



REPUBLIC OF MALAWI

IN THE MALAWI SUPREME COURT OF APPEAL

MISCELLANEOUS CIVIL APPLICATION NUMBER 30 OF 2024

**[Being High Court of Malawi Principal Registry Civil Division Judicial
Review Cause No. 33 Of 2022]**

BETWEEN

PRESIDENT OF THE REPUBLIC OF MALAWI

APPLICANT

AND

THE STATE

[On the Application of Chikhulupiliro Zidana]

RESPONDENT

CORAM: HON JUSTICE L P CHIKOPA SC, DEPUTY CHIEF JUSTICE

T C Nyirenda[Attorney General], Sibande, McJessie, Chaula,

Chiume of Counsel for the Applicant

Kalampa of Counsel for the Respondent

Minikwa Court Clerk

RULING/ORDER

1. The substantive matter is, in our opinion about who can or should appoint the Director General of Immigration and Citizenship Services in Malawi, who can be appointed into such position and the procedure to be followed in making such appointment.
2. In a judgment/ruling rendered on June 6, 2024 the court below ruled that only the Minister Responsible for Immigration Services can appoint the Director General of Immigration and Citizenship in Malawi. Further that a person can only be so appointed if on the date of their appointment they were a public officer.
3. With respect to the instant case the court below found that Brigadier General Kalumo[retired] was not duly appointed to the office of Director General of Immigration and Citizenship Services. He was appointed by the President of the Republic of Malawi as opposed to the Minister Responsible for Immigration Services. He was also not, on the date of his appointment, a public officer. True he had served in the Malawi Defence Force[then known as Malawi Army] but had on the date of his appointment since retired. Proceeding on the preceding conclusions the court below nullified the appointment of Brigadier General Kalumo[retired] as Director General of Immigration and Citizenship Services in Malawi.
4. The appellant has since appealed to this court. It also seeks that the enforcement of the judgment of the court below be stayed pending the hearing and determination of the said appeal.
5. The application is supported by an affidavit sworn by The Honourable the Attorney General who appeared in person. The application is opposed and there is an affidavit in support of the opposition.

6. Whether or not to grant a stay is in the judicious discretion of the court before whom the application for stay is made. And a stay will only be granted if it is in the interests of justice that it be granted.
7. Applying the above to the instant case we are of the view that the interests of justice weigh more towards not granting the stay. We do not think the Immigration and Citizenship Services will grind to a halt in the absence of Brigadier General Kalumo[retired]. Or that irreparable damage will be done to Brigadier General Kalumo or the Directorate of Immigration and Citizenship services in Malawi if a stay is not granted. And if the appeal succeeds, we are sure there the good Brigadier General will go back to his position and resume his functions as by law provided for as if nothing ever happened.
8. On the other hand, we think there is a higher possibility of irreparable damage being caused if, pursuant to a stay, Brigadier General Kalumo[retired] continued to serve as Director General. More especially if the appeal herein turned out to be unsuccessful. A not qualified person would have performed functions he should never have performed. Issues of illegality, long term even irreversible illegality, would arise. The application for a stay is therefore dismissed.
9. Further to the above we feel bound to say a word about steps being taken to enforce the judgment in issue. It should be remembered that the essence of the judgment is the nullification of Brigadier General Kalumo's appointment as Director General. It says nothing about who should subsequently fill the office. Or when the office should be filled.
10. About the appeal itself it is, in our view, in the interests of all that it be disposed of in the shortest time possible. Accordingly, the parties in this

matter will within 21 days from the date hereof appear before the Registrar of this court to map the way forward complete with time lines within which steps towards hearing and disposing of this appeal before July 31, 2025 should be carried out. Needless to say, sanctions will be imposed on anyone that will be found seeking to frustrate the process.

11. Costs shall be the respondent's in any event.

Made this January 25th, 2025 at Blantyre



HON JUSTICE L P CHIKOPA

DEPUTY CHIEF JUSTICE