

The State, on the application of Blantyre City Council v The Ombudsman

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Civil Cause Number 132 of 2024
Date of Judgment:	April 30, 2025
Bar:	For the Claimant: Mr. Mphatso Matandika and Ms. Aisha Lourenco For the Defendant: Mr. Yamikani Kamoto and Mr. Heznon Kuseli.

Head Notes

Judicial Review -Leave to apply out of time – Inordinate delay – Permission denied.

Summary

The Applicant, Blantyre City Council, sought leave from the High Court to apply for judicial review out of time. The dispute originated from a complaint lodged with the Ombudsman by an employee of the Applicant, Dennis Maunda, regarding unfair labour practices. Following an inquiry, the Ombudsman issued a determination on 23 April

2019, directing the Applicant to pay a difference in salaries by 30 September 2019. The Applicant was advised of its right to apply for a review to the High Court within 90 days, as per section 123(2) of the Constitution. The Applicant failed to do so and filed the current application for judicial review six years later.

The Court considered the Applicant's reasons for the delay, which included seeking legal opinions and parallel proceedings in the Industrial Relations Court. The Court, however, deemed these reasons "invalid", citing a previous case where a six-month delay was considered inordinate, the Court found the six-year delay in this instance to be "frivolous".

The application for permission to apply for judicial review out of time was denied on the grounds of inordinate delay. The Court ordered the Applicant to comply with the Ombudsman's determination within three months of the date of the ruling. The Court further ordered that each party should bear their own costs

Legislation Construed

1. **Constitution of the Republic of Malawi (1994)**

- (s 123(2))

2. **Courts (High Court) (Civil Procedure) Rules 2017**

- (O 19 r 5)
- (O 19 r 20)

Judgment

This is a Judicial Review application made under Order 19 r. 20 of the Courts (High Court) (Civil Procedure) Rules 2017 (CPR). On 22nd October 2024, the Claimant made an application, without notice, for permission to apply for judicial review out of time. The same was granted and an application with notice was heard today.

The background to this matter is that Dennis Maunda, an employee of the Claimant lodged a complaint before the Ombudsman on grounds of unfair labour practices. After an inquiry, the Ombudsman made a determination dated 23rd April 2019 which required the Claimant to pay a difference in salaries by 30th September 2019. The Claimant was also advised of its right to apply for a review to the High Court within 90 days, in keeping with section 123(2) of the Republican Constitution of Malawi. The Claimant did not apply for a review and is making this application to apply for judicial review, six years later.

Under Order 19 r. 5 of the Courts (High Court) (Civil Procedure) Rules 2017, 'an application for judicial review ... shall be filed promptly and shall be made not later than 3 months of the decision.' The Court has the power to extend the period in deserving cases.

The reasons cited for the delay include the fact that the Claimant was seeking a legal opinion from its lawyers and that the employee had commenced parallel proceedings in the Industrial Relations Court. This Court finds both of these reasons to be embarrassingly invalid. A delay of six months was found inordinate in *The State (On the application of Blantyre City Council) v Ombudsman Judicial Review Cause Number 63 of 2019*. What more with a delay of 6 years? To say the least, it makes the within

application frivolous.

The permission to apply for judicial review out of time is, therefore, denied on the ground of inordinate delay. The Claimant shall comply with the Ombudsman's determination within three months from the date hereof. Each party shall bear their own costs.

Made in Chambers this 30th April, 2025.