

The State (On the Application of ADMARC Limited) v The Ombudsman

Summary

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice M.A Tembo
Cause Number:	Judicial Review Case number 137 of 2018 (High Court)
Date of Judgment:	June 23, 2021
Bar:	Chipembere, Counsel for the Claimant Chandilanga, Counsel for the Defendant

The Claimant, ADMARC Limited, sought judicial review in the High Court, Principal Registry, against a determination by the Ombudsman concerning the unfair dismissal of a former employee. The former employee, an Applicant before the Ombudsman, was dismissed in January 1997 but lodged his complaint with the Ombudsman only in July 2013. In February 2019, the Ombudsman found in favour of the former employee, ordering the Claimant to pay lost salary from 1997 to 2019 based on the current salary of the relevant post, plus an equivalent of five years' salary as compensation for unfair dismissal, along with other allowances. The Ombudsman reasoned that the *Employment Act* was not in

operation at the time of the dismissal, only alluding to constitutional provisions on employment rights.

The Claimant applied for judicial review, seeking a declaration that the Ombudsman's decision was unconstitutional, unlawful, and *Wednesbury* unreasonable, and sought an order of certiorari to quash the decision. The principal legal questions were whether the Ombudsman had jurisdiction to entertain the matter when a remedy was available in the courts, and whether the quantum of compensation awarded was excessive, unreasonable, and lacked a legal basis. The Court found that the matter was one of unfair dismissal, a remedy for which was always readily available before the courts. Furthermore, the former employee could not be allowed to sit on his rights, let the limitation period run its course, and then invoke the Ombudsman's jurisdiction under the guise that no remedy was reasonably available before the courts, as this would defeat the spirit of the *Constitution*.

In its finding, the Court held that the Ombudsman did not properly assume and exercise jurisdiction in the matter. Even if jurisdiction had been properly assumed, the remedies granted were found to be excessive and *Wednesbury* unreasonable because they disregarded the *Employment Act*, which required compensation awards to be just and equitable. The award of current salaries for past years and the additional five years' salary compensation amounted to double compensation and failed to factor in mitigation. Consequently, the Court quashed the Ombudsman's decision and granted the orders sought by the Claimant. Costs were awarded to the successful Claimant, to be assessed by the Registrar.