE APPLICATION OF:)

ABDUL NAHIMANA (On his own behalf and on behalf of refugees and asylum seekers in Malawi).....1ST CLAIMANT

-AND-

SAMUEL MKUMBIRA.....2ND CLAIMANT

-VS-

**MINISTER OF HOMELAND SECURITY IN
MALAWI.....DEFENDANT**

CORAM: HON. JUSTICE MANDALA MAMBULASA

Mr. Luciano M. Mickeus, Advocate for the 1st Claimant

Mr. Patrick Kalanda, Advocate for the 1st Claimant

Mr. Eric Salima, Advocate for the 1st Claimant

Mr. Peter Minjale, Advocate for the 2nd Claimant

Mr. Neverson Chisiza, Principal State Advocate for the Defendant

Mr. Obet Chitatu, Court Clerk

Mrs. Annie Libukama, Court Marshal

RULING

MAMBULASA, J

Introduction

[1] The 1st Claimant, Abdul Nahimana, on his own behalf and on behalf of refugees and asylum seekers in Malawi approached this Court on 27th April, 2021 seeking permission to apply for judicial review and also stay of the decision of the Defendant directing all refugees and asylum seekers residing outside Dzaleka Refugee Camp in the rural areas of Malawi to return to Dzaleka Refugee Camp (the Camp) by 28th April, 2021 without giving them sufficient time to make arrangements for their relocation and without

ensuring that there are basic needs at the said Camp and discriminating against them based on their status.

- [2] Upon perusal and assessment of the application, the Court granted the 1st Claimant permission to apply for judicial review proceedings and also stayed the Defendant's decision requiring all refugees and asylum seekers residing outside the Camp in the rural areas of Malawi to return to the Camp pending the hearing of the substantive matter or a further order of the court.
- [3] On 13th May, 2021 Samuel Mkumbira applied to be added as a party to the proceedings and also sought an order of stay of the Defendant's decision against himself and his family. Similarly, the Court granted him the two prayers that he sought. He eventually became the 2nd Claimant in this proceeding.
- [4] On 3rd June, 2021 Clara-Leo Tembo filed an application under Judicial Review Cause No. 36 of 2021 to be added as a party to this proceeding. On 8th June, 2021 she was duly added as the 3rd Claimant. However, during the hearing of the application to discharge the permission to apply for judicial review and the stay in this matter on 25th June, 2021 she withdrew her application. The Court ordered her to file a Notice of Withdrawal of Proceedings, a thing which she never did. She has however been removed as a party in spite of the fact that she did not file a Notice of Withdrawal of Proceedings as ordered by the Court.
- [5] On 9th June, 2021 the Court granted an order seeking consolidation of claims of Miscellaneous Civil Cause No. 3 of 2021 between *The State (On the application of Emmanuel Mangomba and Chikondi Joseph) –And- The*

Secretary for Homeland Security and Commissioner for Refugees and The Inspector General (Malawi Police Service) and the present proceeding. This application was filed at the Mzuzu District Registry of the Court and it was before Honourable Justice Ligowe who directed the Claimants to apply to join the present proceeding or a similar one which had been filed at the Lilongwe District Registry of the Court. The matter that was commenced at the Lilongwe District Registry was eventually dismissed and the only other subsisting matter was the present one. The Claimants in this case were also seeking permission to apply for judicial review and an interlocutory injunction against the decision of the Defendant as already described in paragraph 1 above. Following the order for consolidation of claims, this application will be treated as part and parcel of the present proceeding.

[6] On 9th June, 2021 this Court also granted permission to apply for judicial review and stay of the Defendant's decision to relocate all refugees and asylum seekers living outside Dzaleka Refugee Camp in the rural areas of Malawi to return to the said Camp to Theresa Mugurwanyana, Serge Rwakayigamba, Francis Muhozi and Fabiano Musabinana. The Defendants are *The Secretary for Homeland Security and Commissioner for Refugees* and *The Inspector General (Malawi Police Service)*. This Court ordered *suo moto* that Miscellaneous Civil Cause No. 19 of 2021 (Principal Registry) be consolidated with and treated as part of this proceeding as well.¹

[7] On 17th June, 2021 the Court granted permission to 317 claimants to join this proceeding as part of the 1st Claimant. This was purely for purposes of ensuring that they enjoyed the protection of the order of stay that the Court

¹ See Order 6 rule 9 of the Courts (High Court) (Civil Procedure) Rules, 2017.

had granted to the 1st Claimant against the Defendant's decision to relocate all asylum seekers and refugees residing outside the Dzaleka Refugee Camp in the rural areas of Malawi to return to the said Camp. According to their list which was attached to their application along with their United Nations High Commissioner for Refugees (UNHCR) Forms, they all live in urban areas of Malawi.

- [8] In view of the foregoing, there was no need to continue naming more claimants to the action when the 1st Claimant brought this proceeding on his own behalf and on behalf of refugees and asylum seekers in Malawi. This also explains why the other two advocates appear as representing the 1st Claimant. However, the 2nd Claimant could not be subsumed in the 1st Claimant because his scenario is slightly different from the others. This will become clear later on in the ruling. This means that any decision that the Court will arrive at in respect of the 1st Claimant will be for all the claims and the other claimants that were added or joined later on. More so because of the consolidation of all the claims in this matter.

Issue for Determination

- [9] There is only one issue to be determined by the Court at this stage. It is whether or not it should vacate or discharge the permission to apply for judicial review and also the stay or suspension of the decision of the Defendant which it granted to the Claimants in this matter.

The Claimants' Case

- [10] The 1st Claimant came to Malawi as an asylum seeker in 2002. He is originally from Burundi. He states that there are a few of them that were admitted in Malawi as refugees and they were staying at the Camp. There is an exhibit that has been marked as, “AN 1” which is a UNHCR Form that identifies him as an asylum seeker.
- [11] The 1st Claimant alleges that due to some challenges at the Camp, they were allowed and/or condoned to relocate to various parts of Malawi as way back as 2003 where they have been doing small scale businesses for survival and leading normal lives.
- [12] He alleges that many of them have families and children born in Malawi. In his case, the 1st Claimant claims to have five (5) children and one of them, as at the time of the application in April 2021, was in Form 2 at Chichiri Secondary School in Blantyre. There is an exhibit that has been marked as, “AN 2” showing a school report of his son to that effect.
- [13] The 1st Claimant and many of the refugees and asylum seekers have been engaging in various social and economic activities. In the case of the 1st Claimant, he has liabilities including a loan to settle with a micro-finance institution called, Finca. There is an exhibit that has been marked as, “AN 3” to that effect showing that he had to settle a total of MK5,780,560.54 by end of June, 2021.
- [14] The Defendant was and is aware that they have been staying outside the Camp and that they were engaging in small scale businesses in Malawi. It has given them a notice to relocate to the Camp by 28th April, 2021. The

notice was given to them on 1st April, 2021. A copy of the notice is exhibited to the application and is marked as, “AN 4”.

- [15] The 1st Claimant depones that the notice of one month to relocate to the Camp is not sufficient for them to make arrangements and relocate. He states that they require more time like 12 months or more.
- [16] The 1st Claimant claims that they have been visiting their friends who remained at the Camp and that the place has no facilities for their habitation. It lacks accommodation and various social and economic needs of human beings.
- [17] They state that they understand that they are refugees [and asylum seekers] and that they need to abide by all laws of Malawi. They equally have to enjoy human rights.
- [18] They state that the conduct of the Defendant is quite shocking to them because it recognized them that they had overstayed in Malawi and made a directive that those that have stayed for more than 7 years must apply for citizenship which some of them did. The 1st Claimant has exhibited to that effect a copy of an application form, NR 2 that he submitted to the Malawi Government and General Receipt . J No. 5484950 showing proof of payment for his application for citizenship for the sum of MK20,000.00 (Twenty Thousand Kwacha) dated 10th September, 2018.
- [19] The 1st Claimant avers that the statement from the Defendant does not even state what will happen to those that were born here in Malawi but their

parents are refugees [and asylum seekers] or what will happen to those that have married Malawians. They allege that the statement leaves their lives in danger of xenophobic attacks, hence their application to the Court to seek judicial review remedies.

[20] The 2nd Claimant, Samuel Mkumbira, originally came from Rwanda in 2012 as an asylum seeker.

[21] He states that he is registered as a Malawian national and currently holds a Malawian Citizen Identity Card. There is an exhibit of the said card which has been marked as, "SM 1".

[22] The 2nd Claimant is a businessman and trades in wholesale business in Blantyre and also a car hire business. There are exhibits of business certificates that have been marked as, "SM 2".

[23] He avers that in his businesses, he has employed over thirteen (13) Malawian citizens. He has three children who are in school in Limbe. There are exhibits of their certificates of birth that have been marked as, "SM 3".

[24] The 2nd Claimant states that since he came to Malawi, he has never been at the Camp with his family and all his children were born without staying at the Camp. He depones that he believes that they have acquired citizenship and they ought to be treated as Malawians with human rights worth protecting, hence his application to the Court to also seek judicial review remedies.

The Defendant's Case

- [25] The Defendant filed Sworn Statements in Support of his application to discharge permission to apply for judicial review as well as the order for stay of his decision that was granted to the Claimants. The first sworn statement was made by Patricia Madalo Liabuba, then, Acting Secretary for Homeland Security by virtue of which position, she was also the Acting Commissioner for Refugees in Malawi.
- [26] Ms. Liabuba confirmed that the Government of Malawi issued a Notice calling on all refugees and asylum seekers residing outside Dzaleka Refugee Camp in rural areas of Malawi to relocate to the Camp.
- [27] The issue of relocation is not new especially to those that have been residing outside the Camp for a very long time, to the extent that the High Court of Malawi already adjudicated on similar issues as raised by the Claimants herein.
- [28] The Claimants have always been aware of the position of the Government of Malawi on this matter and it is not tenable to contend that there has been inadequate notice.
- [29] Besides, one month notice is adequate for asylum seekers and refugees to return to their Camp.
- [30] Whilst at the Camp, refugees and asylum seekers are always at liberty to get permission to go out to attend to their personal issues.

- [31] Further, children of asylum seekers and refugees in boarding schools are given opportunity to attend school. In addition, there are schools at and around the Camp for the attendance of the asylum seekers and refugees.
- [32] The Camp provides basic accommodation standards. At the moment, a substantial number of asylum seekers and refugees who decided to comply with the Government Notice have already returned whilst the Claimants have decided to keep fighting the same fight in courts.
- [33] From the foregoing, the Defendant verily believes that if the application was made with notice and the aforesaid facts were brought to the attention of the Court, the permission to apply for judicial review would not have been granted. The said permission and stay order should be vacated with costs.
- [34] The Defendant filed a supplementary Sworn Statement in Support made by Ivy Chihana, Senior Legal Adviser at the Department for Refugees in the Ministry of Homeland Security.
- [35] There is Refugee Status Determination (RSD) Unit under the Ministry of Homeland Security. Its main duty is to determine refugee status and recommend to the Refugee Committee established under section 3 of the Refugees Act² for the granting of the refugee status or refusal thereof.
- [36] Thus, RSD sits as a tribunal determining applications for refugee status and has its own criteria that it follows in deciding whether or not to recommend to the Refugee Committee to grant the status.

² Cap. 15:04 of the Laws of Malawi.

- [37] Once a migrant enters any border of Malawi, they are supposed to report to Immigration Services Department or any competent officer within 24 hours. At this time, the migrant is known as an asylum seeker and is entitled to protection by the Government of Malawi.
- [38] Protection is given in Malawi to all that apply for asylum on the basis that they will go through a process so that, if they are given a refugee status if they so qualify would then be accorded a chance to durable solutions.
- [39] Once an asylum seeker enters Malawi through known borders, they are cleared by the Immigration Services Department or any competent officer and handed over to the Department of Refugees Transit Shelter for onward relocation to the Camp where all processes take place for the grant of refugee status or refusal thereof. There is an exhibit of a copy of an RSD process chart marked, "IC 1".
- [40] According to the information that the Government of Malawi has, the 1st Claimant arrived in Malawi alone in 2002 and made application for asylum as a single person and was registered as a Burundian asylum seeker.
- [41] The 1st Claimant later made an application to be merged to his family upon getting married to a Ms. Uwimana Jeanne, a Rwandan national in 2004. The marriage was proved by claiming that they have a child together as there was no marriage certificate to prove the same. There is an exhibit of a copy of the RSD Assessment and Recommendation Form that has been marked as, "IC 2".

- [42] As a family, the 1st Claimant presented their application for refugee status and were called for a Refugee Status Determination Assessment Interview on 7th September, 2006. The 1st Claimant presented himself as a beneficiary to an RSD case whose principal applicant was the wife. That is clear from exhibit, “IC 2” already referred to above.
- [43] The 1st Claimant’s case was thus processed together with the principal applicant’s case and they were both rejected at first instance on 11th April, 2007 and the rejection applied to all the family members. There is an exhibit of the rejection notice (a letter) which has been exhibited and is marked as “IC 3”.
- [44] In exercising their rights of appeal against their rejection by the RSD, the 1st Claimant together with his principal applicant, Ms. Uwimana Jeanne, appealed to the Minister of Homeland Security as provided for under section 11 of the Refugees Act.
- [45] The Minister after hearing the appeal, dismissed the same on 31st October, 2013. There is an exhibit of a second notice (a letter) which has been exhibited and is marked, “IC 4”. The decision of the Minister was final. Therefore, once the Minister dismissed such an appeal as was the case herein, the 1st Claimant ceased to be an asylum seeker and had 21 days to leave the country.
- [46] The 1st Claimant has been staying in Malawi illegally and that, unless the 1st Claimant proves to the contrary, the Defendant prays for an order that he should be arrested pending his deportation.

- [47] On exhibit, “AN 1” the Defendant alleges that the 1st Claimant exhibited an old UNHCR Form that portrays him as an asylum seeker when in fact, he ceased to be so the moment his appeal for refugee status was dismissed by the Minister.
- [48] The foregoing was as a result of failure to update the UNHCR database system in time to reflect the actual status of the 1st Claimant as of now.
- [49] The updated UNHCR Form clearly spells the 1st Claimant as a person ‘not of concern’ and it has been exhibited and has been marked as, “IC 5”. The legal status of the 1st Claimant now is that of ‘not of concern’.
- [50] The outdated UNHCR Form was thus misleading and the Court should not give it any weight at all.
- [51] The Government Notice that is being disputed herein and which is the subject matter of this proceeding is clear. It is addressed to asylum seekers and refugees. The 1st Claimant is neither of the two. The said Notice does not concern him adequately.

Court’s Intervention

- [52] During the hearing on 25th June, 2021 the Court ordered the parties to address it on whether the Government Notice entitled, “Notice to all asylum seekers and refugees residing outside the Dzaleka Refugee Camp in **rural areas** of Malawi” applied to the Claimants who stay in urban areas.

- [53] The Defendant, through Patricia Madalo Liabuba, filed another Sworn Statement after the hearing in which he clarified that the execution of the Government Notice was to start with those asylum seekers and refugees residing in rural areas. The plan was that after relocating asylum seekers and refugees that are in the rural areas, Government would then relocate those in urban areas.
- [54] The essence of the foregoing approach is to enable Government ably monitor peaceful relocation without compromising on the human rights of the asylum seekers and refugees.
- [55] According to the Defendant, all district towns, rural growth centres, rural trading centres have been categorized as rural areas.
- [56] Urban centres are delineated by the official boundaries of the four cities, namely, Lilongwe, Blantyre, Mzuzu and Zomba.
- [57] The Defendant averred that the Government Notice was served on those that were concerned, to wit, asylum seekers and refugees in the rural areas. He concedes that not all asylum seekers and refugees might have been served with the Notice and that in some cases, a few in urban areas might also have been served inadvertently.

The Law

[58] Order 19 rule 20 of the Courts (High Court) (Civil Procedure) Rules, 2017 provides as follows:

(1) Judicial review shall cover 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 provided, if any; or
 - (iv) bad faith, if any,

where a right, freedom, interests or legitimate expectation of the applicant is affected or threatened.

- (2) A person making an application for judicial review **shall have sufficient interest in the matter to which the application relates.**
- (3) Subject to sub-rule (3), an application for judicial review shall be commenced *ex-parte* with the permission of the Court [sic].
- (4) The Court may upon hearing an *ex parte* hearing direct an *inter-partes* hearing.
- (5) Subject to sub-rule (6), an application for judicial review under sub-rule (3) shall be filed promptly and shall be made not later than 3 months of the decision.

(6) The Court may extend the period under sub-rule 5.

[59] It is established law that the Court has inherent jurisdiction to vacate or discharge orders including orders granting permission to apply for judicial review which were made without notice being given to defendants.³

[60] The rationale behind the Court's retention of the power to vacate or discharge permission to apply for judicial review and any interim relief is easy to understand. Lord Fraser of Tullybelton put it succinctly in *R -vs- Inland Revenue Commissioners, Ex-Parte National Federation of Self-Employed and Small Business Ltd*⁴ when he said at page 645 as follows:

The court which grants leave at that stage will do so on the footing that it makes a provisional finding of sufficient interest, subject to revisal later on, and it is therefore not necessarily to be criticised merely because the final decision is that the applicant did not have sufficient interest. But where, after seeing the evidence of both parties, the proper conclusion is that the applicant did not have a sufficient interest to make the application, the decision ought to be made on that ground.

[61] It is also trite law that permission to apply for judicial review may be removed where there was suppression of material facts by the claimant or claimants as the case may be.⁵ Stated differently, the grant of permission to

³ *The State -And- Malawi Housing Corporation Ex-Parte Mrs. Sheila Kenneth Davis* Judicial Review Case No. 60 of 2017 (High Court of Malawi) (Principal Registry) (Unreported).

⁴ [1982] A.C. 617.

⁵ *The State -and- Council of the University of Malawi, Ex-Parte Innocent Longwe and Wilfred Mkochi* [2010] MWHC 1. See also *The State -vs- The Minister of Finance and The Registrar of Financial Institutions Ex-Parte: Daphter Namandwa* Judicial Review Case No. 17 of 2013 (High

apply for judicial review may be set aside on the grounds of material non-disclosure on the part of the claimants. That was the holding in *Jones & 14 others -vs- Refugee Committee and Another*.⁶ That is so because in without notice applications, claimants are under legal duty to make full and frank disclosure of all facts known to them that might have a bearing on the case so as to enable the Court make a proper assessment.⁷ In worst case scenarios, material non-disclosure by claimants that are so grave, render the order of the court *void ab initio*.⁸

Application of the Law to the Facts

[62] It was clear to the Court during the hearing that the 1st Claimant had suppressed and misrepresented material facts to the Court. While his application for permission to apply for judicial review and stay of the Defendant's decision showed that he was one of the asylum seekers in this country, that is not so. He relied on an outdated UNHCR Form that was given to him at the time he entered Malawi in 2002. Exhibit "IC 3" by the Defendant addressed to Ms. Uwimana Jeanne, dated 11th April, 2007 under reference no. RSD 0577/06/03C00085 written by the then, Secretary and Commissioner for Poverty and Disaster Management Affairs, L. D. Ng'oma

Court of Malawi) (Principal Registry) (Unreported); *State and another; Ex-Parte: Clc Forex Bureaux and nine others* [2009] MLR 449.

⁶ [2005] MLR 134.

⁷ *R -vs- Kensington Income Tax Commissioners, ex- parte Princess Edmond de Polignac* [1917] 1 KB 486.

⁸ n6 above.

(Mrs.) clearly shows that her application as a refugee was rejected by the Refugee Committee. The ground for the rejection was stated as follows:

The circumstances as detailed by you at interview relate to matters for which international protection is not required as meant under the Refugees Act.

Paragraph 4 of exhibit "IC 3" is extremely important. It was couched in the following terms:

Accordingly, the following members of family [are] also denied the grant of refugee status: Nahimana Abdul and Mahoro Hakim.

[63] Ms. Jeanne Uwimana was not satisfied with the decision of the Refugee Committee. She appealed to the Minister against the decision of the Refugee Committee to deny her refugee status in Malawi. However, her appeal was unsuccessful. The Minister upheld the Refugee Committee's decision on 31st October, 2013. Paragraph 2 of the letter to her dated 31st October, 2013 under reference no. RSD0577/06/03C00085 written by the then, Secretary for Home Affairs and Commissioner for Refugees, B. W. Chisamile read as follows:

Your fear of persecution is not well founded as meant under the Refugees Act as the circumstances in your home country, Rwanda, have changed significantly.

[64] That meant that the 1st Claimant was also equally affected by the decision of the Minister, just like that of the Refugees Committee before it. Paragraph 3 of the above-mentioned letter to Ms. Jeanne Uwimana stated the following:

In accordance with such refusal, you should note that you and your dependents are hereby instructed to make arrangements to leave Malawi within twenty-one (21) days of the date of receipt of this decision.

[65] It is surprising that the 1st Claimant has continued to live in Malawi since then. In the view of the Court, 21 days from the date of receipt of exhibit, “IC 4”, the 1st Claimant became an illegal immigrant. This information was suppressed at the time that he approached the Court and applied for permission to apply for judicial review as well as the order of stay of the Defendant’s decision. It is a material fact. In these circumstances, this Court finds and determines that the 1st Claimant, being an illegal immigrant does not have sufficient interest or *locus standi* in the matter at hand. He is neither a refugee nor an asylum seeker. His current status according to the updated UNHCR Form exhibited by the Defendant as “IC 5” is that he is a person ‘not of concern’. He is not personally or directly affected by the Government Notice in this matter. The position of the law is very clear as we have already seen. The Court retains power to vacate permission to apply for judicial review and any interim relief that it granted, if upon hearing both parties it turns out that the claimant did not have sufficient interest or *locus standi* in the matter. Consequently, and in view of the foregoing, this Court has no choice but to discharge the permission to apply for judicial review and lifts the order of stay that it granted to him against the decision of the Defendant on 27th April, 2021. As earlier stated, this applies to all the orders and claims that were consolidated with this proceeding.

[66] In passing, the Court also observes that the 1st Claimant misrepresented to the Court that he applied for Malawian citizenship.⁹ Form NR 2 that he exhibited to his application as proof of that fact is not for application for Malawian citizenship as alleged. It is for national registration for non-Malawian citizens into the national register who have been granted permanent residence permit, temporary employment permit or business residence permit under the Immigration Act¹⁰ to reside in Malawi.¹¹ Applications for citizenship are made under a different piece of legislation altogether, the Malawi Citizenship Act¹² as well as under section 47 of the Malawian Republican Constitution.¹³ The current legal status of the 1st Claimant is that he is 'not of concern'. It is a wonder that the 1st Claimant made such an application to the National Registration Bureau, when on the evidence that is before the Court, he does not have a permanent residence permit, temporary employment permit or business residence permit. Surely, as will be seen also with the case of the 2nd Claimant shortly, the Defendant and perhaps all of us, need to rethink our approach in the way we conduct our work if we are to make significant progress as a nation.

[67] The Court now proceeds to consider the 2nd Claimant's application. He joined this proceeding as a 2nd Claimant on the belief that he was an asylum seeker from Rwanda, and was also granted a stay of the decision of the

⁹ See Paragraph 18 above.

¹⁰ Cap. 15:03 of the Laws of Malawi.

¹¹ See Section 7 of the National Registration Act, Cap. 24:01 of the Laws of Malawi as well as Form NR 2 under the National Registration Regulations.

¹² Cap. 15:01 of the Laws of Malawi.

¹³ Act No. 20 of 1994.

Defendant as described in paragraph 1 above against him and his family pending the determination of the matter herein or a further order of the Court.

[68] In his application to be added as a party, the 2nd Claimant exhibited a Malawian Citizen Identity Card that was duly issued to him by the National Registration Bureau and yet he claimed to be an asylum seeker. Technically, and subject to verification by the Defendant how he acquired the Malawian Citizen Identity Card that exhibit alone, takes the 2nd Claimant out of the purview of the present proceeding. He too does not have sufficient interest in this matter. On the face of it and subject to the foregoing observation and for purposes of this proceeding only, the Court presumes that he is a Malawian citizen. The Court therefore proceeds to lift the order of stay that was granted to him and his family as well.

[69] Even if the Claimants were found to be either asylum seekers or refugees, and therefore assumed to have sufficient interest or *locus standi* in this matter, the Government Notice would not concern them. The Government Notice targets asylum seekers and refugees residing outside the Camp in the rural areas of Malawi. The Claimants herein are residing in urban areas. As the Defendant stated, he intends to execute the Government Notice in a phased approach starting with asylum seekers and refugees residing in rural areas. It is only after monitoring a peaceful and human rights compliant relocation of the first phase, that he would then go to those asylum seekers and refugees residing outside the Camp in urban areas. For this reason, as well, the Court would have removed the permission to apply for judicial review and the stay order, as the Claimants would not have had sufficient

interest or *locus standi*. The same would also have been the case if the other applications that had been consolidated with this proceeding had been severally considered by the Court.

[70] Costs are awarded in the discretion of the Court.¹⁴ Where the Court decides to make an order on costs, the general rule is that the unsuccessful party pays the costs of the successful party.¹⁵ The Claimants and those they represent are engaged in various small and medium scale businesses. They are of some means. There is therefore no good reason why the Court should depart from the general rule in this matter. The Court therefore awards costs of this application to the Defendant.

[71] The delay in rendering this ruling is deeply regretted but it is due to heavy workload that the Court has at its hands.

[72] Made in Chambers this 12th day of August, 2022 at Blantyre, Malawi.


M. D. MAMBULASA
JUDGE

¹⁴ Section 30 of the Courts Act, Cap. 3:02 of the Laws of Malawi. *See also* Order 31 rule 3 (1) of the Courts (High Court) (Civil Procedure) Rules, 2017.

¹⁵ Order 31 rule 3 (2) of the Courts (High Court) (Civil Procedure) Rules, 2017.