

**IN THE MALAWI SUPREME COURT OF APPEAL
M.S.C.A. CIVIL NO. 15 OF 2004**

BETWEEN:

WINNE WAKUDYANAYE.....APPELLANT

VERSUS

THE STATE AND THE HIGH COURT OF MALAWIRESPONDENT

CORAM : THE HON. JUSTICE TAMBALA J.A
Matemba Counsel for Applicant
✓ Chokotho (for the Respondent)
Mchacha Court Official

RULING

This is an application for leave to apply for judicial review of Judgment of Katsala J. sitting at High Court in Blantyre. It is a strange application as it is not the practice of this court to judicially review decisions or judgment of the lower courts in terms of Order 53 of Rules of the Supreme Court. Certainly in my long experience on the Higher Bench I do not recall when a judgment of an inferior court was subjected to judicial review in accordance with Order 53. I would hasten to state that the present application is misconceived.

The facts as they can scantily be gathered from the submissions of Mr Chokoto learned counsel for the respondent are that the applicant a school teacher presented her nomination papers to a returning officer for the Nsanje District. She was desirous to stand as an independent Member of Parliament in the Nsanje –Lalanje Constituency. In terms of settled law and practice she was required to resign from her employment in the public office before she could be eligible to

contest for a parliamentary seat in the forth coming general elections.

The facts show that the applicant presented her nomination papers on 28th February 2004. It was later brought to the attention of the returning officer that the applicant has not resigned from the Civil Service at the time when she presented the nomination papers. The returning officer subsequently informed the Electoral Commission that the applicant was a serving civil servant when her nomination papers were received. The Electoral Commission in March wrote to the applicant advising her that she was disqualified from contesting a parliamentary seat in the forth coming general elections, because she had not resigned from the civil service at the time when she presented her papers.

The applicant contended that she had duly resigned on 24th February 2004. She applied for judicial review of the decision of Malawi Electoral Commission which led to her disqualification. Potani J in the court below granted the applicant a stay of execution and an injunction restraining Malawi Electoral Commission from putting into effect the applicant's disqualification. Then on 12th May 2004, Katsala J. in the court below dismissed the applicant's originating motion for judicial review and dissolved the injunction granted by Potani J. This morning Katsala J. dismissed the applicant's second originating motion for judicial review and refused to restore the injunction which he had dissolved. The present application is a reaction to Katsala J's decision.

The letter from Malawi Electoral Commission disqualifying the applicant is dated 9th March, 2004. It would seem to me that if the applicant had acted swiftly and the matter was pursued diligently it would have been properly resolved at an earlier stage. It is difficult to give the applicant a just and effective remedy at this late hour considering the several stakeholders who have an interest in the election which is taking place to-morrow.

It is also not clear whether the name of the applicant appears in the relevant ballot papers. In the event that her name does not appear

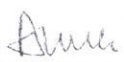
on such ballot papers then an order of injunction granted against Malawi Electoral Commission at this late hour would be futile. It will be impossible to implement it. This court is not in the habit of making orders in vain.

Then from the affidavits of Mr Solomon the returning officer and Mr Sakwala District Education Manager for Nsanje, it would seem that the applicant had indeed not resigned from the public service at the time that she presented her papers to the returning officer. She, therefore, was ineligible to contest for a parliamentary seat.

For the above reasons, it would not be proper or just for me to reverse the decision made by Katsla J. in this matter. The present application is accordingly dismissed.

Since this matter was brought by the Department of Legal Aid, I make no order for costs.

MADE in Chambers this 19th Day of May, 2004 at Blantyre.


D G Tambala
JUSTICE OF APPEAL