



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION
JUDICIAL REVIEW CAUSE NO. 22 OF 2022
(Before Honourable Justice Mambulasa)

BETWEEN:

**THE STATE (ON THE APPLICATION OF
MABLE LWANDA & 21 OTHERS)CLAIMANTS**

-AND-

**NATIONAL DISCIPLINARY COMMITTEE OF THE MALAWI POLICE
SERVICE.....DEFENDANT**

CORAM: HON. JUSTICE MANDALA MAMBULASA

Mr. Clement Mwala, Advocate for the Claimants

Mr. Innocent Chirwa, State Advocate for the Defendant

Mr. Obet Chitatu, Court Clerk/Official Interpreter

Mrs. Annie Libukama, Court Marshal

RULING

MAMBULASA, J

Introduction

[1] The Claimants have approached this Court seeking permission to apply for judicial review of the decision of the Defendant to demote and transfer them from their duty station. Thus, the Claimants claim that the decision made against them was against rules of natural justice, unfair, unreasonable and illegal. Hence, if permission to apply for judicial review is granted, the Claimants further seek an interim relief by way of an order of stay/suspension of the demotions and the consequential transfers pending substantive hearing of the matter. The application is brought pursuant to Order 19, rules 20, 21 and 22 of the Courts (High Court) (Civil Procedure) Rules, 2017 and section 43 of the Republican Constitution. It is supported by a Sworn Statement made by Mable Lwanda and Linda Mitole. The Claimants also filed Skeleton Arguments in support of their application, Form 86A and the grounds upon which relief is sought.

[2] Upon perusal and assessment of the application, the Court directed that it should come by way of notice to the Defendant pursuant to Order 19, rule 20 (4) of the Courts (High Court) (Civil Procedure) Rules, 2017. It must be noted that the first time that the application came up for hearing on 28th July, 2022 the Defendant was not ready to proceed and had not filed any documents with

the Court. Thus, hearing was postponed to 25th August, 2022 and the Claimants were awarded costs for attendance for that day. The costs were to be assessed by the Registrar if not agreed by the parties.

- [3] The Defendant then filed its Sworn Statement in Opposition to the application accompanied by Skeleton Arguments. The Notice of Intention to Cross-Examine persons who made the Sworn Statement in Support of the Application relied upon by the Claimants, filed by the Defendant, was abandoned during the hearing. No reasons were proffered to the Court for the abandonment. It seemed the learned Advocates herein reached some gentlemen's agreement not to take that route as it was going to make the proceeding unnecessarily protracted.

Issues for Determination

- [4] There are two issues to be determined by the Court at this stage.

- 4.1 First, is whether or not the Court should grant permission to apply for judicial review to the Claimants as sought and prayed for.
- 4.2 Second, if permission to apply for judicial review is granted to the Claimants, whether or not, the Court should grant stay/suspension of the decision of the Defendant to demote and transfer the Claimants pending the hearing of the substantive matter.

The Claimants' Case

- [5] The Claimants were hitherto police officers stationed at Blantyre Police Station in Blantyre District.
- [6] On or about 16th October, 2021 they arranged a trip for female police officers to go to Lake Malawi in Mangochi District to celebrate Mothers' Day. They sought the necessary permission from their officer-in-charge who eventually granted them the permission sought. The officer-in-charge did not stop at granting them permission. He went a step further and arranged a bus for them for the said trip.
- [7] The Claimants finally set out for their trip to Lake Malawi in Mangochi District early in the morning as planned to make the most out of the day, as they were expected to return to Blantyre the same day. When they reached Mangochi Township, they received communication that the Commissioner for the Southern Region had ordered that they return to Blantyre immediately. Obviously, tempers flared in the bus but nevertheless, they obliged.
- [8] Few days later, 24 of them, except 6 senior officers were charged with various disciplinary offences. The offences included the following:
- 8.1 Leaving the post without authority contrary to section 52, Schedule 3 (B) of the Police Act;
 - 8.2 Disrespectful in word, act, or demeanor to superior in rank contrary to section 52, Schedule 1 (A) of the Police Act;

8.3 Willfully disobeying lawful orders given by superior in rank contrary to section 52, Schedule 1(B) of the Police Act;

8.4 Failing to appear on parade without proper cause contrary to section 52, Schedule 8 (A) of the Police Act.

[9] The Claimants allege that 6 senior police officers who were part of the trip to Lake Malawi in Mangochi District have since then, not been charged with any disciplinary charges or offences at all. They allege that this is discrimination based on seniority.

[10] The 24 junior officers appeared before a Station Disciplinary Committee conducted by officers from the Southern Region. To their surprise, 3 of the 6 senior police officers who were part of the trip to Lake Malawi in Mangochi District were called as witnesses against them. This hearing took place on or about 14th November, 2021.

[11] On 29th January, 2022 the Claimants were informed that the disciplinary hearing referred to in paragraph 10 above had been quashed and that the initial charges had been replaced with four counts. During this hearing, the Claimants denied all the counts levelled against them and further hearing was postponed/adjourned to 4th February, 2022.

[12] On 4th February, 2022 none of the witnesses of the Defendant turned up and hearing was further adjourned to 11th February, 2022. On 11th February, 2022 the witnesses never turned up again. The Station Disciplinary Committee (the Committee) produced a written report by the officer-in-charge for Blantyre

Police Station which was read to them which stated that they were innocent. The Committee undertook to revert to the Claimants.

- [13] On 12th March, 2022 the Committee came up with a determination which found all of them guilty and required them to provide mitigating factors. A number of them declined to offer any mitigating factors as according to them, there was no disciplinary hearing, properly so called. However, the Committee proceeded to sentence them to loss of maximum of four (4) days' pay.
- [14] The Claimants allege that the determination was made without affording them an opportunity to cross-examine witnesses and that they were left wondering as to the basis on which it had actually been made. None of them has ever received a copy of the determination made by the Committee.
- [15] The said determination was then subjected to a review by the Defendant which enhanced the punishment from loss of pay for a maximum of 4 days to demotions from whatever rank they had to that of a constable, the entry point in the Malawi Police Service. Some of the Claimants have been demoted by two ranks and others by one.
- [16] The Claimants being dissatisfied with the enhancement of their punishments by the Defendant appealed to the Police Service Commission through their officer-in-charge for Blantyre Police Station and the appeals were sent to the Office of the Inspector General on 23rd April, 2022 for onward transmission to the Police Service Commission.

- [17] However, since the appeals were submitted to the Office of the Inspector General for onward transmission to the Police Service Commission, the Office of the Inspector General did not allegedly submit them, thereby purposely frustrating the appeal process.
- [18] The non-submission of the appeals by the Office of the Inspector General to the Police Service Commission made the Claimants unable to exhaust all internal available remedies, thereby leaving them with no option but to commence the present proceedings.

The Defendant's Case

- [19] As already stated in paragraph 3 above, the Defendant filed a Sworn Statement in Opposition to the application for permission to apply for judicial review as well as the interim relief sought by the Claimants.
- [20] The Defendant states that the Claimants have brought the present application against the National Disciplinary Committee of the Malawi Police Service. This entity does not exist in the Malawi Police Service establishment as enshrined in the Police Act. What exists is the National Police Disciplinary Committee with powers to among other things, review decisions of Subordinate Disciplinary Committees. The National Police Disciplinary Committee does not in itself have a legal personality which means that it cannot be sued in its name.
- [21] The Defendant further states that the Claimants respond to varying ranks below Inspector and they appeared before a Subordinate Disciplinary

Committee on disciplinary offences. Following the said disciplinary hearing, they were all found guilty and were sentenced to varying punishments. The determination is dated 11th February, 2022. A copy of the same has been exhibited to the Sworn Statement in Opposition.

[22] The Defendant alleges that the Claimants were served with a notice of hearing which had counts and particulars of the charge. Further, at the hearing, the Claimants were accorded an opportunity to cross-examine all the witnesses that were brought forward.

[23] The National Police Disciplinary Committee in exercise of its powers, sat to review the determination of the Subordinate Disciplinary Committee and the punishments were enhanced as stated by the Claimants. A copy of the minutes of the National Police Disciplinary Committee dated 21st - 22nd March, 2022 have been exhibited to the Sworn Statement in Opposition.

[24] The Defendant states that the National Police Disciplinary Committee only sat to review the determinations of the Subordinate Disciplinary Committee and not to rehear the disciplinary proceedings as such the Claimants were not required to appear before it.

[25] The Defendant confirms that the Claimants have indeed appealed to the Police Service Commission which is yet to hear and determine the appeal. It states that it is surprising that the Claimants, before their appeals could be heard, have resorted to this Court. The Defendant states that the application is premature, vexatious, frivolous, baseless and an abuse of court process. The deponent has exhibited a Letter or Notice of Appeal containing grounds of

appeal addressed to the Police Service Commission from the Claimants written by the Director of Human Resource Management and Development dated 18th July, 2022 on behalf of the Office of the Inspector General.

- [26] The Defendant alleges that the Claimants have also commenced another matter based on the same facts before Honourable Justice N’riva seeking permission to apply for judicial review against the Malawi Police Service in *Judicial Review Case No. 70 of 2021*. A copy of the application before Honourable Justice N’riva has been exhibited to the Sworn Statement in Opposition.
- [27] The Defendant asks: If permission to apply for judicial review will be granted by this Court, what will happen if the Police Service Commission reverses the decision of the National Police Disciplinary Committee? If the Police Service Commission will sustain the decision of the National Police Disciplinary Committee, the Claimants will have a remedy to appeal to this Court. These issues point to the fact that the application before this Court is premature and the Claimants have not exhausted all the remedies available to them as provided for in the Police Act.
- [28] The Defendant states that considering that this is an employment related matter and in the event that the determination of the National Police Disciplinary Committee is reversed, damages would be an adequate remedy. It would be easier to calculate what the Claimants will have lost following their demotions and the same could be paid to them. As such, this claim does not fall within the purview of judicial review.

[29] The Defendant finally states that the application to apply for permission to move for judicial review should be denied as the Claimants have brought claims against a non-existent legal person. That the application is an abuse of court process as there are already pending court proceedings based on the same facts. The Claimants have not exhausted all the remedies available to them. The application has been brought prematurely when the appeal submitted to the Police Service Commission is yet to be heard and determined. Being an employment-related matter, damages would be an adequate remedy and would be quantifiable in monetary terms.

Claimants' Reply

[30] The Claimants also filed a Sworn Statement in Reply. They stated that it is not correct that the National Disciplinary Committee of the Malawi Police Service does not exist. The wireless message that communicated the decision to demote them appearing as exhibit, "MLLM1" refers to the National Disciplinary Committee meeting held from 21st to 22nd March, 2022. Further, the minutes of that Committee's meeting exhibited to Frank Kamude's Sworn Statement in Opposition as "FK2" are entitled National Disciplinary Committee Minutes.

[31] The Defendant does not state the truth as there were two disciplinary hearings at station level. The first disciplinary hearing was held on 14th November 2021 and the results were that 8 out of 24 officers that were charged were found guilty while the rest were not found guilty. It is at this disciplinary hearing that witnesses were invited and testified and were cross-examined.

- [32] The disciplinary hearing held on 14th November, 2021 was subsequently quashed and the Claimants were informed that fresh disciplinary hearings would be conducted.
- [33] The second hearing was scheduled for the 11th, 12th and 13th February 2022. A copy of the notice of hearing has been exhibited as, “MLLM3”.
- [34] The said second hearing was postponed to 14th February, 2022. A copy of the notice of hearing has been exhibited as, “MLLM4”.
- [35] The hearing scheduled for the 14th February, 2022 was further postponed/adjourned to 12th March, 2022. There is a copy of the notice of hearing to that effect which has been exhibited as, “MLLM5”.
- [36] On 12th March, 2022 the disciplinary hearing took place. However, no witnesses were called and the disciplinary committee just took the evidence from the proceedings that were quashed and went on to make its determination without calling witnesses.
- [37] It is not true that the Claimants had been accorded an opportunity to cross examine witnesses as during the hearing on 12th March, 2022 no witnesses came while proceedings of 14th November, 2021 where witnesses came, were quashed and the evidence from there should not have been used in making a determination in a fresh hearing on 12th March, 2022.
- [38] They made a decision to commence court proceedings on 8th July, 2022 over two and half months after submission of their appeals to the Police Service

Commission through the Office of the Inspector General, after confirming that their appeals were being deliberately frustrated.

[39] The Claimants had been informed and verily believe that by the time they served the Defendant with the *inter-partes* application for permission to apply for judicial review as well as the interim relief on 22nd July, 2022, their appeals had not yet been forwarded to the Police Service Commission and that exhibit “FK3” the Letter or Notice of Appeal and grounds of appeal addressed to the Police Service Commission was written after the Defendant had been served on 22nd July, 2022. It was backdated to appear as if it had been written and sent before the service of the *inter-partes* application. It is even doubtful if the appeals were indeed forwarded to the Police Service Commission in the absence of proof of acknowledgement of receipt from the Police Service Commission itself to the Office of the Inspector General.

[40] The Claimants did not commence another matter based on the same facts before Honourable Justice N’riva as alleged by the Defendant. The matter before Honourable Justice N’riva was commenced by 5 ladies only who are also in this matter. They are challenging the decision of the Inspector General to punish them in moving them from their respective departments and reverting them to general duties before the conclusion of the disciplinary proceedings. The matter before Honourable Justice N’riva is not a challenge on the National Disciplinary Committee’s decision on demotions.

[41] The Claimants refer to paragraph 9 of Frank Kamude’s Sworn Statement in Opposition and state that the issue is not purely an employment matter, but rather it constitutes administrative action and also the exercise of quasi-

judicial functions and therefore amenable to judicial review. The parties cases end here. The Court shall now proceed to look at the applicable law.

The Law

[42] 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 (4), an application for judicial review shall be commenced *ex-parte* with the permission of the Court.

- (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.

[43] From the above, it is worth-noting that there are a number of requirements that must be fulfilled by a claimant before they may be granted permission to apply or move for judicial review proceedings.

[44] As Justice Ruth Chinangwa noted in *The State (On application of Gertrude Hiwa, SC) and Office of the President and Cabinet and Secretary to the President and Cabinet*¹ from Order 19, rule 20 quoted above, the Court has to consider the following requirements in an application for permission for judicial review:

44.1 There must be a law, an action or a decision of the Government or a public officer for conformity with the Constitution where a right, freedom, interests or legitimate expectation of the claimant is affected or threatened; or

44.2 A decision, action or failure to act in relation to the exercise of a public function in order to determine its lawfulness, its procedural fairness, its

¹ Judicial Review Cause No. 42 of 2020 (High Court of Malawi) (Lilongwe District Registry) (Civil Division) (Unreported).

justification of the reasons provided, if any, or bad faith, if any, where a right, freedom, interests or legitimate expectation of the claimant is affected or threatened;

44.3 A person making an application for judicial review should have sufficient interest in the matter to which the application relates;

44.4 An application for judicial review should be filed promptly and shall be made not later than 3 months of the decision.

[45] In addition to the above requirements, case law has also developed other additional principles upon which permission to apply for judicial review is considered in our jurisdiction. For purposes of the present proceedings, one such relevant principle is that judicial review is not available in cases where there are other alternative remedies and the same have not been used or exhausted by a claimant.²

[46] In *R -vs- Inland Revenue Commissioners, Ex-Parte Preston*³ the Court said:

...a remedy by way of judicial review is not to be made available where an alternative remedy exists. This is a proposition of great importance.

² As above. See also *The State (On the application of Malawi Revenue Authority) -and- The Chairperson of the Industrial Relations Court and Roza Mbilizi* Judicial Review Case No. 52 of 2021, (High Court of Malawi) (Principal Registry) (Unreported) and *State (ex parte Aero Plastic Industries Ltd -vs- Director of Environmental Affairs* MSCA Civil Appeal No. 19 of 2019 (Unreported).

³ [1985] AC 835 at 852.

[47] In *R -vs- Epping and Harlow General Commissioners, Ex-Parte Goldstraw*⁴ Sir John Donaldson MR stated that:

But it is a cardinal rule that, save in the most exceptional circumstances, that jurisdiction will not be exercised where other remedies were available and have not been used.

[48] It is not automatic that once there is an alternative remedy, then judicial review will not be available. The court must exercise its discretion in the particular case in light of the alleged alternative remedy. This is important because to give but one example, a tribunal may have been established under a statute but may not have been operationalised, and so, it cannot be said that an alternative remedy would be available. In that kind of case, a court would exercise its discretion in favour of granting permission for judicial review as the alternative remedy only exists on the statute book and not in reality.

[49] The permission application like the present one serves two purposes. First, it eliminates at an early stage, applications that are either frivolous, vexatious or hopeless. Second, it ensures that an application is only allowed to proceed to substantive hearing if the Court is satisfied that there is a case fit for further consideration.⁵

⁴ (1983) 3 AllER 257 at 262.

⁵ *The State (On the application of Dr. Justice Michael Mtambo) -and- Judicial Service Commission and The President of the Republic of Malawi*, Judicial Review Case No. 25 of 2022 (High Court of Malawi) (Principal Registry) (Civil Division) (Unreported).

[50] At the permission application stage, there is no need for the Court to go into the matter in depth. If the Court is satisfied that there is an arguable case, then it follows that permission to apply for judicial review should be granted where all the other requirements have also been fulfilled by the Claimant.⁶

Application of the Law to the Facts

[51] As correctly observed by Justice Ruth Chinangwa in the case cited above in paragraph 44, it is noted from the reading of Order 19, rule 20 (1) (a) and (b) of the Courts (High Court) (Civil Procedure) Rules, 2017 that a claimant need not satisfy both requirements. A claimant needs only satisfy one of them at any given point in time.

[52] In the instant case, the most applicable one is Order 19, rule 20 (1) (b) namely, a decision, action or failure to act in relation to the exercise of a public function in order to determine its lawfulness; its procedural fairness; its justification of the reasons provided, if any; or bad faith, if any, where a right, freedom, interests or legitimate expectation of the claimant is affected or threatened.

[53] The Claimants in this application are questioning the decision of the National Police Disciplinary Committee of the Malawi Police Service to demote them on review from the decision of the Station Disciplinary Committee and whether the same was made in accordance with the rules of natural justice, was fair, was reasonable, was lawful and was not discriminatory.

⁶ n5 above.

[54] When one considers section 53 (1) (b) of the Police Act, the Defendant does not appear to be a correct party to these proceedings. It provides as follows:

The power to discipline any police officer, other than the Inspector General, for an offence against discipline shall-

in the case of a police officer of or below the rank of sub-inspector and any other person who accepts to perform duties in the Police Service as a police officer, be exercised by the Inspector General acting through police disciplinary committees.

It is clear from the reading of the above provision that for police officers of or below sub-inspector, like all the Claimants in this matter, the power to discipline them is exercised by the Inspector General, acting through police disciplinary committees. According to section 55 of the Police Act, a standing National Police Disciplinary Committee and other police disciplinary committees subordinate to the National Police Disciplinary Committee are all disciplinary committees through which the Inspector General act. Ultimately, when disciplinary committees sit and take decisions, they represent the Inspector General. It naturally follows that where one wishes to challenge decisions of disciplinary committees in courts of law, the Inspector General would be the most suitable or appropriate party. These observations are made by way of *obiter dictum* as it is no business of the courts to decide for the parties which party they should sue or bring proceedings against.

[55] At this point, it must be categorically stated that this Court is not persuaded by the argument of the Claimants that the fact that officers of the Malawi Police Service wrongly called the Defendant, National Disciplinary Committee, instead of the National Police Disciplinary Committee as

provided for under section 55 of the Police Act⁷, this Court should accept and perpetuate the misnomer. It cannot do that. In *Muluzi et al -vs- Malawi Electoral Commission*⁸ this Court opined as follows:

“We repeat, therefore, that names used in common parlance, when it comes to matters legal in court, ought to give way to legal names or legally recognized names.

Similarly, in *The Democratic Progressive Party -vs- The Attorney General (On behalf of the Office of the President of the Republic of Malawi)*⁹ the Court had an occasion to remind the parties that:

We are in the realm of the law and nomenclature matters.

In short, it is safer for this Court to stick to legal names or legally recognized names of public bodies. The Court declines to use a name that is used in common parlance by officers of the Malawi Police Service when section 55 of the Police Act creates the National Police Disciplinary Committee.

[56] This Court is satisfied that there was a decision by the National Police Disciplinary Committee on review to demote the Claimants herein. The decision was made by the said Committee in exercise of its public function as provided for under section 55 of the Police Act. In this case, it is

⁷ Cap. 13:01 of the Laws of Malawi.

⁸ Constitutional Cause No. 1 of 2009 [2009] MWHC 5.

⁹ Constitutional Referral No. 3 of 2021 (High Court of Malawi) (Principal Registry) (Unreported).

acknowledged that the National Police Disciplinary Committee is not a legal person, but it is a legally recognized public body that made the decision to demote the Claimants in this matter. It is common knowledge that judicial review proceedings of administrative action target the person who made or should have made the decision¹⁰ as well as public bodies. In some cases, the decision maker will be a legal entity, in which case, it is the legal entity that proceedings will be brought against. In other cases, the decision maker may be a legally recognized public body in the sense that it is created by statute, but may not have a legal personality. Where no legal entity or personality exists in a particular legal framework, like the instant case, but a decision was made or taken by a public body created under a statute, it may suffice, to bring judicial review proceedings of administrative action against the legally recognized public body that made the particular decision. Thus, the first requirement is fulfilled by the Claimants in so far as it relates to demotions.

[57] It must be mentioned that there is a mismatch between the actual application and Form 86A filed by the Claimants. The application states that it was seeking a review of the decision and exercise of powers of the National Disciplinary Committee of the Malawi Police Service to demote the Claimants and transfer them from their duty station for being against rules of natural justice, unfair, unreasonable and illegal. In Form 86A under the *Judgment, order, decision or other proceeding in respect of which relief is sought*, it states: The decision of the National Disciplinary Committee of the Malawi Police Service to demote the Claimants on review from the decision

¹⁰ See generally Order 19, rule 23 (2) (c) of the Courts (High Court) (Civil Procedure) Rules, 2017.

of the Station Disciplinary Committee. Similarly, in the same Form 86A under *Reliefs Sought and Grounds for seeking the reliefs*, it provides as follows: A declaration that the decision of the National Disciplinary Committee to demote the Claimants is against rules of natural justice, unfair, unreasonable, discriminatory and illegal. It is only under the *interim relief* part of Form 86A where something on transfers appears. It states: An order staying the demotions and the consequential transfers. The assumption here is that the transfers were ordered by the Defendant as well. A perusal of exhibit, “MLLM1” the wireless message, does not show anywhere that the Defendant ordered the transfers of the Claimants from their duty station. Similarly, a perusal of exhibit, “FK2” the minutes of the National Police Disciplinary Committee does not show anywhere that it ordered transfers of the Claimants as one of the punishments. Consequently, this Court finds that the Claimants herein have failed to prove that the Defendant made a decision in exercise of its public functions to transfer them from their duty station as alleged in the actual application. In this case, the first requirement is partly fulfilled and partly not fulfilled.

[58] The next requirement to consider is whether the Claimants have sufficient interest in the matter to which the application relates. The Claimants cited the case of *R -vs- Avon, Ex-Parte Rex Worthy*¹¹ that held that a person who is in fact affected by a decision has sufficient interest. The Claimants in this matter have a direct interest as they are persons who have been demoted and their salaries reduced accordingly. The Defendant did not advance any arguments

¹¹ [1989] HLR 544.

on this point. Consequently, it goes without saying that the Claimants have sufficient interest in this matter.

[59] The third requirement to consider is whether the application was filed promptly and in any event within three months of the decision. The Claimants contended that the application is brought promptly within three months from the time the decision was made and communicated through a wireless message on 14th April, 2022. The Defendant did not advance any specific arguments on this requirement.

[60] The Claimants filed their application with this Court on 8th July, 2022. The Claimants claim that the decision by the National Police Disciplinary Committee to demote them was made on 14th April, 2022. Exhibit “FK2” attached to the Sworn Statement in Opposition by the Defendant are Minutes of the National Disciplinary Committee for Disciplinary Case Review Meeting No. 1 of 2022. The actual meeting took place from 21st to 22nd March, 2022. The wireless message, C33/12/21, communicating the determination was written on 14th April, 2022. The officer-in-charge for Blantyre Police Station appears to have received the message on 16th April, 2022 if his office stamp appearing on the first page of the exhibit is anything to go by. It is not immediately clear to the Court why the Claimants are alleging that the decision to demote them by the National Disciplinary Committee (as they call it) was made on 22nd April, 2022 as contained in section 5, entitled, *Limitation of Time* of their grounds upon which relief is sought.

[61] The National Police Disciplinary Committee met from 21st to 22nd March, 2022. Strictly speaking, the decision to demote the Claimants was made

during this period. However, the Claimants were not aware of it. They only became aware of it on 16th April, 2022 when the wireless message, C33/12/21 was communicated to the officer-in-charge for Blantyre Police Station. For purposes of computation of time, it started running from the date that the determination was communicated to the Claimants i.e. from 16th April, 2022. By 8th July, 2022 when the Claimants filed their application with this Court, they were within 3 months that is prescribed by Order 19, rule 20 (5) of the Courts (High Court) (Civil Procedure) Rules, 2017. In the final analysis, the Court is satisfied that the application was filed promptly and within three months from the time of the decision.

[62] The fourth requirement to be considered is whether the Claimants made use of or exhausted alternative available remedies before approaching this Court. In their Sworn Statement in Support of the application, the Claimants stated that they filed appeals to the Police Service Commission through their officer-in-charge and the same was forwarded to the Office of the Inspector General on 23rd April 2022. The Claimants exhibited a Memorandum from the officer-in-charge from Blantyre Police Station to that effect marked as “MLLM2”. The Claimants also deponed that the Office of the Inspector General did not submit their appeals to the Police Service Commission from 23rd April 2022 up to the time they filed their application thereby purposely frustrating their appeals. They contended that the non-submission of their appeals made them fail to exhaust all internal available remedies, thereby leaving them with no choice but to move the Court to apply for permission for judicial review proceedings as well as seek the interim relief.

[63] The Defendant submitted that the relationship between the Claimants and the Malawi Police Service is governed by the Police Act. Perusing through the said Act, it clearly provides a well set out procedure in case one is aggrieved by a decision made in exercise of disciplinary powers. The National Police Disciplinary Committee has powers to review decisions of the Subordinate Disciplinary Committee. Where one is aggrieved by such decision, a remedy lies in appealing to the Police Service Commission and further another remedy lies in appealing to the High Court. The Claimants are well aware of this procedure as evidenced by their appeals to the Police Service Commission. However, it appears they are not patient but seek to jump to this Court without exhausting legally provided remedies. Their appeals were only lodged on 1st July, 2022 and on 8th July, 2022 they brought this application for permission to apply for judicial review. It cannot be said that there has been a delay to hear their appeals. This is a frivolous, vexatious and baseless application which ought to be dismissed with costs. The Claimants must wait to exhaust the available remedies and only then, can they appeal to this Court. What will happen if the Police Service Commission reverses the decision of the National Police Disciplinary Committee and the permission herein is granted?

[64] The Claimants made their Sworn Statement in Support of the Application on 24th June, 2022. The present application was only filed with this Court on 8th July, 2022. The Memorandum by the officer-in-charge, Blantyre Police Station submitting their appeals to the Police Service Commission through the Office of the Inspector General was written on 23rd April, 2022. At the time the Claimants made their Sworn Statement in Support of the Application, it was exactly 2 months and a day. The Court disagrees with the learned Advocate for the Defendant that the appeals were lodged on 1st July, 2022.

Exhibit, “FK3” attached to the Sworn Statement in Opposition to the application written by the Director, Human Resource Management & Development on behalf of the Office of the Inspector General of Police shows that the appeals were finally forwarded to the Police Service Commission on 18th July, 2022. As at now, the Police Service Commission is seized with the Claimants’ appeals even though the Claimants allege that there is no evidence of acknowledgement of receipt of the said appeals by the Police Service Commission to the Office of the Inspector General that was produced by the Defendant.

[65] This Court agrees with the Defendant’s argument that the Claimants appear to be somewhat impatient. If the application had been filed on the day that the Claimants’ Sworn Statement in Support of the application was made, namely, 24th June, 2022 it would have been only 2 months and a day. Even if one goes by the Claimants’ argument that the period that the Memorandum lied in the Office of the Inspector General without being forwarded to the Police Service Commission was more than 2 and ½ months, it was still not an undue delay given that they did not cite any specific section in the Police Act or regulation in the Police Service Commission Regulation that stipulated any timeframes within which the appeals had to be forwarded to the Police Service Commission by the Office of the Inspector General that had specifically been breached. Without any such standard expressly provided for in the law - at least the Claimants cited none to the Court, the Claimants’ allegation that there has been undue delay is difficult to justify. The Claimants have not demonstrated to the Court that they followed up formally in writing on the status of the transmission of their appeals to the Police Service Commission by the Office of the Inspector General in order to appreciate why there might

have been a perceived delay. They simply allege that they were informed and believed that information that their appeals were being purposely frustrated. The source of that specific piece of information is not disclosed and so too the basis for the belief. It is an established law that a sworn statement may contain a statement of information and belief provided the sources of information or the basis for the belief are also set out in the statement.¹² That was not the case with the Claimants' Sworn Statement in Support of the application. It is therefore difficult for the Court to believe this piece of information/evidence that their appeals were being purposely frustrated by the highest office in the Malawi Police Service.

[66] All in all, this Court finds that the Claimants have not exhausted alternative available remedies that are provided for in the Police Act. The Police Service Commission is now seized with their appeals. Should the Claimants not be satisfied with the outcome before the Police Service Commission, they will also have the other remedy of appealing to the High Court.¹³ The position of the law is very clear. A remedy of judicial review is not to be made available where alternative remedies exist. Indeed, judicial review is a remedy of last resort. There is no exceptional circumstance in this case, requiring the Court to assume jurisdiction in this matter. It would also not be desirable to have the same matter being dealt with by the High Court and the Police Service Commission simultaneously. This matter should be dealt with in one forum at a time. For this reason, permission to apply for judicial review is declined.

¹² See Order 18, rule 6 (2) of the Courts (High Court) (Civil Procedure) Rules, 2017.

¹³ Section 65 of the Police Act.

[67] Having declined to grant permission to apply or move for judicial review, the interim relief of stay or suspension of the decision of the National Police Disciplinary Committee has no legs to stand on. It automatically falls away. The above notwithstanding, the Court makes an order that the Police Service Commission should endeavour to deal with the Claimants' appeals within a reasonable time and that the Registrar of this Court should bring this Ruling to the attention of the Police Service Commission.

[68] Costs are awarded in the discretion of the Court.¹⁴ Where the Court decides to make an order for costs, the general rule is that the unsuccessful party pays the costs of the successful party.¹⁵ The Claimants are already suffering reduced remuneration. It would not be fair to condemn them in costs. The Court orders that each party bears its own costs except those referred to in paragraph 2 hereof that were awarded to the Claimants.

[69] Made in Chambers this 28th day of October, 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.