



IN THE HIGH COURT OF MALAWI

MZUZU DISTRICT REGISTRAR

CIVIL

JUDICIAL REVIEW CAUSE NO. 1 OF 2018

BETWEEN

THE STATE

(ON THE APPLICATION OF

REGISTERED TRUSTEES OF CHRISTIAN SERVICE

COMMITTEE OF THE CHURCHES IN MALAWI)

APPLICANT

-AND-

REGIONAL COMMISSIONER FOR LANDS (NORTH)RESPONDENT

CORAM: THE HONOURABLE JUSTICE .T.R. LIGOWE

Mr. W. Chiwaya Counsel for the Applicant

Respondent/Absent

Mrs. F. Luwe, Official Interpreter

Mrs R. Luhanga, Court Reporter

Ligowe, J

JUDGMENT

1. This matter came before me for judicial review of the decision of the Regional Commissioner for Lands (North) to reallocate Title No. Lupaso

4/18 leased to the claimant, to other people, without granting the claimants the right to be heard.

2. The Regional Commissioner for Lands (North) did not respond to the notice of originating motion for judicial review despite being duly served with the same on 7th March, 2018. The hearing was set for 14th June, 2018 but he did not attend court despite due service of the notice of hearing on him. I adjourned the matter to 28th of June, 2018 just to ensure he attends court but he still did not attend despite being served with the notice.
3. The notice for the hearing today, 20th June, 2018, was served on him on 20th June, 2018 as shown by the returned copy on file. That notice is inscribed "Sue AG" which I suppose means that the Regional Commissioner was directing that the proper party to be sued is the Attorney General.
4. It has to be noted here, just as in The State v Attorney General and Laston Kaliba, Ex parte Allackson William, JR Cause No 109 of 2010 (HC) (Principal Registry) (Unreported) and The State v Attorney General (Ministry of Education), Misc cause No 49 of 2006 (HC, Principal Registry) (Unreported), that judicial review proceedings are not legal suits which when it is against the Government are taken against the Attorney General. Judicial review lies against the person or public authority which carried out the public duty or function in question. The essence is to review, not the merits of the decision in question but the decision making process, so as to ensure that the individual affected is given fair treatment.
5. The Regional Commissioner for Lands (North) is with due respect mistaken if he has not responded to these proceedings thinking that the Attorney General is the rightful party.
6. The facts have not been contested. The claimant leased Title No. Lupaso 1663 in the city of Mzuzu from the Malawi Government for a period of 99 years from 1999. In 2010 the Regional Commissioner for Lands (North)

requested the claimant to subdivide the plot and allocate the other part to other people on the ground that the claimant was not remitting ground rent and had partially developed it. The claimant did not accept this proposal in their letter to the Regional Commissioner dated 3rd September, 2010. Thereafter the claimant paid ground rent amounting to K191,034.29 for the period from June 2007 to 2012 according to the Land Rent Demand Notice issued by the Regional Commissioner on 28th December, 2011.

7. The claimant has not made further payments of the rentals until now. The claimant states that the Regional Commissioner has not issued any demand notice for the rentals despite the claimants several requests for the same.

8. After payment of the outstanding ground rent as of 2012, the Regional Commissioner did not re-introduce the suggestion to subdivide the plot until 2017 when the claimant was surprised to see other people depositing bricks on the plot. Counsel for the Claimant approached the Regional Commissioner on this issue on 31st January, 2018 and the Commissioner said his office had started redistributing part of the claimant's land because on non-payment of ground rent.

9. The claimant argues that, having acquired Title No. Lupaso 4/18 on plot No Luwinga 1663 for 99 years, the Regional Commissioner could not have expropriated it without notification and appropriate compensation to the claimant, in accordance with section 44 (3) of the Constitution. The claimant also argues that for the Regional Commissioner to re enter and redistribute the land while the claimants lease subsists, is unreasonable. So the Claimant prays for:-

1. A declaration that the respondent said decision, having been made without affording the claimant, the right to be heard, is unlawful, in breach of principles of natural justice, unconstitutional and null and void.

2. A declaration that the respondent's decision amounts to expropriation of property without following constitutional principles laid down under section 44 and amounts to breach of the right to property under section 28 of the Constitution.

3. A declaration that the said decision of the respondent is unreasonable in the Wednesbury sense, procedurally improper and void.

4. A like order to certiorari quashing the said decision of the respondent.

5. An order of permanent injunction restraining the respondent from
a. re-entering and redistributing the applicants material piece of land.


6. An order of costs.

10. Considering all the facts of the case presented before me, I agree that it was wrong for the Regional Commissioner for Lands (North) to re enter and redistribute the claimants Title No. Lupaso 4/18 on Plot No Luwinga 1663 without notifying the claimant and paying appropriate compensation. That was in breach of natural justice and so, unreasonable.

11. All the reliefs sought are granted except the 5th. The Regional Commissioner is hereby ordered to follow section 44 (3) of the Constitution and give the claimant the opportunity to be heard. It is there an then that if he finds that he has good reasons to re-enter and redistribute the land, that he can do so.

12. I award the claimant costs.

13. Delivered in chambers this 28th day of June, 2018.


T.R. Ligowe
JUDGE