

The State v Ombudsman ex parte The Principal Secretary for Agriculture and the National Assembly

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Mkandawire
Cause Number:	Judicial Review Case Number 152 of 2016 (Being MSCA Civil Appeal number 24 of 2017)
Date of Judgment:	July 30, 2019
Bar:	Chatepa/Chasulilanga, Counsel for the Respondent Applicants, Absent

The Respondent filed an application for an order of committal for contempt of court against the First Applicant (Principal Secretary for Finance) and the Second Applicant (Principal Secretary for Agriculture) pursuant to Order 30 Rule 1 and 5 of the Courts (High Court) (Civil Procedure) Rules 2017. The application sought committal for blatantly and contemptuously disobeying a judgment of the Malawi Supreme Court of Appeal delivered on the 11th of February 2019. That judgment had directed the First and Second Applicants to issue a public apology to

Malawians for buying archaic equipment that sat idle, unnecessarily indebting the country, and for the illegal selling of tractors.

The matter originated from a 2016 Ombudsman report, 'The present toiling, the future overburdened,' which investigated irregularities in the purchase and disposal of farm machinery worth U\$50 million. The report ordered the Ministry of Finance (First Applicant) to apologise for the indebtedment and the Ministry of Agriculture (Second Applicant) to apologise for selling tractors to officials below purchase price. While a High Court judgment initially ruled that the Ombudsman lacked jurisdiction, the Ombudsman appealed, and the Supreme Court of Appeal upheld the report in its entirety on 11th February 2019. The Supreme Court directed the First and Second Applicants to publish the apology within 60 calendar days, expiring on the 10th of May 2019. Despite reminders, the First and Second Applicants failed to comply by the deadline. The High Court determined it had jurisdiction to handle the contempt proceedings under Rule 20 of the Supreme Court of Appeal Rules, which allows the court below to enforce a Supreme Court order, and found it expedient given the clear provisions in the High Court Rules.

The Court found it to be a fact, satisfied to the requisite standard, that the order of the Malawi Supreme Court of Appeal had been disobeyed by the First and Second Applicants. The Court found both the First and Second Applicants guilty of contempt of court and convicted them.