

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

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 and Absent

Head Notes

Civil Procedure - Contempt of Court – Committal application – High Court jurisdiction to enforce Supreme Court order – Rule 20 of the Supreme Court of Appeal Rules – High Court has concurrent jurisdiction to enforce Supreme Court orders

Civil Procedure - Contempt of Court – Disobedience of court order – Failure to publish apology within 60 calendar days – Applicants found guilty and convicted of contempt

Civil Procedure - Contempt of Court – Failure to comply – Late, partial compliance by one Applicant – Attempted compliance outside ordered period does not alter finding of guilt

Summary

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.

Legislation Construed

Subsidiary legislation

Courts (High Court) (Civil Procedure) Rules 2017 (Order 30 rule 1 and 5)

Supreme Court of Appeal Rules (Rule 20)

Judgment

1. On the 11th of June 2019, the Respondent filed an application for order of committal for contempt of court pursuant to order 30 rule 1 and 5 of the Courts (High Court) (Civil Procedure) Rules 2017. The application on the part of the Respondent was for an order of committal against the 1st and 2nd Applicants who are the Principal Secretary for Finance and the Principal Secretary for Agriculture for holding the Supreme Court of Appeal in contempt by blatantly and contemptuously disobeying the judgment of the Malawi Supreme Court of Appeal delivered on the 11th of February 2019 directing the 1st and 2nd Applicants to issue an apology to Malawians for buying equipment that was archaic and sitting idle and deteriorating, thus unnecessarily indebting Malawians and for the illegal selling of tractors. At first glance, I almost thought that this was a matter which could have been dealt with by the Malawi Supreme Court of Appeal itself. My perusal of the Supreme Court of Appeal Rules

however revealed that the Supreme Court does not have specific Rules that deal with matters of this nature. I then addressed my mind towards Rule 20 of the Supreme Court of Appeal Rules which deals with enforcement of orders. This Rule provides that any order given or made by the Court may be enforced by the Court or by the Court below as may be expedient. The High Court being subordinate to the Supreme Court is one of those Courts which is mandated to enforce Supreme Court Orders under this Rule. Since the Courts (High Court) (Civil Procedure) Rules, 2017 have got very clear and detailed provisions which cater for contempt of Court proceedings, I found it most expedient that this contempt of Court proceedings should be handled by this Court. The matter was therefore properly before me.

2. The application herein is supported by a sworn statement made by the Respondent. I will be referring to it in due course.

3. The court set down the matter for hearing on the 12th of July 2019. On this day, both Applicants were not present. As there was evidence that both Applicants were served with the notice of hearing, I ordered that we proceed with the hearing.

4. 4. As already pointed out, this application is anchored on the sworn statement of Martha Chizuma the Ombudsman. The relevant details to this application are as follows:

i) In October, 2016 the office of the Ombudsman released a report entitled 'The present toiling, the future overburdened' . This report was released following an

investigation into allegations of maladministration and other irregularities on the purchase and disposal of farm machinery under India line of credit worth U\$50 million. The report is marked MCI. The report made findings and provided remedies.

ii) The Ministry of Finance was supposed to apologise to Malawians for buying tractors with archaic technology whereby unnecessarily indebting Malawians. The Ministry of Agriculture was supposed to apologise to Malawians for selling the said tractors to top government officials and other people and further for selling them below the purchase price.

iii) The Ministry of Finance and Agriculture through the Attorney General sought review of the report in the High Court. A judgment of the High Court dated 27th of January 2017 ruled that the Ombudsman had no jurisdiction to investigate the matter. The said Judgment is marked as MC2.

iv) The Ombudsman appealed to the Malawi Supreme Court of Appeal. On 11th of February 2019 the Supreme Court of Malawi upheld the report in its entirety. The Supreme Court of Appeal ordered that all the Applicants should comply with the directed remedies. The judgment is marked as MC3. The court further directed that the 1st and 2nd Applicants should within 60 calendar days from the date of judgment publish the apology as ordered by the Ombudsman.

v) The said 60 calendar days expired on 10th May 2019.

vi) Following the Malawi Supreme Court of Appeal Judgment, the Ombudsman wrote all Ministries including the 1st and 2nd Applicants of what is expected of them. The letters are marked as MC4 and MCS.

vii) On the 13th of May 2019, the Ombudsman wrote the Attorney General informing him that she would be proceeding with contempt of court proceedings against the Principal Secretaries of Ministry of Finance and Agriculture. The letter is MC6. The Attorney General did not respond to this letter.

ix) Despite the judgment of the Supreme Court of Appeal, reminders by the Ombudsman's office to the 1st and 2nd Applicants as well as their legal representative the Attorney General, both parties have continued to defy the judgment of the Supreme Court of Appeal by not complying with the directed remedies.

x) The Respondent submits that this conduct constitutes contempt of court.

xi) The Respondent therefore prays that the 1st and 2nd Applicants if found guilty be committed to prison for contempt of court resulting from their blatant and contemptuous disregard of the judgment of the Supreme Court requiring each of them to comply with the directives that were issued by the Ombudsman in her report and to issue an apology to Malawians by 10th of May 2019.

5. The facts of this application are so straight forward and I do not need to deliberately complicate them. The 1st and 2nd Applicants were both fully aware that the Malawi supreme Court of Appeal had ordered them to publish an apology before the expiry of 60 calendar days from the 11th of February 2019. The Respondent went even a step further by reminding the Attorney General who is their legal advisor. This did not work. I even wonder what advice the Attorney General had given them because come the 10th of May 2019, which was the expiry day, the 1st and 2nd Applicants did not apologise.

6. let me put it on record that when the court resumed on 12th of July 2019, Counsel Chatepa informally brought to the attention of the court that she had just seen an apology by the 2nd Applicant in one of the daily papers of that day. Unfortunately, the 2nd Applicant was not in court to explain the status of that apology as it was outside the ordered period . As a court of law, I was not ready to be involved in matters that were not properly brought before me. I did not also want to delve in any speculations. It was incumbent upon the 2nd Applicant to respect the court order to come to court on the 12th of July 2019. That said, even if this was brought to my attention, it did not change things because the 2nd Applicant had not fully complied with the Court's

order. This was just a mockery of justice unfortunately one cannot trick justice.

7. I find it as a fact and I am satisfied to the requisite standard that the order of the Malawi Supreme Court of Appeal given on 11th of February 2019 has indeed been disobeyed by the 1st and 2 nd Applicants. I find both the 1st and 2nd Applicants guilty of contempt of court and they are both convicted.

Delivered this 30th day of July 2019 at Lilongwe.