

University of Zambia

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An evaluation of the effect of the requirement for leave in judicial review matters on the right to administrative justice.

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By

Phiri Lukundo. M

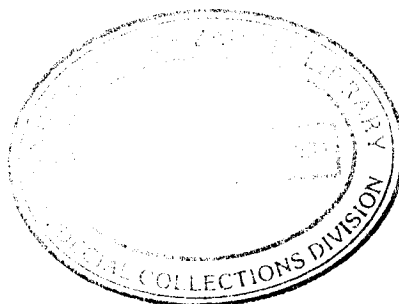


A dissertation submitted to the University of Zambia Law Faculty in partial fulfilment of the requirements for the Award of the Bachelor of Laws (LLB) Degree.

2012

DECLARATION

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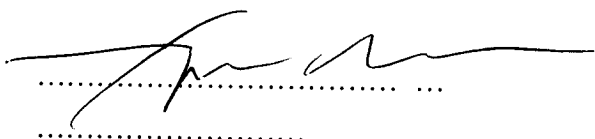
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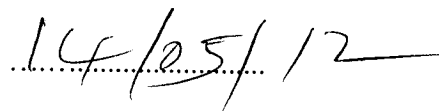
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Abstract

The philosophy behind administrative justice is based on the premise that principles of equality and fairness must govern administrative bodies. As such the administrative justice is a mechanism used to ensure that the powers and duties of the government are exercised in accordance with the liberal principles of a democratic constitution and a progressive bill of rights and simultaneously contributes to the improvement of the technique of government.

This dissertation was aimed at evaluating how the requirement for leave in judicial matters affects an individual's right to administrative justice. In conducting this research, literature on the subject of judicial review and administrative justice was consulted in order to determine how leave affected administrative justice. An appraisal of cases on the interpretation of leave in judicial review matters was conducted to determine judicial trends in the interpretation of leave. This was done to establish how the interpretation of leave in judicial review matters impacts on the right to administrative justice. The dissertation further evaluated the legal framework of the requirement for leave in judicial review matters as practiced in Zambia. Attention was drawn to the Order 53 of the Rules of the Supreme Court Practice of England as well as the case of the *People v The Anti-Money Laundering Investigation Unit Ex-parte Mahitani*.

In this research various aspects of administrative justice were explored in relation to the interpretation of leave in judicial review matters. From the research, the findings were that the concept of leave in judicial review matters was not detrimental to the cause of administrative justice. However it is the manner in which it is interpreted that affects the individual's right to administrative justice. The recommendation is to interpret leave in a manner that takes into account the various interests that administrative justice seeks to serve. This includes preserving an individual's right to successfully defend their rights against administrative bodies.

It was further recommended that the right to administrative justice should be entrenched in the bill of rights followed by a subsequent statute governing judicial review. Furthermore the concept of sufficient interests should be extended to include not only personal interests but also public interests such as the general enforcement of the law in furtherance of the concept of checks and balances.

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I would like to give glory to Jehovah God for the successful completion of this work. I praise his name for giving me the strength to undertake this research. I wish to say thanks for being my shield, my strength, my stronghold deliverer and my redeemer.

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Dedication

This paper is dedicated to Steve and Faith. I am here because you believed in me. You two are by far the best parents in the world. I love you

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Chapter One

1.0 Introductory Chapter

1.1 Introduction

This chapter is an introduction of the entire research to be undertaken. Its main focus will be to give a summary of the entire research and it will highlight the main weaknesses of the way judicial review is currently practiced in Zambia. Furthermore, it is in this chapter that specific questions will be raised that must be answered in its preceding chapters.

There is so much that has been said about justice and its benefits to society. It must be stated here that principles of fairness and equality before the law are some of the goals that must be attained in every society. This research is therefore being undertaken to investigate the effect that the need to seek leave of court in judicial review matters has on an individual's right to access administrative justice.

The underlying principle of any sound legal system is its ability to command respect, loyalty and confidence from the people it seeks to serve, such that the failure by the people to identify themselves with the law of the land is tantamount to anarchy and the eventual break down of the entire system which anchors the whole legal system. Central to this concept is the concept of justice but for the purpose of this research, this rather vast concept will be narrowed down to one rather emerging concept called administrative justice¹.

A considerable number of concepts have been used in administrative law. These include accountability, rule of law, better decision-making, procedural fairness, and rationality as some familiar expressions in this genre. "Administrative Justice" is similarly being used

¹ J L Mashaw, *Bureaucratic Justice: Managing Social Security Disability Claims* (New Haven, CT, 1983); a conference on "Administrative Justice" at Brunel University in May 1986

increasingly as a defining concept, internationally and in most jurisdictions.² However in as much as there has been much talk and debate on this issue, scholars have failed to come up with a universally accepted definition of the concept leading most to resort to construing the meaning from the characteristics of administrative justice.

For the purpose of this research, however the definition of this rather important concept will be derived from the words making up the concept. In this vein, the word Administrative refers the organisational or governmental powers vested in the executive branch of the state and all other bodies performing public functions³. The Oxford Advanced Learner's Dictionary⁴ defines the word justice to mean fair treatment of people. It goes on further to define fair as treating people equally and finally lawful to mean legal or legitimate. These two concepts put together apply to administrative action in other words the conduct of public officers in their course of duty. Thus, the concept of administrative justice is concerned with the impact of governmental actions on the rights and interests of a person and how they should be safeguarded.⁵ Most of the all, the question that administrative justice seeks to answer is whether public officials are acting fairly in the course of their duties

From the foregoing, an individual's right to administrative justice is an important aspect of the development of any society. In Zambia, the power to ensure that the citizen accesses administrative justice has been largely left to the courts. This is so because judicial controls of the executive have proved impotent leaving the court to deal with matters relating to the problems arising out of the relationship of public bodies and the people they seek to serve. Therefore, the court in Zambia specifically the High Court for Zambia has been conferred

² P L Strauss, *An Introduction to Administrative Justice in the United States* (Carolina Academic Press 1989)

³ R, Creyke & J, McMillan: **Administrative Justice—the Core and the Fringe**. Papers presented at the 1999 National Administrative Law Forum Australia [Australian Institute of Administrative Law Inc Canberra 2000] 3

⁴ J, Turnbull et al (ed): *Oxford Advanced Learner's Dictionary*. (Oxford Press 2010) p 813

⁵ R, Creyke & J, McMillan: **Administrative Justice—the Core and the Fringe**. p4

with the powers of supervisory jurisdiction over tribunals, inferior courts, public bodies and persons performing public functions using its powers of judicial review. The High Court derives this power of judicial review by virtue of article 94 of the constitution which provides in sub article one as follows:-

There shall be a High Court for the Republic which shall have, except as to the proceedings in which the Industrial Relations Court has exclusive jurisdiction under the Industrial and Labour Relations Act, unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

In as much as the statement above entails that any person aggrieved with a decision of a public officer has recourse at law, there has been a rather consistent position of the law requiring an individual seeking redress under judicial review to seek leave of court first. This requirement is a setback for those who would want to challenge the actions of public officers⁶.

1.2 statement of the problem

The 24th of October 2011 marked the 47th year of Zambia's independence from the British rule. Despite having developed a sound legal system, problems are still being faced as regards administrative justice. Although the law has given the High Court a supervisory jurisdiction over public bodies, this power can only be exercised when an individual brings an action before the court to challenge the action of a public official. The court in itself cannot move on its own motion to review the action of any public officer and check if he/she conforms to the law; or to determine whether persons who come into direct contact with public officers are

⁶ Order 53 Rule 3 of the Rules of the Supreme Court Practice of England 1999

treated fairly and equally. As such it remains for the citizens to bring an action against the public officials if the court can exercise the power of supervisory jurisdiction. Unfortunately the law itself does not make it easy for the individuals bringing an action against public officials by way of judicial review because of the impediments found in Order 53 Rule 3 of the Rules of the Supreme Court Practice of 1999. This rule requires a person aggrieved to seek leave of court before he/she can bring an action in judicial review matters. For Zambia, this requirement has been religiously upheld to its strictest sense as condition precedent for those wishing to challenge administrative action by way of judicial review.

Other than the traditional requirement of *locus standi*, the Supreme Court in the case of *The People v The Attorney General ex-parte Derrick Chitala*⁷ included another requirement that demands that the person seeking to apply for leave in judicial review matters should show that his/her application will succeed on merit when the matter goes to the substantive hearing. This is done in order to avoid having the court's time and that of the applicant from being wasted on matters that are legally unattainable although being neither frivolous nor vexatious. The difficulty posited in the later requirement has made succeeding at leave applications and a subsequent hearing of the substantive case an intricacy in the Zambian legal system.

Needless to say, that all of these requirements have posed a problem in so far as protecting an individual from the harsh realities inherent in public bodies. All these restrictions contained in the laws as well as case law have fuelled the marginalisation of individuals as regards their right to administrative justice. Despite having seen the adverse effects resulting from the strict interpretation of leave courts maintained a very stringent approach to leave there has been no will by the lawmakers to relax these rules so that accessing the court in judicial review matters can be easy. It is therefore the purpose of this research to examine the extent

(1995-1997) ZR 91 SC

to which the requirement to seek leave of court before applying for judicial review hinders an individual's right to access administrative justice.

1.3 Objectives of the study

- To determine the importance of administrative justice to the development of the state.
- To review the court's decision in the case of *The People v The Anti Money Laundering Investigation Ex-parte Mahtani*⁸
- To recommend practical solutions to the problems currently being faced by people in so far as administrative justice is concerned.

1.4 Significance and purpose of the study.

Access to administrative justice is a vital ingredient in the safeguard of an individual's interests. This is a need that cannot be ignored in Zambia. The need to protect individuals from public officials who sometimes act arbitrarily and in excess of the powers conferred on them by the law cannot be over emphasized. As such there is need to critically evaluate the laws that ensure that the rights and interests of the people are protected. It is against this background that this research is being undertaken to look at how the restrictions imposed by the requirement for leave to apply for judicial review has adversely affected the access to administrative justice.

Having stated the problems currently being faced by individuals bringing actions on ground of being unfairly treated by public officials, it is important to look into ways in which this issue can be addressed. This can be done by making a comparative study of the Zambian legal system with other jurisdictions to see how the rules that have held us back can be relaxed and brought up to date with the modern approach to leave. This will ensure that

⁸ 2010/HK/459

administrative justice can flourish as such the country will realise the benefits that justice and equality will yield. The importance of this research cannot be over emphasised in that it is a fact that the executive branch of Zambia wields so much power that is more often subject to abuse. It is also a fact that many people have suffered injustices perpetrated by public officers. Therefore, it is for this reason that this research will bring to light ways in which the law should not be used as a tool of injustice by the authorities.

1.5 Specific Research Questions.

- I. What is the rationale behind leave in judicial review matters?
- II. How functional are the internal mechanisms in public bodies that promote administrative justice?
- III. Is there political will in the public sector to ensure that holders of public offices give due regard to the law in the course of their duties?
- IV. Are the people aware of their rights to administrative justice?
- V. Does the court inspire confidence in the general public in matters concerned with them being the guardians of the law?
- VI. To what extent is the decision in the *The People v The Anti Money Laundering Investigation Ex-parte Mahtani*⁹ capable of further eroding the people's confidence in the courts?
- VII. What is the impact of the requirement to seek leave of court before applying for judicial review on the right to administrative justice?
- VIII. To what extent are public officials challengeable in Zambia?

⁹ 2010/HK/459

1.6 Research Methodology

This research will mainly embrace desk research and where necessary field research. In conducting this research, available literature on judicial review and its impact on administrative justice will be consulted. The literature consulted will include books written on the subject of judicial review as well as papers presented at national and international conferences on the same. Furthermore, law reports from Zambia, those from common law jurisdictions as well as other jurisdiction available will be consulted in order to analyse the trends adopted by the courts in Zambia and other jurisdictions regarding judicial review and administrative justice. Furthermore data from reputable cites on the internet will be consulted in order to gain access to essays written on the subject surrounding judicial review as well as journals. Where necessary, interviews will be conducted with various stakeholders such as judges and scholars in the field of law to get their views on the subject under investigation

1.7 Conclusion

This chapter is an introduction of the research about to be undertaken. Its focus was generally to highlight the problems being faced in so far as judicial review is concerned highlighting mainly the weaknesses found in the need to seek leave of court before applying for judicial review. Furthermore, it is necessary to state that the whole of this research is going to address the issues affecting administrative justice in the succeeding chapters. The starting point of course will be the role of judicial review in a legal system and this will be discussed in the next chapter.

Chapter Two

2.0 Judicial Control of Administrative Action.

2.1 Introduction

This chapter examines the role of the Courts in judicial review matters, the effect of an official acting *ultra vires* and finally the effect of that *ultra vires* action on administrative justice. Courts play an important role as a medium through which disputes can be settled. Furthermore, the court as an interpreter of the law plays an even greater role in ensuring that public bodies are at all times held accountable to the people they seek to serve. This chapter will mainly be concerned with judicial control of administrative action.

2.2 The Role of Judicial Review in Controlling Administrative Bodies

The need to examine the role of judicial review in the course of this research is based on the fact that, the interaction of public officials and the citizen is on an unequal footing. This is so because the government wields so much power which if left unchecked can be used to the detriment of the people.¹ In addition, administration decisions affect individuals on a daily basis. Where this administrative function is abused, far reaching consequences befall on the common man. As such judicial review is a sure way through which the conflicts between citizens and administrative officers are reconciled. Furthermore, judicial review may not only yield outcomes that leave administrative injustice untouched.²

The role of the court in the exercise of its powers of judicial review stems from the fact the control of public officials in their exercise of public functions can only be effectively done by

¹ M, Weichersand G, Carpenter. *Administrative Law*. (Butterworths Durban 1985) see p 8

² R, Creyke & J, McMillan. *Administrative Justice—the Core and the Fringe*. Papers presented at the 1999 National Administrative Law Forum Australia. [Australian Institute of Administrative Law Inc Canberra 2000] p 23

the court itself. As was mentioned in the preceding chapter the control of public officials by means of non judicial controls such as the commission of inquiry and other non judicial modes of keeping public officials in check have proved impotent such that it remains for the court to keep public bodies within the confines of the law. As De Smith, Woolf and Jowells observe, *in all developing legal systems there has been recognition of a fundamental requirement for principles to govern the exercise by public authorities of their powers*³. As such where these public bodies fail to adhere to the principles that govern the exercise of their powers, the court is prepared to intervene and provide relief for unlawful action that has injurious effects on the aggrieved citizen.

In light of the above observations, judicial review is the supervisory jurisdiction that the High Court exercises over proceedings and decisions of inferior courts, tribunals and other bodies performing public functions.⁴ As such, judicial review as defined in the preceding statement provides the mode through which the control of administrative action can be exercised. Furthermore, judicial review provides the mechanism through which administrators are made to operate within the confines of their enabling law. Furthermore, it provides for the basic protection of citizens' interests as well as deterrence to public officials abusing their powers to the detriment of the citizens.⁵ Judicial review is designed to prevent the excess and abuse of public power by public authorities. Furthermore, the court will intervene and check whether there has been a flaw in the process followed by the authority to make the decision.⁶ Regarding the role of judicial review of administrative action, the Supreme Court in the case

³ De Smith, Woolf and Jowells; *Principles of Judicial Review*. Sweet and Maxwell. London (1999) p 3

⁴ *Ridge v Baldwin* [1964] AC 40; [1963] W.L.R 935

⁵ R, Croyke & J, McMillan. *Administrative Justice—the Core and the Fringe*. p3

⁶ *Council for the Civil Service v Minister of the Civil Service* [1984] 3 All ER 950

of *Dean Mung'omba, Bwalya Kanyanta Ng'andu and The Anti Corruption Commission v Golden Mandandi and The Attorney General*⁷ stated that:

Judicial review is concerned with the decision making process. Whether the tribunal had power to act in the matter; whether they followed procedure; whether they exceeded their jurisdiction in matters of procedural nature. Judicial review is not concerned with the merits of the decision.

In the Zambian legal framework, judicial review is governed by Order 53 of the Supreme Court Rules of Practice of England (1999 edition). This is so because where there are lacunas in the laws of Zambia, the Supreme Court Rules of Practice of England will apply by virtue of section 10 of the High Court Act which provides that:-

*The jurisdiction vested in the Court shall, as regards practice and procedure, be exercised in the manner provided by this Act and the Criminal Procedure Code, or by any other written law, or by such rules, order or directions of the Court as may be made under this Act, or the said Code, or such written law, and in default thereof in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice.*⁸

It is therefore Order 53, which provides the mechanism through which effective control of administrative action can be achieved. From the foregoing, it becomes apparent that the subject matter of judicial review is the decision of the administrative officer or his refusal to make such a decision⁹. It should be noted here that judicial review, as was held in the case of *Dean Mung'omba*, is not concerned with the merits of the decision challenged but the decision making process itself.

⁷ SCJ No 3 of 2003

Cap 27 of the Laws of Zambia see also section 2(e) of CAP 11 of the Laws of Zambia

⁹ Per Lord Diplock in *Council of Civil Service Unions and others v Minister for the Civil Service*[1984] 3 All ER 949

Judicial review will not only be evoked to examine the exercise of power by tribunals, inferior courts and other bodies exercising public functions. The case of *Mwamba and Mbuvi v The Attorney General*¹⁰ further extends the power of courts in judicial review to the decision made by the President. The court in *The People v The Attorney General ex-parte Derrick Chitala*¹¹ further gave credence to what was held in the Stora Mbuvi case when it held that there is no blanket immunity from judicial review even for the President. For this reason any decision made by public officials which is *ultra vires* the law will automatically be a subject of judicial review should the legality of such a decision be questioned by an aggrieved citizen¹². In addition, to qualify as a subject for judicial review the decision must have consequences that affect some person (or body of persons) other than the decision-maker, although it may affect him too¹³. For example, the decision in question may alter an individual's rights or obligations that may be enforceable against him in private law.¹⁴ The role of judicial review is to inspire confidence in the public. As Wade and Forsyth, observe,

“the public needs to be able to rely on the law to ensure that all this power may be used in a way conformable to its ideas of fair dealing and good administration”; that, “[a]s liberty is subtracted, justice must be added”¹⁵ .

2.3 Grounds for Judicial Review

Since judicial review can now be used to impugn any unlawful decision, Order 53 provides the grounds upon which decision in question can be challenged. In his classic Dictum Lord

¹⁰ S.C.Z. Judgement No. 10 of 1993

¹¹ S.C.Z. JUDGMENT NO. 14 OF 1995

¹² De Smith, Woolf and Jowells; *Principles of Judicial Review*.108

¹³ Council for the Civil Service and Others v Minister for the Civil Service [1984] 3 All ER 949

¹⁴ Council of Civil Service Unions and others v Minister for the Civil Service[1984] 3 All ER 949

¹⁵ H W R Wade & C F Forsyth, *Administrative Law* (Clarendon Press, 7th ed, 1994)

Diplock classified under three heads the grounds upon which an impugned administrative action could be challenged.¹⁶ These are what are now understood as; illegality, irrationality (unreasonableness in the *wednesbury* context) and lastly procedural impropriety.

In the case of *Mpongwe Farms Limited (in receivership) and Two Others v The Attorney General*¹⁷, the High Court held that judicial review will lie on any of the three grounds. The first ground for judicial review is that of illegality. This will arise where the public authority acts without or in excess of his/her jurisdiction.¹⁸ The second Ground is that of irrationality, this refers to the situation where the decision made is unreasonable to an extent of absurdity. That is, that the decision made is so outrageous such that it is devoid of any logic that no sensible person applying his mind to the question to be determined, could have arrived at such a decision.¹⁹ Finally procedural impropriety; this is failure to act with procedural fairness towards the person who will be affected. It further covers the failure by an administrative body to observe procedural rules that are expressly laid down in the legislative instrument.

2.4 The effect of an official acting *ultra vires*

As it was earlier stated the role of the court in judicial review matters is to ensure that public officials act within the four corners of the law. Thus a decision by a public official will only be subjected to judicial review if the decision made exceeds the statutory powers as provided for in the enabling Act²⁰. In such an instance, the decision in question will be said to be *ultra vires*. From the foregoing, the question that begs answers therefore is; what is the effect of a public official acting *ultra vires*?

¹⁶ Council for the Civil Service and Others v Minister for the Civil Service [1984] 3 All ER 2004/HP/0010

¹⁷ See also Council of Civil Service Unions and others v Minister for the Civil Service [1984] 3 All ER 950

¹⁸ Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223

¹⁹ *Mpongwe Farms Limited (in receivership) and Two Others v The Attorney General* 2004/HP/0010

The effect of a public official acting *ultra vires* will be looked at from two dimensions, the first being the legal effect of the *ultra vires* act and secondly the effect that the *ultra vires* act has on administrative justice. It was stated in the previous chapter that the goal of any sound legal system is to be able to command respect from the people it serves. Further, it was stated that failure by the people to identify themselves with the law is a recipe for anarchy. Therefore it is the goal of any democratic government to ensure that its organs are governed by the law for the benefit of the governed.

Judicial review primarily deals with questions of jurisdiction and natural justice²¹. Judicial review will mainly be concerned with whether or not the public official has the powers to act in the manner in which they acted and if they did lawfully exercise their powers, did they exercise them fairly? The main essence of the law is to strike a balance between the authority and liberty or rather the governors and the governed²². For this reason, where a public official acts in defiance of the law, an upset is created in the balance between authority and liberty which in turn is going to lead in the violation of an individual's liberty.²³

Furthermore, it must be stated that the public officials are conferred with so much discretionary power by the constitution as well as various statutes. It is for this reason that the executive branch of government and its machinery is the most powerful arm of the state. As such the executive branch has the power to shape and reshape the social, economic and political aspect of the general populace for its benefit or detriment. Therefore, a government left unchecked will always lead to its official violating the law that empowers them to function. In terms of administrative discretion, the Courts have consistently affirmed their

²¹ De Smith, Woolf and Jowells; *Principles of Judicial Review*. p 168

²² C, Anyangwe, *An Outline of the Study of Jurisprudence* [Lusaka: UNZA Press:2005] 61

²³ C, Anyangwe. *An Outline of the Study of Jurisprudence*, P82

reluctance to substitute the decision of the administrative officer with that of their own.²⁴ Sometimes statute has conferred on the administrative body unfettered discretionary powers. However the court in the case of *Padfield v Minister of Agriculture, Fisheries and Food*²⁵ it was held that:

*Even if statute were to confer upon the decision maker an unfettered discretion, the use of that adjective (unfettered), even in an act of parliament, can do nothing to unfetter the control of which the judiciary have on the executive, namely, that in exercising their powers the latter must act lawfully.*²⁶

The effect of an official acting *ultra vires* the law can have manifold effects on to the development of the legal system and the general welfare of the people. It is in the exercise of this discretionary power that lot of bad decisions can be made and these decisions tend to affect the citizens really badly. This abuse has been so profound that the courts have time and again urged public officials to evoke their good conscience in cases where they are called to exercise discretion in order ensure that an injustice is not done on those subjected to their power²⁷.

2.5 The Effect of the *Ultra Vires* Action on Administrative Justice

The purpose of administrative justice is to benefit members of the community.²⁸ Administrative justice entails the conduct of public officers in the course of their duties²⁹. It is further concerned with the persons whose interest they seek to serve when they are carrying

²⁴ De Smith, Woolf and Jowells; *Principles of Judicial Review*. p 153

²⁵ [1968] AC 997

²⁶ De Smith, Woolf and Jowells; *Principles of Judicial Review*. p 169

²⁷ See *R v Minister of Transport ex parte HC Motor Works Limited* [1927] 451s

²⁸ J, McMillan (ed), *Administrative Law: Does the Public Benefit?* (AIAL, 1992) at xi.

²⁹ R, Creyke & J, McMillan: *Administrative Justice—the Core and the Fringe*. Papers presented at the 1999

National Administrative Law Forum Australia [Australian Institute of Administrative Law Inc Canberra 2000] p4

out their duties³⁰. This is so because administrative justice is concerned with the impact governmental actions have on the rights and interests of the person and how they should be safeguarded³¹. As such, where an official is acting in excess of his/her jurisdiction the rights and interests of a person are affected.

Furthermore, the effect of a public official acting *ultra vires* entails that individual will be treated unfairly by the power he/she is subjected to. The fact that the role of public officers is to deliver services to the citizens, makes it clear that where public officers flout the law, the result is that people will lose confidence in the law. This in turn breeds corruption leading to those who have money to bribe public officials in order to access services that they would otherwise get for free. This will ultimately lead to the marginalisation of the poor who cannot afford to bribe officials. Administrative justice entails that people have the right to access services provided for by the public sector.

2.6 Conclusion

This chapter examined the role of judicial review in a democratic society. It was observed that judicial review is put in place to balance interests and to further address the injustice that is inherent when the governors and governed interact.

The importance of judicial review in a society is to ensure that public officials should be held accountable for the decisions they make. The purpose of the executive branch of government is to deliver services such as education and to regulate society as such citizens interact with public bodies on a daily basis. This chapter underscores the point that leaving public officials unchecked give rise to gross violations of the law leading to anarchy. Furthermore, this violation may have the effect of having the citizens denied the services that they are entitled

³⁰ Ge Govender and Hulme. *Administrative Law and Justice in South Africa*. [Butterworths Durban 2001] p 10
³¹ R, Creyke & J, McMillan: *Administrative Justice—the Core and the Fringe*. p4

to. The next chapter will examine the concept of leave in judicial review matters and how it affects administrative justice.

Chapter Three

3.0 An evaluation of the Leave Stage in Judicial Review matters.

3.1 Introduction

This chapter will examine the requirement to obtain leave of court before applying for judicial review. It will further evaluate the rationale behind leave in judicial review matters and how leave affects an individual's right to administrative justice. Focus will be on the law of Order 53 rule 3(1) and (7) of the Rules of the Supreme Court of England (White book.)

3.2 The Law of Order 53 Rule 3 of the Supreme Court Rules of England

The Zambian jurisprudence on judicial review unlike the South African jurisprudence is couched in such a way that application for judicial review is not a matter of right¹. Thus, a person seeking administrative action must obtain leave of court before an application for judicial review can be entertained by the courts.²

The law under order 53 of the rules of the Supreme Court of England provides the procedure to be followed in moving the court to review administrative action this applies to *supply and cassus omissus* in our practice and procedure by virtue of section 10 of the High Court Act³. By the provisions of order 53, person seeking to move the court in judicial review matters must first seek leave of court to do so. Rule 3 of Order 53 of the Rules of the Supreme Court of England provides the criteria by which leave of court can be obtained before the applicant

¹ Article 33 of the South African Constitution guarantees the right to administrative action in Zambia
Judicial Review is governed by Order 53 of the White Book

² Rule 3 of Order 53 of the Rules of The Supreme Court of England

³ See the case of *The People v the Attorney General ex parte Chitala* para 10

can proceed to apply for judicial review⁴. Specific attention should be drawn to rule 3 sub rules 1 and 7 which provide as follows:

1. No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this rule;

7. The court shall not grant leave unless the applicant has sufficient interest in the matter in which the application relates.

3.3 The rationale behind the need to seek leave of court before applying for judicial review.

The rationale behind seeking leave of court to apply for judicial review is primarily premised on whether or not the applicant has sufficient interest in the matter he/she wishes to challenge⁵. In the case of *The People v The Anti-Money Laundering Investigation Unit Ex-parte Rajaan Lekhraj Mahtani, Chisha Mutale and Parvathi Nachimunthu* the High Court held that:-

Regarding sufficient interest, Order 53 rule 3(7) stipulates that, in order for an applicant to obtain leave to apply for judicial review, the applicant must show sufficient interest in the matter to which the application relates⁶.

The need to have sufficient interest serves a purpose of barring people driven by the frivolous and vexatious motives from disrupting the smooth running of public bodies.

It is at leave stage that the court will determine whether the applicant has sufficient interest in the matter he/she wishes to challenge or is out to disturb an otherwise smooth running of

⁴ De Smith, Woolf and Jowells; *Principles of Judicial Review*. (Sweet and Maxwell. London 1999) 34

⁵ *R v Inspectorate of Pollution and another ex parte Greenpeace Ltd* [1994] 4 All ER 349

⁶ (2010) HP, 118

the central government⁷. This is important because it serves to remove the uncertainties in which public officers might be left as to whether they can safely proceed with the administrative action while proceedings for judicial review of it were pending before court however misconceived.⁸

An applicant is said to have sufficient interest in the matter if he/she has a direct personal interest in the relief that he is seeking⁹. However if his interest in the matter is not directly personal, but is a general or public interest, it will be for the court to determine whether he has the requisite standing to apply for judicial review.¹⁰ In the case of *R v Commissioners of Inland Revenue ex-parte National Federation of the Self Employed and Small Businesses* it was held that the question of sufficient interest must be taken together with the legal and factual context of the application and whether there has been breach or failure to carry out statutory or public duties. The law now focuses on public policy than private interests.¹¹

Furthermore the courts are constantly dealing with the problem of resolving the conflict between two aspects of public interests. In this case, it is the desirability to encourage individuals to participate in the enforcement of the law and the undesirability of meddlesome interlopers evoking the jurisdiction of the court in matters that are not of concern to them.¹² In this vain, leave stage is aimed at protecting public bodies by deterring and eliminating ill founded claims without the need for them to be party to litigation.¹³

Another argument advanced in favour of leave is that it is intended to save the courts time from being wasted by misguided busy bodies. The Supreme Court in the case of *The People*

⁷ De Smith, Woolf and Jowells; *Principles of Judicial Review*. (Sweet and Maxwell: London 1999) p 30

⁸ *R v Inland Revenue Commissioners Ex-parte National federation for the Self Employed and Small Businesses* [1982] AC 617

⁹ De Smith, Woolf and Jowells; *Principles of Judicial Review*. p 35

¹⁰ *R v Somerset C.C. and ARC Southern Ltd exp Dixon* [1998] P& C.R 175

¹¹ [1981] 2 ALL ER 93

¹² *Maxwell Mwamba and Stora Mbuzi v The Attorney General* Supreme Court Judgment 10 of 1993

¹³ De Smith, Woolf and Jowells; *Principles of Judicial Review*. p 568

*v the Attorney General ex parte, Derrick Chitala*¹⁴ as regards the rationale behind the need to seek leave of court before applying for judicial review held that, *the purpose of leave in judicial review matters is to eliminate at an early stage frivolous, vexatious and hopeless applications*. Further citing the *Inland Revenue Authority case*, the court went on to state that, *leave enables the court to prevent abuse of court by busy bodies cranks and other mischief makers*.

The High Court is burdened with so many cases pending before it. Granted the courts are open to any person aggrieved and has been seen to be the best channel to be used to right the wrongs that have plagued individuals, it is a fact that dispute resolution through the courts is expensive. It is against this background that those that argue in favour of leave contend that, it aids in caseload management¹⁵. This is important in that it ensures that the limited judicial resources are used in a prudent manner. Lord Donaldson in the case of *R v Panel on Takeovers and Mergers ex parte Guinness*¹⁶ held that:

public interest dictate that judicial review should be exercised speedily given constraints of limited judicial resources, this necessarily involves limiting the number of cases in which leave to apply for judicial review should be given.

The sentiments by Lord Donaldson concerning leave need not be over emphasised. They are true especially in the Zambian context to the extent that our economy is not strong enough to afford the judiciary the luxury of spending its limited resources without care. Furthermore, the requirement for leave is beneficial to the applicant because it serves his/her costs in that leave enables the court to dispose off the case within a reasonable time thereby

¹⁴ (1995-97) ZR 91 (SC)

¹⁵ De Smith, Woolf and Jowells; *Principles of Judicial Review*. Sweet and Maxwell. London (1999) 564

¹⁶ [1990] 1 QB at pp 177-178

saving the applicant costs. Regarding the issue of leave De Smith, Woolf and Jowells observe that:

*The permission stage is far from being an impediment to access to justice, may actually be advantageous since it enables the litigant too expeditiously and cheaply get the views of the court on the merits of his application.*¹⁷

In addition, the leave stage in judicial review matters acts as a membrane which sieves applications to ensure that only those that are deserving can proceed to the substantive hearing. In the case of *R v Secretary of the State for the Home Department ex parte Rukshanda Begum*,¹⁸ the Court of Appeal held that the test to be applied in deciding whether to grant leave to move the court in judicial review matters is whether the judge is satisfied that there is a case fit for further investigations at full inter parte hearing of the substantive application of judicial reviews¹⁹. It should be noted here that the tendency of the court is to determine at an initial stage in this instance leave stage whether the applicant will succeed once the matter proceeds to the substantive hearing.

In the case of *The People v the Attorney General ex parte, Derrick Chitala*²⁰, the Supreme Court recognised the fact that the applicant in the matter had sufficient interest in the matter which he sought to challenge by way of judicial review. The Supreme Court went further to delve in the remedies he sought and held that although the application was neither frivolous nor vexatious, it was legally an untenable application on the face of it such that it was not wrong for the judge below to refuse leave summarily

¹⁷ De Smith, Woolf and Jowells; *Principles of Judicial Review*. Sweet and Maxwell. London (1999) 564

¹⁸ [1990] C.O.D 107

¹⁹ Refer to par53/1-14/34 of *R v Secretary of the State for the Home Department ex parte Rukshanda Begum*

²⁰ (1995-97) ZR 91 (SC)

The above statement underscores the fact the requirement of an individual to seek leave of court before applying for judicial review ensures that a large proportion of applications can be disposed off at permission stage. In the case of *The State v Minister of Finance Ex parte Malawi Limited*,²¹ it was held that:

Leave ensures screening of deserving cases to avoid the inundation of the court and allowing public administration to continue at least expeditiously where matters are unfit for judicial review. Moreover, the leave requirement ensures that at an early stage the appropriate method merited by the law and factual complexion accompanies the proceedings, where leave is granted, the judge would have considered the pertinent matters including of course ... the general considerations...

Another common ground upon which leave to apply for judicial review may not be granted is that an applicant has not exhausted a more appropriate method of pursuing his/ her grievance²². As such the court requires that the applicant to utilise all the relevant procedures designed by the law to address the wrongs which the applicant wishes to right prior to resorting to the remedies available under judicial review²³. It is in this accord that that judicial review should be considered as the remedy of last resort.²⁴ This is so because it is highly unnecessary to flood the court with judicial review matters when the same can be addressed by other tribunals. It has been a long-standing trend embraced by the court that where there is a statutory right of appeal leave of court to apply for judicial review should not be availed to such an applicant²⁵. Furthermore, in the case of *Finsbury Investment and*

²¹ Miscellaneous Civil cause number 40 of 2003

²² *R v Chief Constable of Merseyside Police, exp Swati* [1986] 1 QB 424

²³ De Smith, Woolf and Jowells; *Principles of Judicial Review*. (Sweet and Maxwell: London 1999) 565

²⁴ De Smith, Woolf and Jowells; *Principles of Judicial Review*. 566

²⁵ De Smith, Woolf and Jowells; *Principles of Judicial Review*. 566

*Others v the Attorney General*²⁶ the High Court refused to grant the applicants leave to apply for judicial review because the applicants had an alternative method of moving the court under the Banking and Financial Services Act by which their grievances could be addressed; that is by way of writ of summons. Furthermore, in the case of *New Plast Investment v The Commissioner of Lands and the Attorney General*,²⁷ the Supreme Court held that where a statute provides the mode of commencement that mode must be followed. In the case of *Preston v Inland Revenue Commissioners*²⁸ Lord Templeman observed that, *judicial review should not be granted where an alternative remedy is available such as an appeal*.

From the foregoing it is clear that it is immaterial that the applicant has sufficient interest in the matter in which he/she wishes to challenge by way of judicial review; leave will not be granted until he/she has exhausted all the alternative remedies available to them for instance where the applicant has an alternative of appealing. The reasoning of the court is that Parliament by establishing an alternative procedure indicates expressly or by implication that it intends that the procedure be used²⁹

Furthermore, the court frowns upon an attempt by the applicant to use judicial review to derail criminal proceedings that are properly instituted before the court³⁰. In the case of *C & S Investment Ltd, ACE Car Hire and Sunday Mulumba v the Attorney General*³¹ it was held that the court frowned upon using civil procedure to arrest criminal proceedings. As such judicial review falling within the realm of civil procedure is not permitted by the court to derail proceedings falling under the realm of criminal procedure. Further, in the case of

²⁶ 2010/HK/690

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²⁸ [1981] 2 ALL ER 93

²⁹ De Smith, Woolf and Jowells. *Principles of Judicial Review*. (Sweet and Maxwell: London 1999) 566

³⁰ See the Case of Mahtani and Sangwa v The Zambia Police cited below

³¹ (2004) ZR216

Rajaan Lekhraj Mahtani and John Sangwa v The Zambia Police, the Supreme Court stated that:

The criminal justice system has its own procedure and it is for that reason that civil procedure should not be used to abort criminal investigations or prosecutions. To go round on interlocutory appeal in criminal matters by way of judicial review is misconceived³².

From the arguments presented in favour of leave it can be seen that for whatever reason advanced leave of court seeks to dispel the following: frivolous vexatious and hopeless applications³³ made by busy bodies misguided by trivial complaints of administrative error³⁴ which are misconceived, unarguable or groundless. Furthermore, where there is an alternative procedure of dispute resolution, an application for judicial review is not an appropriate procedure.³⁵

3.4The shortcomings of the requirement for leave as is currently practiced in Zambia

A number of reasons have been advanced to champion the cause for leave in judicial review. Some of which include protecting public officials from misguided persons who are out to disrupt the smooth running of the government. However, there are those that argue in favour of an unrestrictive approach to leave in judicial review. Some of the arguments are presented below.

³² Appeal number 167/2010

³³ Refer to the supreme court practice of England 1999 edition par 53/1-14/30

³⁴ R v Inland Revenue Commission Ex parte National Federation of Self Employed and Small Businesses[1982] 617 at 643

³⁵ New Plast Investment v The Commissioner for Lands and the Attorney General(2001) ZR 51

The requirement for leave is couched on the principle that only those that are personally affected by the decision made can challenge the decision in judicial review³⁶. However, sufficient interest should not be looked at from a restrictive point of view. Judicial review provides a way through which the law is enforced. As such it must be regarded a matter of public interest that the law should be enforced³⁷. Therefore, public policy consideration demands that the policy should be to encourage and not discourage public spirited individuals and groups, even though they are not directly affected by the action which is being taken, to challenge the legality of such an administrative action.³⁸.

It has been argued that the rationale behind leave is to allow those that have been affected by the decision to challenge it by way of judicial review. In the case of *Maxwell Mwamba and Stora Mbuzi v The Attorney General*³⁹ the supreme court pointed out the fact that although it was desirable that citizens should actively participate in the enforcement of the law, there was need to prevent the court's time from being wasted by meddlesome private attorney generals who would wish to move the court in matters that do not concern them. The Supreme Court in this case was reluctant to come to a firm decision as regards relaxing the rules as to standing in judicial review matters despite having clearly pointed out the benefits of relaxing the rules as to standing.⁴⁰

The test for standing in judicial review matters in Zambia is too strict. In the case of *The People v The Anti-Money Laundering Investigation Unit Ex-parte Rajaan Lekhraj Mahtani, Chisha Mutale and Parvathi Nachimunthu*⁴¹, the High Court interpreted sufficient interest to mean an applicant whose interests have been directly affected by the action taken. The test

³⁶ De Smith, Woolf and Jowells. *Principles of Judicial Review*. (Sweet and Maxwell: London 1999) p 35

³⁷ De Smith, Woolf and Jowells. *Principles of Judicial Review*. p 30

³⁸ De Smith, Woolf and Jowells. *Principles of Judicial Review*. 31

³⁹ SCZ Judgment No 10 of 1993

⁴⁰ See the Pronouncements of Judge Musumali

⁴¹ (2010) HP, 118

for *locus standi* should be extremely flexible. For instance, an appraisal of the Promotion of Administrative Justice Act (PAJA) of South Africa reveals in section 6(1) that any person may institute proceedings in a court or tribunal for the review of administrative action. From the provision of the said Act, it is apparent that the issue of sufficient interest under the P.A.J.A is relaxed such that sufficient interest is a question of public interest. As such as long as an issue is of public interest, any one regardless of their interests can challenge the legality of an administrative action.

Unfortunately, the same cannot be said for Zambia. The manner in which leave is interpreted in Zambia has adverse effects given the cost of instituting legal proceedings in this country. If the requirement of sufficient interest were to be relaxed, an opportunity would be availed to those who have the means of bringing an action on behalf of an affected person⁴². However, under the current situation, particular problems relating to the issues of standing do arise where the applicant is suing in a representative capacity.⁴³ That is in cases where a trade union or an organisation dealing with human rights issues wish to bring an action on behalf of those who cannot afford legal representation⁴⁴. The effect of this existing status quo is twofold; firstly it deprives those that cannot afford legal representation there right to access justice and secondly the much needed check and control of public officers will not be achieved.

Furthermore, the consequence that the strict interpretation of leave is that the unjust consequences it yields are far-reaching on the citizen affected by the decision taken (these may include an infringement to his personal liberties and rights).⁴⁵ The very fact that judges

⁴²De Smith, Woolf and Jowells. *Principles of Judicial Review*. (Sweet and Maxwell: London1999) 43 on the issue of standing in a representative capacity

⁴³ De Smith, Woolf and Jowells. *Principles of Judicial Review*.45

⁴⁴ De Smith, Woolf and Jowells. *Principles of Judicial Review* p 45

⁴⁵ Ge Denvish and Hulme. *Administrative Law and Justice in South Africa* (Durban Burtterworth: 2000) p

at leave stage are endowed with vast discretionary powers in their determination of what amounts to a valid or meritorious application, can have very treacherous effects given the fact that discretionary powers are more often than not subject to gross abuse.⁴⁶

The requirement for an applicant to seek leave of court to apply for judicial review takes away the whole purpose for judicial review which is the supervisory jurisdiction inherent in the high court over public bodies.⁴⁷ A very important point to note is that the High Court cannot move in and review the action of an administrative officer unless an aggrieved applicant brings an action before the court. As such, the court needs to be more receptive and increase the latitude of the cases it hears in judicial review matters provided that such cases have merit. Furthermore, it is important for the development of our legal system in terms of judicial precedence that the court should take up more cases in judicial review. The courts unfortunately have not been able to move with time and changes in trends in the judicial system that has been embraced by other countries like South Africa.

The argument in favour of enforcing strict measures for determining the merits of the case has been premised on the fact that there is need to manage the court's caseload⁴⁸. Further, it has been argued by those favouring a strict approach to leave that leave protects public officers from being terrorised by busy bodies driven by vexatious motives⁴⁹. It is conceded here that this point may be valid in more developed jurisdictions. However, in the Zambian jurisdiction, this argument cannot hold. Firstly, the general populace has shown very little interest in the operation of public officers. Even where the decision made by public officers grossly affects the citizens on a daily basis, very few of these decisions are ever challenged in the courts of law. This is so because very few people are aware of the options available

⁴⁶ I, Shapiro,; *The Rule of Law*. (The New York University Press : 1994) at p 253

⁴⁷ See Art 94 of the constitution on the role of the High Court.

⁴⁸ R v Panel on Takeovers and Mergers *ex parte* Guinness

⁴⁹ IRC v National Federation for the Self Employed and Small Businesses [1982] AC 617 at p 653

to them at law which can safeguard their interests. As such in the Zambian context we are not protecting anything in any case it is only the rich that can afford legal suits.

Furthermore, there are number of factors that discourage individuals from commencing legal proceedings even in judicial review matters. Firstly the cost of litigation as has been pointed out are too high that only the most determined vexatious litigant can indulge in legal proceedings which lack merit.⁵⁰ In light of the above statement, the fears that are commonly voiced by the courts that they are being overwhelmed by a flood of frivolous actions cannot be supported by evidence of this happening in practice.⁵¹ Where there are strict rules as to leave there is a fear that no one will be in the position of challenging administrative action of obvious illegality or questionable legality. As De Smith, Woolf and Jowells observe⁵²: *it is hardly desirable that a situation should exist where because all members of the public are affected no one is in the position of bringing proceedings.*

The manner in which judicial review in Zambia has been practiced has put yet another hindrance to those who wish to challenge the court in judicial review matters. In the case of *The People v the Attorney General ex parte, Derrick Chitala*⁵³ the court added yet another requirement for leave which requires the applicant to show that his application is likely to succeed should the matter proceed to substantive hearing. What this entails is that leave will not be granted if the High Court is of the view that the case presented in the documents filed into court in support of the application for leave reveal that the application will not succeed on merit.⁵⁴

⁵⁰ De Smith, Woolf and Jowells; *Principles of Judicial Review*. (London Sweet and Maxwell:s 1999) see page 31

⁵¹ De Smith, Woolf and Jowells; *Principles of Judicial Review*. p31

⁵² De Smith, Woolf and Jowells; *Principles of Judicial Review*. 31

⁵³ (1995-97) ZR 91 (SC)

⁵⁴ See also *The People v The Anti-Money Laundering Investigation Unit Ex-parte Rajaan Lekhraj Mahtani, Chisilha Mutale and Parvathi Nachimunthu* (2010) HP, 118

3.5 Conclusion

This chapter has examined the rationale behind the need to apply for leave in judicial review matters. As has been discussed leave is important in that it acts as a selective membrane allowing cases on merit to proceed to the substantive hearing. Leave does not only benefit public bodies and the courts, it also serves the applicant in that he/she can obtain the views of the court as quickly as possible thereby serving him/her costs. However, despite its many advantages, the requirement for leave can yield injustice for those that cannot bring an action for themselves because the cost of litigation is too high. Furthermore the activities of public bodies are a matter of public interests as such anyone should be encouraged to challenge decisions made by public bodies should the legality of such a decision be questioned. The next chapter will examine how the requirement for leave affects an individual's right to administrative justice.

Chapter Four

4.0 The Role of Judicial Review in Achieving Administrative Justice

4.1 Introduction

This chapter will look at the role administrative justice plays in the development of society. It will further examine the importance of administrative justice in its role as a mechanism of protecting an individual's rights and interests. The chapter will also evaluate the extent to which leave affects an individual's right to administrative justice. Last but not the least the paper will examine the impact the decision in the *People v The Anti Money Laundering Investigation Unit Ex-parte Mahtani*¹ has on the concept of administrative justice.

Administrative justice forms an integral part in the development of any given state. The fact that people are treated fairly by those in whom the locus of power has been entrusted is the benchmark used to determine the development of a nation's legal system. This is in line with the Principle of the social contract as espoused by the philosopher John Lock and other philosophers that have propounded the theory of the social contract². These philosophers argued that sovereign power to rule belonged to the people as such the people enter into a contract with the state the terms of which they relinquish their sovereign right to rule to the state in exchange for having their rights and interests protected³.

4.2 Administrative Justice Defined

It is a burning desire of any well-meaning citizen to live in a country where the principles of democracy and the rule of law are upheld. It is therefore the concern of administrative law

¹ 2010/HK/459

² J Lock, *Two Treatises of Civil Governance*. [Dent and Sons London: 1996] 175

³ C, Anyang we. *An Outline of the Study of Jurisprudence* [Lusaka: UNZA Press:2005] p.140

that those that wield power should carry on their public duties within the framework of the law. As Wade and Forsyth have observed the role of administrative law is to ensure that the public need to rely on the law to ensure that all this power may be used in a way comfortable to its ideas of fair dealing and good administration.⁴ Administrative justice was in chapter one defined by construing the two words that make it up that is 'administrative' and 'justice'. This definition is going to be repeated here for the sake of clarity.

The word 'administrative' or 'administration' refers to the whole machinery of the executive branch of the state.⁵ It has further been defined as the organisational or governmental powers vested in the executive branch of the state and all other bodies performing public functions⁶. The Oxford Advanced Learner's Dictionary⁷ defines the word justice to mean fair treatment of people. Ambrose Bierce defined justice as:

*"A commodity which in a more or less adulterated condition the State sells to the citizen as a reward for his allegiance, taxes and personal service"*⁸.

As such, the two words put together apply to the conduct of public officers in the course of their duties.

Thus, the concept of administrative justice is the benchmark used to determine whether the citizen's right and interests are protected as they come into contact with public officials. As the learned authors of Administrative Law and Justice, observe:

'the concept of administrative justice is concerned with ensuring that the powers and duties of the government are exercised in accordance with the

⁴ H W R Wade & C F Forsyth, *Administrative Law* (Clarendon Press, 7th ed, 1994) at 7.

⁵ Ge Denvish, Govender and Hulme. *Administrative Law And Justice in South Africa*. (Butterworth Durban 2001) p 10

⁶ R, Creyke & J, McMillan: *Administrative Justice—the Core and the Fringe*. Papers presented at the 1999 National Administrative Law Forum Australia [Australian Institute of Administrative Law Inc Canberra 2000] p 3

⁷ J, Turnbull et al (ed): *Oxford Advanced Learner's Dictionary*. (Oxford Press 2010) p 817

⁸ A Bierce, *The Enlarged Devil's Dictionary* (1967) at 168.

*liberal principles of a democratic constitution and a progressive bill of rights and simultaneously contributes to the improvement of the technique of government.*⁹

Furthermore, the concept of administrative justice ensures that mechanisms of dispute resolution are put in place this ensures that an individual can have his grievance resolved administratively¹⁰.

From the definition of administrative justice, it is clear that this concept is premised on the principles of fairness and equality. This can be achieved if those who are endowed with administrative power have the ability to make quality decisions¹¹. It should be noted that when it comes to the interaction of citizens and their public administrators there is no level playing field. This is so because unlike private interactions that involve the equal and voluntary relations, the interaction of public bodies and citizens is neither voluntary nor equal.¹² Consequently, administrative justice being intertwined with administrative law seeks to achieve two things, and these are fair dealing and good administration.¹³ For this reason administrative justice will thrive through a legal and political control of governmental activities and the effective and expeditious legal redress of grievances against the government¹⁴.

⁹ Supra note 3 p 12

¹⁰ Ge Denvish, Govender and Hulme. *Administrative Law and Justice in South Africa*. (Butterworth Durban 2001) p10

¹¹ R, Creyke & J, McMillan: *Administrative Justice—the Core and the Fringe*. Papers presented at the 1999 National Administrative Law Forum Australia [Australian Institute of Administrative Law Inc Canberra 2000] p11

¹² M, Weichers and Carpenter, G. *Administrative Law*. (Butterworths Durban 1985) see p 8

¹³ W.H.R Wade, *Administrative Law*, 6th edition. (Oxford University Press 1998) p 7

¹⁴ Ge Denvish, Govender and Hulme. *Administrative Law and Justice in South Africa*. p12

4.3 The importance of protecting the rights of individuals as they are exposed to public officials.

The jurisprudence behind the protection of individual's rights and interests is premised on the social contract theory. This arose from the realisation that as individuals, people have inherent and inalienable rights which include the sovereign right to govern their own affairs¹⁵. A social contract came about because of a realisation that men needed to come together and form a state. Furthermore, men were to surrender their sovereign right to rule to the state in exchange, the state undertook to protect the rights and interests of its citizens.¹⁶ Whether or not this contract is tenable or not is a subject of debate and shall not be undertaken in this research. However, it can only be stated that traces of this social contract can be noted in article 1(2) the Zambian Constitution which recognises the fact that the all power resides in the people who shall exercise their sovereignty through the democratic institutions of the State in accordance with this Constitution. Furthermore, the preamble of the Zambian Constitution in the second paragraph states that the people are determined to uphold their inherent and inviolable right as a people to decide appoint and proclaim the means and style to govern themselves.

From the social contract theory, it is clear that administrative bodies are put in place to ensure that the state meets its obligation towards the people by providing institutions through which the very interests they have undertaken to protect are safeguarded. Thus, administrative justice forms the basis upon which such rights and interests are protected. If administrative bodies fail to protect their citizens they violate their obligations towards their people, that is to protect and safe guard their interests, the state breaches the social contract. The people in

¹⁵ C, Anyangwe. *An Outline to the Study of Jurisprudence*. [UNZA press: 2005] p 140

¹⁶ C, Anyangwe. *An outline to the Study of Jurisprudence*. p140

that instance have the power to remove the existing government from power and elect new leaders. In light of the above the social contract is governed by public law, a branch that deals with the interaction of the state and its people. Through administrative justice, the law guarantees that administrative bodies shall operate within the legal parameters so as to protect citizens against the abuse of power which leads to the violation of their rights and interests¹⁷.

The impact of the requirement of leave on administrative justice

It has been argued that the role of the court in relation to administrative law jurisprudence is to enhance the cause of administrative justice.¹⁸ That is to promote a value oriented interpretation of the law to include an open and democratic society based on human dignity, equality and freedom¹⁹. As was stated above, public law deals with the unequal interaction or relationship of administrative bodies and citizen. Unlike private relations, interaction between public officials and individuals are not always voluntary. Since there is no level playing field between administrators and citizen, it is always normal to find a situation where an individual is treated unfairly by the public officials²⁰. As such, judicial review comes in to ensure that citizens are protected from the harsh realities of abuse of power by acting as a control mechanism of administrative action.

The role of the court as the effective control of administrative action was dealt with in chapter two. Chapter three went on further and dealt with the concept of leave extensively, in this chapter leave is going to be looked at in relation to its impact on administrative justice. In the South African jurisdiction, a person will only be allowed to move the court in judicial review

Ge Denvish, Govender and Hulme. *Administrative Law and Justice in South Africa*. (Butterworth Durban 2011) p12

C, Anyangwe. *An Outline to the Study of Jurisprudence*. [UNZA Press: 2005] p 13

Ge Denvish, Govender and Hulme. *Administrative Law and Justice in South Africa* p13

M, Weichers and Carpenter, G. *Administrative Law*. (Butterworths Durban 1985) see p 8

matters if he is personally affected by the decision made (*locus standi*).²¹ Furthermore an applicant had to show that his/her application is likely to succeed if the matter proceeds to the substantive hearing.²²

From the above it can be stated that the judicial interpretation of leave in judicial review matters has negative ramifications on the principle of administrative justice. This is so because the right to administrative justice seeks to promote the following goals:-

1. the right of individuals to seek judicial review of government decisions which adversely affect them and a right to have the court apply the substantive grounds of judicial review;
2. a full right of appeal from a first instance decision made by an official, to a tribunal or other judicial body before the operative decision is made and the need for judicial review arises; and
3. that on some issues of importance to individuals there be the right for a court to review both the legality and the merits of the decision being challenged²³.

The rationale behind leave is premised on the fact that an individual's right to challenge administrative action is not a matter of right²⁴. This means that the court preserves the right to grant permission to an individual to enforce his/her rights under judicial review.

This is a sharp contrast to the circumstances prevailing in South Africa where the right to administrative justice is constitutionally entrenched followed by a subsequent enactment of

²¹ The People v The Anti-Money Laundering Investigation Unit Ex-parte Rajaan Lekhraj Mahtan, Chisha Mutale and Parvathi Nachimunthu (2010) HP, 118

²² The People v The Attorney General Exparte Chitala (1995-97) ZR 91 (SC)

²³ R, Creyke & J, McMillan. Administrative Justice—*the Core and the Fringe*. Papers presented at the 1999 National Administrative Law Forum Australia [Australian Institute of Administrative Law Inc Canberra 2000]p 108

²⁴ Rule 3 of the Rules of The Supreme Court Practice

the Promotion of Administrative Justice Act of 2000²⁵. The constitution of South Africa guarantees the right of an individual to move the court in judicial review matters. As such when the court is dealing with a challenge to administrative action it looks to both the Act and the Constitution to determine the general obligation relating to the administrative action in question.²⁶

However, an appraisal of the Zambian constitution shows a clear indication that there is no equivalent provision of article 33 of the South African constitution in the bill of rights. As such the right to administrative action is not guaranteed. In the Zambian situation the cause of administrative justice is not effective. The cause of administrative justice is effected through the legal and political control of governmental activities and the expeditious redress of grievances against the government²⁷. As such it can be said that the concept of leave defeats the purpose of administrative justice in that administrative justice demands that judicial review should serve as the legal control of administrative action and executive control. Where there are impediments such as the interpretation of leave (in the Zambian context), the cause of administrative justice is not championed.

Furthermore when it comes to issue of leave the court has followed the principles of precedence and *stare devises* strictly²⁸. What former basically means is that judicial practice follows what has already been laid by other judges and the later means that decisions of superior courts are binding on the lower court regardless of whether the decision is bad law.²⁹ In this vein the court through the principles laid down above have continued to follow the old interpretation of leave and have forever remained blind to the evolution of the interest

²⁵ Article 33 of The South African Constitution

²⁶ Y, Burns: *Administrative Law under the 1996 Constitution*. (Durban: lexis Nexis Butterworths) p 10

²⁷ M, Weichers and Carpenter, G. *Administrative Law*. (Butterworths Durban 1985) 10

²⁸ M, Munalula. *Legal Process: Zambian Cases and Commentaries* [Lusaka: UNZA Press 2004] 211

²⁹ C Anyangwe, *An Outline of the Study of Jurisprudence* [Lusaka: UNZA Press:2005] p111-114

of society. In the case of *Maxwell Mwamba and Stora Mbuzi*³⁰ the Supreme Court attempted to relax the rules on *locus standi* when it stated that:-

*"... On the question of locus standi, we have to balance two aspects of the public interest, namely the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging meddlesome private "Attorney-Generals" to move the courts in matters that do not concern them. For present purposes, we are prepared to proceed, without coming to any firm conclusion on the point, on the footing that the appellants have a legitimate interest in the national leaders and the governance of this country."*³¹

This case recognised the fact that as long as an action in question is a matter of public interest, any person should be given an opportunity to challenge the action impugned. However, the court refused to come to a firm conclusion on the issue of standing.

There is no doubt that the whole purpose of leave in judicial review matters is to protect public authorities in furtherance of good administration.³² However, the arguments for protecting public authorities against unmeritorious or dilatory challenges against their decisions have to be set against the arguments for preserving the ordinary rights of the private citizens to defend themselves against unfounded claims³³. As such judicial review matters should be handled in such a manner that embraces value oriented principles.³⁴ These principles should underlie an open and democratic society based on human dignity, equality

³⁰ SCZ Judgment No. 10 of 1993

³¹ Per Justice Musumali

³² R v Inland Revenue Commissioners Ex-parte National federation for the Self Employed and Small Businesses [1982] AC 617

³³ The people v the Anti Money Laundering Investigation Unit ex-parte Mahtan 2010/HK/690

³⁴ Ge Denvish, Govender and Hulme. *Administrative Law and Justice in South Africa*. (Butterworth Durban 2001) p15

and freedom.³⁵ Thus even when interpreting rule 3 of Order 53 the High Court should leave in such a way that balance conflicting interests and safeguarding the interest of the general populace.³⁶

Furthermore the purpose of administrative justice is to foster participation of individual in the ongoing process of decision making which impacts upon their lives and thereby promote participatory democracy.³⁷ As such where the decision taken adversely affects the rights of an individual the public officer responsible for such an action should be held accountable. This can be done by enforcing the notion that public officials are answerable to the people who have entrusted their power to rule in their hands. Therefore where an action has been taken that is prejudicial to any interested party, the public official should be compelled to furnish reasons for having made such a decision.³⁸ Administrative justice invites the public to participate in the administration of their affairs by the executive in order to enhance participatory democracy.

The Supreme Court in the Maxwell Mwamba case cited above recognised the need of the public to participate in the political affairs of their country by granting *locus standi* to those that want to challenge executive action. However, the Supreme Court in this case was reluctant to come to a firm position on the issue of *locus standi* when it concluded that the applicant had the right to sue on constitutional issues only. Therefore it is easy for the court in the subsequent cases to revert to the strict interpretation of leave as well as *locus standi*. For this reason it can be stated that in this country the cause of administrative justice is not

³⁵ Ge Denvish, Govender and Hulme. *Administrative Law and Justice in South Africa*. (Butterworth Durban 2001) p16

³⁶ The people v the Anti Money Laundering Investigation Unit ex-parte Mahtan 2010/HK/690

³⁷ Supra note 35 p 14

³⁸ Mureinik: *Reconsidering Review Participation and Accountability*, [1993 Acta Juridica] see also Ge Denvish, Govender and Hulme. *Administrative Law and Justice in South Africa*. (Butterworth Durban 2001) p16

championed by the courts. The strict interpretation of leave serves as a discouragement of those interested in promoting accountability in public officials.

Furthermore, participatory democracy among other things deals with the enforcement of the rule of the law and judicial review has been recognised as an effective medium through which administrative control can be effectively be done. In light of the above statement, the courts in Zambia have made the access to the court in judicial review matters even more difficult because of the strict interpretation of leave. This is so because leave requires prospective applicants to satisfy a host of requirements before leave of court to apply or judicial review is granted to them. This will in effect result in unaccountability as public officers as they would not see the need to furnish an explanation for their decisions however fatal. The role of the court in judicial review matters has made it very difficult for those interested in accountability and good governance to check administrative action because of the stiff rules of standing and other barriers created by leave.

4.5 The impact of the decision in *The People v The Anti Money Laundering Investigation Ex-parte Mahtani*³⁹ has on the concept of leave and administrative justice in Zambia

The case under appraisal in this research is one of the latest cases dealing with the issue of leave in judicial review matters. The action that was being challenged in this case was the decision of the Anti- Money Laundering Investigation Unit to arrest the applicant without an arrest warrant. The court held that leave to apply for judicial review should not be granted because the High Court was not satisfied that there was a case fit for further investigation at the full *inter parte* hearing of the substantive application.⁴⁰ The issue in contention here is not

³⁹ 2010/HK/459

⁴⁰ See p9 of the judgment.

the question of the soundness of the decision rendered but the effect that this decision has bestowed on the development of administrative justice.

The inexorable quest for administrative justice must run as a golden thread through the whole tapestry of administrative law⁴¹. The purpose of judicial review is to serve the ends of administrative justice. If the court refuses to hear the case of the applicant when his right and interests are affected because it is of the view that *prima facie* the case will not succeed her/his right to administrative justice may be affected. The case of Mahtani despite being of sound in reasoning is a clear indication of the court's attitude in leave matters is too strict and may often yield undesirable consequences. In Zambia leave affects the right of an individual to administrative justice to a great extent in that the courts are reluctant to relax the rules relating to leave so that everyone can participate in the development of the country's democracy. Furthermore, even where the individual is personally affected by the decision made, mere sufficient interest may not be enough for her/him to access administrative justice. This is so because other rules of interpreting leave can be used to defeat the individual's quest to access administrative justice through the court.

4.6 Conclusion

This chapter has examined the concept of administrative justice. It has further examined the impact leave in judicial review matters has on administrative justice. From the observations made above, a conclusion can be drawn that leave to apply for judicial review while being an effective tool of sieving judicial review applications can have profound effects on administrative justice. In that there rights and interests while affected cannot be successfully protected by the courts in judicial review matters because of the strict rules of procedure.

⁴¹ Govender and Hulme. *Administrative Law and Justice in South Africa*. (Butterworth Durban 2001)

Chapter Five

5.0 Conclusions and recommendations

5.1 Introduction

This research was aimed at evaluating the extent to which the requirement for leave affects an individual's right to administrative justice. The first chapter introduced the research. It laid out the statement of the problem, significance of the study and the specific questions that would be addressed in the course of the research. Its main objective was to give the structure of the research. In the second chapter, judicial review was discussed. This chapter highlighted the role of judicial review in administrative control, the grounds for judicial review, the doctrine of *ultra vires* and the effect of an *ultra vires* decision on administrative justice. The main objective of this chapter was to examine how judicial review can aid the cause of administrative justice.

The third chapter tackled the issue of leave in judicial review matters. It examined its strength and weakness. The aim of chapter three was to evaluate judicial interpretation of leave in Zambia. Chapter four examined the role of administrative justice in administrative control. The main objective in this chapter was to evaluate the extent to which the requirement for leave affects an individual's right to administrative justice. The decision in *The People v The Anti Money Laundering Investigation Ex-parte Mahtani*¹ was used as a case study to examine the extent to which judicial interpretation of leave in Zambia affects the right to administrative justice.

This chapter is the concluding chapter of this research. It will give the general conclusions drawn from the research. Furthermore, it will give recommendations on how the requirement for leave in judicial review matters can be interpreted to ensure that all the interests affected can be reconciled for the furtherance of administrative justice.

It has been established in the foregoing chapters that the need to protect public officials from unmeritorious claims should be set against need to preserve the ordinary rights of the private citizens. It is commonplace that administrative bodies are there to run the affairs of the state on behalf of the citizens and provide them with some level of protection. It is also trite that in the running of the affairs of the citizen the law endows public officials with powers some of which are discretionary to improve the effectiveness of their operation. However, it has been recognised that the same law that empowers public officials can be used to hurt the interest of those that public officials are charged to protect.

5.2 Conclusions

It is the concern of administrative law that those that are empowered to run administrative bodies must operate within the confines of the law.² It has been observed that government wields so much power, which if left unchecked can be used to the detriment of the people.³ As such, administrative justice is a philosophy that in administrative decision making, the right and interests of individuals are protected. Administrative justice can only be exercised within administrative bodies; however, where there is failure for the parties to reach a consensus, the court as a final arbiter reserves the right to settle disputes between the citizen and the public officer. In light of the above, the court through its power of judicial review is one of the ways in which conflicts are resolved.

This research was undertaken to evaluate the extent to which the requirement for leave in judicial review affects an individual's right to administrative justice. From the findings a conclusion can be drawn that, leave to apply for judicial review is not a bad concept. In fact the reasons in support of leave given in chapter three are there to promote the smooth function of administrative bodies. However, with regard to administrative justice, this rather

² De Smith, Woolf and Jowells; *Principles of Judicial Review*. Sweet and Maxwell. London (1999) p 3

³ M, Weichersand G, Carpenter. *Administrative Law*. (Butterworths Durban 1985) see p 8

important concept of judicial review can affect an individual's right to administrative justice. This is so because the philosophy of administrative justice as has been seen through from the research is to ensure that different interests are reconciled.

It can be noted from the foregoing chapters that the interpretation of leave in Zambia although premised on sound reasoning affects the citizen's right to administrative justice. One aspect of leave is the requirement by the law that an applicant must have sufficient interest in the decision that they wish to challenge by way of judicial review. As was seen in the course of this research, administrative justice seeks to achieve two things; fair dealing and good administration⁴. As such fair dealing and good administration can only be achieved if those entrusted with running the public sector uphold the rule of law. However, it is trite that public authorities have repeatedly abused their authority. It is also trite that public bodies act *ultra vires* the law. It is failure to obey the law by public officials that leads to a violation of an individual's rights and interests.

In light of the foregoing paragraph, it is not always that persons whose interests affected by the decision will challenge that action in the courts of law. This is so because in the Zambian scenario the common person is not aware of his/her rights. Those that are aware may not afford the cost of litigation. In this instance, the rules of standing may work to the disadvantage of those that genuinely wish to see the law enforced. This is so because the test for sufficient interest requires personal loss, issues of public interest do not fall within the ambit of sufficient interest. But for the strict rules to standing, human rights organisation and other non-governmental organisations that would be able to bring an action in a representative capacity. Furthermore, some decision taken may not always personally affect individuals concerned. A person suing in this instance may only be interested in ensuring that

⁴ Maxwell Mwamba and Stora Mbuzi v The Attorney General SCZ Judgment No. 10 of 1993

rule of law in public bodies is adhered to so that the principle of good governance and fair dealing are enhanced in the public sector.

Early, the issue of standing in judicial review matters as interpreted in Zambia is a major constraint for those that wish to improve accountability in the public sector. Aside from the fact that administrative justice is supported by internal review by superior officers, judicial review is an effective mode of externally reviewing administrative action⁵. As such in the context of accountability and good governance, the rules of procedure governing judicial review should not be used to defeat the whole purpose of reviewing administrative action.

Furthermore, courts have a tendency of placing priority on rules of procedure over the substance of why an action to challenge administrative action is brought before the court. As has been stated earlier administrative justice is all about safeguarding the interest of individuals against the abuse of administrative powers. As such, the methodology of interpreting Rule 3 of Order 53 of the Rules of The Supreme Court Practice of England should encompass values that underlie an open and democratic society based on human dignity, equality and freedom. Whether or not our courts have in mind these values when dealing with issues of leave is a matter for debate alone can only answer. However, what can be stated is that the procedure for judicial review specifically Rule 3 has been given priority over the very purpose of judicial review that is to balance conflicting interests and safeguarding the interest of the general populace.

Recommendations

In light of the foregoing conclusions on the extent to which the requirement of leave affects an individual's right to administrative justice, the following recommendations are advanced.

⁵ & John McMillan: *Administrative Justice—the Core and the Fringe*. Papers presented at the 1999 Administrative Law Forum Australia [Australian Institute of Administrative Law Inc Canberra 2000] p 10

These consist of various measures that address aspects of leave in judicial review matters that affect an individual's right to administrative justice.

5.2.1 Constitutional guarantee of the right to administrative action.

The jurisprudence of leave as espoused in the Zambian jurisdiction is that judicial review is not a matter of right. The judges in judicial review matter possess unfettered discretionary powers when it comes to granting leave. Judicial review is the most effective external support of administrative justice. As such it is recommended that the right to administrative action be constitutionally guaranteed. This is to promote accountability in the public sector. The Mung'omba Constitution Review Commission recommended the right to administrative action in the draft constitution. The proposed article 46 in the draft recently published draft constitution provides:-

(1) Every person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair.

(2) Every person whose rights have been affected by administrative action has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to -

(a) give effect to clauses (1) and (2);

(b) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal; and

(c) promote an efficient public administration

constitution is yet to be enacted for now it can only be said that if the right to administrative action is constitutionally guaranteed it will promote a value-oriented interpretation of the law to encompass an open and democratic society based on human equality and freedom.⁶

⁶ Vish, Govender and Hulme. *Administrative Law and Justice in South Africa*. (Butterworth Durban 2001)

From the research undertaken, it was observed that certain countries have entrenched the right to administrative justice in their constitutions. For example section 75(v) of the Australian constitution confers upon the high court the power to award prerogative and injunctive relief against "officers of the Commonwealth following the criteria of lawfulness, fairness and rationality"⁷. The jurisdiction it confers on the Australian High Court is absolute and thus it can be said that section 75(v) confers a jurisdiction upon the High Court which cannot be limited or qualified by statute. In addition clause 33 of the South African constitution entrenches the right just administration action. In the spirit of promoting this right, the South African jurisdiction has enacted the Promotion of Administrative Justice Act. The Zambian jurisdiction can also emulate these countries and improve its administrative law jurisprudence by entrenching the right to administrative action in the constitution. This will enhance the promotion of the rule of law, accountability and the general safeguard an individual's rights and interests.

2.2 The move towards a broad and flexible approach to leave in judicial review matters.

has been observed that the court attach greater importance to the existing of the safeguards alleviate the problems created by increasing case load which is subjecting the court system unwelcome strain.⁸ This alongside a host of arguments favouring the procedural barriers to judicial review may be detrimental to the development of the law. As such it is recommended that the court should embrace a broad and flexible approach to leave in judicial review matters to enhance the cause of administrative justice. In this instance rules as to standing should be relaxed to encompass a number of interests which may necessarily not be of personal nature.

Creyke & John McMillan: *Administrative Justice—the Core and the Fringe*. Papers presented at the 1999 Australian Administrative Law Forum Australia [Australian Institute of Administrative Law Inc Canberra 2000] p 10 with, Woolf and Jowells; *Principles of Judicial Review*. [Sweet and Maxwell: London 1999]

These interests include; the desire individuals to enforce the law where the decision in question is a matter of public concern. In this instance, what is recommended is that where the action impugned is a matter of public interests, the rules of standing should be relaxed to encompass this interest as well. Furthermore where a third party wishes to bring an action on behalf of an affected person who may not be aware of her/his rights or cannot afford the cost of litigation the rules of standing should be relaxed as well. This is so because it is in the interests of administrative justice that a procedure should be put in place that allows a citizen to access justice⁹. Furthermore it is recommended that there is a need to have a judicial review system put in place that can address the citizen's grievances where she /he has been unfairly, unreasonably or unlawfully treated.

5.2.3 Balancing of Interests

It must be noted that the findings of this research does not call for a complete abolition of the requirement of leave in judicial review matters. In fact it has been pointed out that leave is not an enemy to administrative justice. As such when it comes to leave in judicial review matters, it is recommended that a system should be devised which reconciles the interests that arise from interactions of public bodies and the citizens. A system that while protecting the public from abuse of power is not so interventionist that is inconsistent with good governance.

The importance of leave cannot be obliterated by the fact that an individual's interests have to be protected. Leave in judicial review matters should be interpreted in such a manner that does not impair the smooth running of the central government. It should be stressed that although administrative justice has been looked at from the point of view of review of administrative action, this concept embraces a lot of activities and values than simply the

⁹ De Smith, Woolf and Jowells; *Principles of Judicial Review*. (Sweet and Maxwell. London1999)

work of the higher courts, and encompasses, at an institutional level, all modes of dispute resolution, including matters arising under statute involving private bodies¹⁰.

It is in the interest of administrative justice that public institutions should function without constantly being interpreted by vexatious litigants. This is so because public interest dictates that an individual's interests should be weighed against the interests of the general populace. It is recommended that leave should be interpreted in such a way that it protects an individual's interests without necessarily hampering the activities of the central government.

5.2.4 Reforming Judicial Review

It should be noted that constitutional guarantee of administrative action alone will not be effective enacting a statute governing judicial review. Thus it is time for Zambia to have her own statute dealing with judicial review and move away from reliance on British statutes. Furthermore in England reforms, to Order 53 were proposed in 1994 and later in 1996 by the law commission.¹¹ Under the Law Commission's proposals, the term 'leave to apply for judicial review' would be replaced by 'preliminary consideration' (at which interim relief would be available), and the test for allowing an application to go beyond the preliminary stage would no longer be whether the case is arguable but whether there is a serious issue to be tried.

The test for *locus standi* would move away from 'sufficient interest' to whether the court considers either that the applicant has been, or would be, adversely affected or that he is acting in the public interest in applying for judicial review. In England, these reforms are yet to be implemented. What can be stated is that the judicial review system under order 53 and

¹⁰ M Partington, *Globalization and Administrative Justice: Challenges and Possibilities* (paper presented at the Conference on Best Practices in Administrative Justice", Canadian Council of Administrative Tribunals, Vancouver, Oct 1999) at 2-5.

¹¹ Administrative Law: Judicial Review and Statutory Appeals (Law Com No. 226, 1994).

section 31 of the Supreme Court Act of England has not is not worked well even for England because of its failure to balance interests.

The need to have a domestic statute dealing with judicial review is the only way through which the recommendations made above can be effective. Thus, the codification of judicial review should include the following reforms concerning leave. The test for *locus standi* will be broadened to include those acting in the interest of the public and those suing in a representative capacity. It is further recommended that the codification of the principles for judicial review should be couched in such a manner that the principles of administrative justice are championed. The aim of administrative justice is to ensure that citizens are able to actively participate in the development of Zambia's democracy. It is proposed that the judicial review reforms should provide a vehicle through which the public can actively challenge the legality of the decision made by the public officer. This will enhance the role of the courts in administrative control thereby promoting the principles of checks and balance. Time has come when the Zambian legal system can enact its own statute governing review of administrative action. As such it is recommended that the Law Development Commission should look into the possible enactment of an Act of Parliament governing judicial review.

5.2.5 Other Reforms

Protection of an individual's rights and interests cannot be effective if the said individual is not aware of her/his rights. Furthermore, effective review of administrative justice will not be achieved if citizens still possess a generalised phobia of the entire court system. Thus as a final recommendation it is proposed that public sensitisation of the citizens in as far as challenging administrative review is concerned should be carried out. This can be achieved through circulation by the Ministry of Justice of literature covering judicial review and administrative

justice. The other way is through inclusion of the principles of judicial review in the civic education curriculum in schools as well as colleges and universities.

Furthermore, there should be a deliberate policy in the public sector to sensitize public officers on the issue of administrative justice. This can be done through capacity building workshops and seminars aimed at enlightening officers on the issues of administrative justice. This is important especially for those that directly deal with citizens for example, the registration office. This recommendation is aimed at improving service delivery by public bodies. This will yield confidence in the public thereby preventing them to take the law in their hands by getting involved in criminal activities such as corruption.

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