

James Chiku Kaphale v Malawi

Communications Regulatory Authority

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Kenyatta Nyirenda
Cause Number:	Civil Cause Number 315 of 2016
Date of Judgment:	July 12, 2016
Bar:	Mr. Gondwe, Counsel for the Applicant Messrs Mmeta and Mbotwa, Counsel for the Respondents

The Applicant commenced an action in the Industrial Relations Court (IRC) to challenge his suspension as Director of Legal Services and subsequently sought an interlocutory injunction in the High Court, Principal Registry, after the IRC declined jurisdiction on the injunction. The High Court granted an *ex-parte* injunction restraining the Respondent from suspending the Applicant. The Respondent, named variously as "Malawi Communications Regulatory" and "Malawi Regulatory Authority" in the lower court documents, filed an *ex-parte* summons to discharge the injunction. Prior to the *inter partes* hearing of the

discharge summons, the Applicant filed a **Notice for Leave to Amend Name of the Respondent by way of Correction** pursuant to Order 20 Rule 8 of the Rules of the Supreme Court, stating that the correct name was "Malawi Communications Regulatory Authority (MACRA)".

The principal issues for the Court were whether the Applicant's application to amend the Respondent's name was procedurally regular and, crucially, whether the High Court could grant an amendment to the name of the Respondent in ancillary proceedings when the originating process (IRC Form 1) in the lower court had not yet been amended. The Respondent opposed the application on the grounds that the application by "Notice" was procedurally irregular, as amendment under Order 20 of the Rules of the Supreme Court requires a summons or motion, and that amending the name would effectively add a new party at the execution stage. Furthermore, the Respondent argued that the IRC Form 1 could only be amended using the rules of that lower court. The application was dismissed. The Court reasoned that the Respondent's procedural grounds largely went unchallenged, but more importantly, it was not legally tenable for the High Court to grant an injunction in the name of a party different from the name in the originating process before the lower court. The Court stressed that procedural justice is not subservient to substantive justice; rather, it is integral to achieving it. The Court dismissed the application with costs.