

S v Council, University of Malawi; Ex Parte: University of Malawi Workers Trade Union

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice R.E. Kapindu, PhD
Cause Number:	(Misc. Civil Cause No.1 of 2015) [2015] MWHC 494
Date of Judgment:	July 27, 2015
Bar:	E. Banda, Counsel for the Applicant T. Roka, Counsel for the Respondent

The Applicant sought judicial review in the High Court, Zomba Registry, challenging the Respondent's administrative actions stemming from a labour dispute. The dispute arose in late 2014 after the Applicant, the University of Malawi Workers' Trade Union, rejected a salary increment offer from the Respondent, the Council of the University of Malawi. Following the issuance of a 21-day notice that went unresolved, the Applicant commenced a sit-in (strike) on 4 December 2014. While the industrial action was underway, the Respondent issued a series of memoranda declaring the strike illegal, relying on legal opinion that the requisite procedures under the *Labour Relations Act* had not been

followed. Consequentially, the Respondent threatened disciplinary action and informed the employees that they would not be paid for the days they were absent from work. The Principal Secretary for Labour later confirmed that he had not received the requisite report of the dispute, declaring the sit-in illegal and advising the Applicant that they risked being disciplined by the employer. The Applicant sought judicial review, contending that the Respondent's decision to declare the strike illegal and to withhold pay was *ultra vires*, unreasonable, and amounted to a usurpation of the functions of the Industrial Relations Court (IRC).

The application was allowed. The Court held that the Respondent, being a public authority and a party to the labour dispute, possessed no legal competence to unilaterally determine the legality of the strike, noting that this function is reserved exclusively for the Industrial Relations Court or the High Court. The Court found that the Respondent's action constituted a clear usurpation of a judicial function. Furthermore, the consequential decisions to treat the employees as absent from work and to deduct their salaries were declared incompetent and invalid, as they were fundamentally premised upon the prior *ultra vires* declaration of the strike's illegality. The Court ordered the Respondent immediately to pay all affected employees the full amount of salaries that had been deducted and withheld. Costs were awarded to the Applicant.