

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)



2019/HP/1987

IN THE MATTER OF:

**AN APPLICATION FOR JUDICIAL
REVIEW PURSUANT TO ORDER 53 RULE
3 OF THE SUPREME COURT RULES OF
ENGLAND (WHITE BOOK) 1999, EDITION**

AND

IN THE MATTER OF:

**AN APPLICATION FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW**

AND

IN THE MATTER:

**THE DECISION OF THE LUSAKA
PROVINCE MINISTER AND THE
MINISTER OF LOCAL GOVERNMENT
AND HOUSING INFRASTRUCTURE**

BETWEEN:

CHIKWANDA MUSONDA

1ST APPLICANT

JACQUALINE HAMPAKO MUSONDA

2ND APPLICANT

AND

THE ATTORNEY GENERAL

RESPONDENT

Before the Hon. Lady Justice C. Lombe Phiri in Chambers

For the Applicants:

C. Magubwii – Tembo Ngulube & Associates

For the Respondent:

C. Mulonda – PSA

R U L I N G

This is a matter where the Applicant sought this Court's Judicial Review of the decision by the Minister of Lusaka Province and the Minister of Local Government and Housing Infrastructure ordering the demolition of structures built on stand Number Lusaka/LN 25166/10, Lusaka.

The Court granted leave to the Applicant to proceed to present its motion on Judicial Review. However, before the parties made their respective positions known they filed into Court a Consent Judgment duly executed by the parties. The Consent Judgment was basically to the effect that this Court ought to quash the Order of the Ministers to demolish the structures. And that each party would bear their own costs.

I received the said Consent Judgment. I anxiously perused Order 53 upon which the jurisdiction of this Court is drawn from. The provisions of Order 53 are very clear that in order for the Court to exercise its jurisdiction thereunder it should satisfy itself that the circumstances exist to make whichever order is available. In this case the Applicant is seeking for quashing of the Order. Having granted leave to proceed with Judicial Review it meant this Court found that prima facie there were grounds for further investigation. However, a final Order granting the Application cannot be made without full representation of the circumstances. A perusal of Order 53 does not provide for summary disposal of such an application without a full investigation. There is a clear standard and threshold that has to be demonstrated by the Applicant before this Court can move any further. Grant of Judicial Review is based on facts that the acts of the public officer were irrational, unreasonable, irregular or ultra-vires. Only after satisfying itself that any of these facts exist can a Court be seen to interfere with the administrative functions or decisions

of a public officer. Without proving this the Court would be misdirecting itself and acting ultra-vires itself.

In view of the forgoing there is no legal basis for the Court to endorse the Consent Judgment filed by the parties.

Turning to the status of the matter. At a hearing on 4th June, 2020 the parties were guided by the Court regarding the Consent Judgment. From the representations of parties it is clear that the dispute of the parties has been overtaken by events. The parties were guided to discontinue the proceedings especially that the parties had both indicated the desire to bear their own costs. The parties were given 7 days to file the Notice of discontinuance failure to which the matter would be dismissed. After 7 days the parties had not complied with the Court's Order. This matter will therefore stand dismissed for want of prosecution. Each party will bear their own costs.

Delivered at Lusaka this 4th day of August, 2020.



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C. LOMBE PHIRI
JUDGE