



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION

MISCELLANEOUS CIVIL REVIEW CASE NO. 67 OF 2021

(Being Matter Number IRC 512 of 2021 in the Industrial Relations Court)

(Before Honourable Justice Mambulasa)

BETWEEN:

MALAWI COMMUNICATIONS REGULATORY

AUTHORITY..... CLAIMANT

-AND-

DANIEL DATCHI, GODFREY ITAYE & OTHERS..... DEFENDANT

CORAM: HON. JUSTICE MANDALA MAMBULASA

Ms Thokozani Chimbe, Advocate for the Claimant

Mr. Obet Chitatu, Court Clerk

RULING

MAMBULASA, J

Introduction

- [1] On 8th July, 2021 the Claimant filed a without-notice application for review of an Order of the Chairperson of the Industrial Relations Court made on 28th June, 2021 under section 26 (1) of the Courts Act¹.
- [2] The file was brought to the attention of this Court in the late afternoon on 13th July, 2021.
- [3] The said Order made by the Honourable Chairperson of the Industrial Relations Court was to the following effect:
- 3.1 It stayed the termination by the Claimant of the Defendants' employment following the nullification of the Defendants' contracts of employment by the Ombudsman;
- 3.2 That the Defendants be deemed to be on leave on half pay from the date of termination of their employment until conclusion of the matter in the Industrial Relations Court or until a further order made by the said court;

¹ Cap. 3:02 of the Laws of Malawi.

3.3 That the Defendants surrender motor vehicles assigned to them to the Industrial Relations Court and that such vehicles be stored at the High Court of Malawi premises at Chichiri.

[4] The application was made on the grounds that the said orders made by the Honourable Chairperson of the Industrial Relations Court were egregiously and manifestly wrong and likely to prejudice the ends of justice for the following reasons:

4.1 Lack of jurisdiction by the Industrial Relations Court to make the said orders;

4.2 Failure by the Industrial Relations Court to be bound by the doctrine of *stare decisis*;

4.3 The Industrial Relations Court made orders that were not prayed for by the Defendants; and

4.4 Unfair treatment towards the Claimant.

[5] The application for review is supported by a Sworn Statement made by Ms Thokozani Chimbe in her capacity as the Director of Legal Services of the Claimant.

Issue for Determination

[6] The only issue falling for determination before this Court is:

Whether or not this Court can exercise its general supervisory and revisionary jurisdiction over an order or decision made by the Honourable Chairperson of the Industrial Relations Court as envisaged under section 26 (1) of the Courts Act?

The Law

- [7] Jurisdiction is a very fundamental matter that must always be considered by every judicial officer before hearing or entertaining any matter.
- [8] Jurisdiction is almost invariably a creature of statute. In *Kettie Kamwangala –vs- The Republic*² A. C. Chipeta, JA made an apt observation on the issue of jurisdiction when he said that:

...Jurisdiction, as I further understand the law, is not assumed for mere purposes of convenience...Jurisdiction is Statute-conferred, and unless and until the circumstances the Statute has specified as creating jurisdiction in this Court occur, no one should try and confer jurisdiction on this Court otherwise.

- [9] Section 2 of the Courts Act defines “subordinate court” as follows:

means any court, subordinate to the High Court, **established under this Act** but does not include a Traditional Court established under the Traditional Courts Act or any Act replacing the same [*Emphasis supplied*].

² MSCA Miscellaneous Criminal Appeal No. 6 of 2013 (Unreported).

[10] Section 26 (1) of the Courts Act under which the application for review has been brought by the Claimant in this matter provides as follows:

In addition to the powers conferred upon the High Court by this or any other Act, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts and may, in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested at any stage in any matter or proceeding, whether civil or criminal, in any subordinate court, call for the record thereof and may remove the same into the High Court or may give to such subordinate court such directions as to the further conduct of the same as justice may require.

[11] Section 33 of the Courts Act establishes courts that are subordinate to the High Court under it. It states that:

There are hereby established in Malawi the following courts subordinate to the High Court-

- (a) courts of Resident Magistrates;
- (b) courts of magistrates of the first grade;
- (c) courts of magistrates of the second grade;
- (d) courts of magistrates of the third grade; and
- (e) courts of magistrates of the fourth grade.

[12] The courts of magistrates subordinate to the High Court established by the Courts Act referred to in paragraph 11 above are created by section 110 (1) of the Republican Constitution on one hand.

[13] On the other hand, the Industrial Relations Court is created by section 110 (2) of the Republican Constitution.³ However, the Industrial Relations Court is not established by the Courts Act. It is constituted by the Labour Relations Act,⁴ more particularly under Part VII of that Act.

[14] This Court therefore agrees entirely with the observation made by M. A. Tembo J in *Galaxy Broadcasting Company Limited –vs- George Stephen Misinde and three others*⁵ that there is no mention of the Industrial Relations Court under the Courts Act.⁶ No section in the Courts Act can therefore apply to the Industrial Relations Court except to the extent allowed by the Labour Relations Act itself or rules made under it.⁷

Analysis and application of the law to the facts

[15] Section 2 of the Courts Act is very clear that subordinate court means any court, subordinate to the High Court, established under the Courts Act. As we have seen, these are courts that are subordinate to the High Court and are created by section 110 (1) of the Republican Constitution.

³ Act No. 20 of 1994.

⁴ Cap. 54:01 of the Laws of Malawi.

⁵ Miscellaneous Application Number 31 of 2016, (High Court of Malawi) (Principal Registry) (Unreported).

⁶ As above.

⁷ See for instance, rule 27 of the Industrial Relations Court (Procedure) Rules.

- [16] Section 33 of the Courts Act establishes five courts that are subordinate to the High Court. These are the courts of Resident Magistrates, courts of magistrates of the first grade, courts of magistrates of the second grade; courts of magistrates of the third grade, and courts of magistrates of the fourth grade.
- [17] It is the considered view of this Court that while the Industrial Relations Court is a subordinate court to the High Court in terms of section 110 (2) of the Republican Constitution, under the Courts Act, it is not. The simple reason is that it is not established under the Courts Act. Rather, the Industrial Relations Court is constituted under the Labour Relations Act.
- [18] If Parliament had wanted the Industrial Relations Court to be under the purview of the High Court in terms of its general supervisory and revisionary jurisdiction, it would have specifically amended the Courts Act to include it. Parliament did not and has not done so until now in spite of the fact that the Industrial Relations Court has been in existence for well over two decades now. Similarly, there is no corresponding provision in the Labour Relations Act conferring a general supervisory and revisionary jurisdiction on this Court over orders or decisions of the Chairperson of the Industrial Relations Court. In the circumstances, this Court cannot assume jurisdiction where none has been conferred on it either by the Courts Act or by the Labour Relations Act. Jurisdiction cannot be assumed for mere purposes of convenience in this matter. Jurisdiction is statute-conferred.

Finding and determination

[19] In view of the foregoing, it is this Court's finding and determination that it has no jurisdiction to hear or entertain the Claimant's application for review of the Order of the Chairperson of the Industrial Relations Court made on 28th June, 2021 under section 26 (1) of the Courts Act.

[20] The application for review is therefore declined.

[21] Made in Chambers this 15th day of July, 2021 at Blantyre, Malawi.



M. D. MAMBULASA

JUDGE