

**AN ANALYSIS OF THE RATIONALE FOR OBTAINING LEAVE IN JUDICIAL
REVIEW MATTERS IN ZAMBIA**



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

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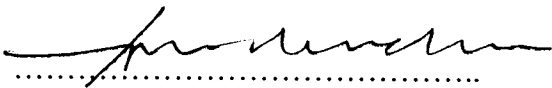
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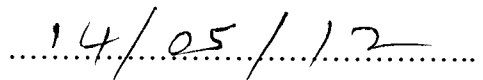
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ABSTRACT

Owing to the mal-administration by public officers, there is need for the High Court to regulate the administrative actions of public officers by promoting access to justice to the victims of mal-administration. From the point of view of the individual, access to justice refer to the right to seek a remedy before the court of law or a tribunal which is constituted by law and which can guarantee independence and impartiality in the application of the law.

This dissertation focused on the analysis of the rationale for obtaining leave in judicial review matters in Zambia. It examined how the rationale for leave has been used by the court to protect the violated rights of individuals from administrative organs and how the violation can be effectively addressed through judicial review, which is a public law remedy. The objectives of the study include; understanding the scope of judicial review of administrative actions, the elements of leave in judicial review proceedings, why it is necessary to apply for leave in judicial review proceedings and what happens when leave is granted or when it is not granted. The study methodology was based on desk research, particularly collection of secondary data from both published and unpublished books as well as rulings arising from leave cases.

The dissertation has established a number of shortcomings in the analysis of the rationale for obtaining leave in judicial review matters in Zambia. These include; the use of Order 53 as a foreign legislation makes the law somewhat uncertain in that the court may decline to strictly follow the procedure outlined under Order 53 and instead substitute its own procedure, the discretion given to judges when granting leave and judicial remedies, *ex parte* applications, no universally accepted standard to determine frivolous, vexatious and unmeritorious matters and inadequacies of Order 53 in addressing the issue of what sufficient interest exactly is.

The dissertation recommends that there is need to have a domestic legislation which will take into consideration the prevailing legal system in Zambia by clearly outlining the procedure for judicial review proceedings. It further recommends the introduction of the move away from *ex parte* to *inter parte* application at the leave stage. This will require the claimant to gather all the relevant materials and disclose their case in full to the defendant, while the defendant only has to give his defence in outline. Furthermore, it recommends the enactment of an Act of Parliament stating who may make a claim for judicial review and establishing criteria of what exactly constitutes sufficient interest.

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DEDICATION

To the Almighty God the creator of my life. God you have inscribed my life on the palms of your mighty hands and I know this work is simply a part of my life you have inscribed. I will always adore and praise your Holy name. To mum and dad, this work was supported and inspired by your endless encouragement and financial support to me. Thank you so much.

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CHAPTER ONE

1.0 INTRODUCTORY CHAPTER

1.1 Introduction

Mal-administration by public bodies is a vice that is ever present in all societies. One remedy or tool to fight this vice is judicial review which is a public law remedy, by which an individual can challenge the legality of decisions, determinations, orders or even omissions of persons or bodies performing public functions.¹ By way of judicial review, therefore, the High Court exercises its supervisory jurisdiction over the proceedings and the decisions of tribunals and other bodies exercising quasi-judicial functions or who are charged with the performance of public duties.² Article 94 of the Constitution,³ provides the extent of the powers of the High Court of Zambia to review administrative actions. It provides that the High Court has unlimited and original jurisdiction to hear and determine any civil or criminal proceedings under any law except those proceedings in which the Industrial Relations Court has exclusive jurisdiction under the Industrial and Labour Relations Act. Therefore, the High Court is not limited in its powers to entertain any matter; this means that administrative actions are reviewable as they fall within the jurisdiction of the High Court.

Judicial review is the determination of the legality or constitutionality of action taken by an agency or administrative organs that perform public functions.⁴ It may also be understood as the process whereby a court of law examines or establishes whether or not such body has acted lawfully in the sense of acting within the scope of its lawful process.⁵

¹ Chishala G. Chama, “Shortcomings of Judicial Review and Human Rights Protection in Zambia.” Obligatory Essay, School of Law (2008), –iv–.

² Halsbury’s Laws of England vol. 37, 4th ed, 432.

³ Chapter One of the Laws of Zambia.

⁴ S. A Reigel et al, *Administrative Law- The Law of Government Agencies* (London: Butterworths, 1982), 254.

⁵ Irving N. Stevens, *Constitutional and Administrative Law*, 2nd ed. (London: M&E Handbook, 1992), 125.

Judicial review serves two main functions as a judicial control mechanism and the ultimate safeguard for the ordinary citizen against unlawful actions by what would otherwise appear to be powerful administration, and to safeguard rights of citizen.⁶ There is no automatic right to a remedy in judicial review proceedings: the remedy is discretionary.⁷ This remedy is concerned with reviewing not the merits of the case or the decision in respect of which the application for judicial review is made but the decision-making process itself.⁸

An application for judicial review is made in accordance with Order 53 of the Rules of the Supreme Court (RSC) of England⁹ which is applicable in Zambia by virtue of section 10 of the High Court Act¹⁰ which provides that;

The jurisdiction vested in the court shall, as regards to practice and procedure, be exercised in the manner provided by this Act and the Criminal Procedure Code, or 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 Court of Justice.

In the case of *Zambia National Holdings and United National Independent Party v. The Attorney General*¹¹, the Supreme Court on appeal observed on page 28 that:

As a general rule, no cause is beyond the competence and authority of the High Court; no restriction applies as to type of cause and matters as would apply to lesser courts. However, the court is not exempt from adjudicating in accordance with law including complying with procedural requirements as well as substantive limitations such as those one finds mandatory sentences or other specification of available penalties or, in civil matters the types or choices of relief or remedy available to litigants under various laws or cause of action.

It is therefore submitted that the High Court in adjudicating matters before it must comply with procedural requirements under various laws or cause of action. Therefore, the law

⁶ Moses Mwelwa, "The Legal Fiction of Judicial Review: A Critique." Obligatory Essay, School of Law (2003), xiv.

⁷ Hilaire Barnett, *Constitutional and Administrative Law* (London: Cavendish Publishing Limited, 1996), 714.

⁸ Moses Mwelwa, "The Legal Fiction of Judicial Review: A Critique." Obligatory Essay, School of Law (2003), 2.

⁹ Rules of the Supreme Court of England (1999 EDITION).

¹⁰ Chapter 27 of the Laws of Zambia.

¹¹ 1994 Z.R. 115.

governing the procedure for judicial review which is provided for by Order 53 of the Rules of the Supreme Court (RSC) of England¹² applies in Zambia by virtue of section 10 of the High Court Act¹³

The application for leave to apply for judicial review is normally made *ex parte* to a single judge in chambers and may be renewed in an open court. This is a necessary preliminary step in making a claim for judicial review which is intended to ensure that leave is not granted in inappropriate cases. Ordinarily, leave is simply the permission in form of an order granted by a judge for an individual to bring an action against the public authority either to enforce the rights, to compel compliance with the law or to impugn the decision of a public authority.¹⁴

The leave requirement has been defended by the judiciary for performing a crucial function in maintaining the case within an optimal level as articulated by Lord Donaldson in *R v Chief Constable of Merseyside Police ex parte Calveley*,¹⁵ that:

The public interest normally dictates that if the judicial review jurisdiction is to be exercised, it should be exercised very speedily and given the constraints imposed by limited judicial resources, this necessarily involved limiting the number of cases in which leave to apply should be given.

If the leave stage were to be abolished it would deprive the court of the power to exercise its discretion at the outset of the proceedings. The discretion which the court has at this stage is very much more limited than that which exist at a later stage although it is very important.¹⁶

The leave stage, therefore, assists case-load management by deterring frivolous, vexatious, unmeritorious applications without the need for *inter partes* judicial review hearing. In the words of Sir Wade: “it enables many unmeritorious cases to be disposed of summarily if an

¹² Rules of the Supreme Court of England (1999 EDITION).

¹³ Chapter 27 of the Laws of Zambia.

¹⁴ Moses Mwelwa, “*The Legal Fiction of Judicial Review: A Critique.*” Obligatory Essay, School of Law (2003), 14.

¹⁵ [1986] 1 ALL ER 257.

¹⁶ O. Hood Philips and Paul Jackson, *Leading Cases in Constitutional and Administrative Law*, 6th ed. (London: Sweet and Maxwell, 1988), 620.

arguable case cannot be shown.”¹⁷ Secondly, leave ensures that an application is only allowed to proceed to a substantive hearing if the court is satisfied that the case is fit for further investigation at a full *inter partes* hearing.¹⁸

In *The People v The Bank of Zambia ex parte Finsbury Investment Limited, Patrick Simuntala Chamunda and Others*,¹⁹ it was submitted on behalf of the applicants in the supplementary submissions in support of their application for leave to apply for judicial review on page three that in order for the requirement of leave to be satisfied, three elements must be fulfilled and these include: sufficient interest (*locus standi*), promptness and arguable case. *Locus standi* is the title to sue. It may be defined as the right to bring proceedings, the right to challenge an action or decision of a public body.²⁰ Further, it is a party’s right competence to claim the relief in a court of law as a result of a particular ‘interest’ in a case.²¹ For promptness, Order 53 Rule 4 (1)²² requires that an application for leave to apply for judicial review shall be made promptly within three months from the date when the grounds for the application first arose unless the court considers extending the period based on good reasons. For arguable case, it entails that there is a sufficiently arguable case fit for further investigation at a substantive hearing. An arguable case does not mean a winning case, it simply means that a case is not frivolous and vexation.²³

¹⁷ William H. R. Wade and Christopher F. Forsyth, *Administrative Law*, 7th ed. (Oxford: University Printing House, 1994), 453.

¹⁸ William H. R. Wade and Christopher F. Forsyth, *Administrative Law*, 7th ed.

¹⁹ 2010/HK/690.

²⁰ *FTJ Chiluba and Another v. National Media Corporation Ltd and Others (1991) HN 152 (Unreported)*

²¹ Penjani M. Longwe, “*Locus Standi in Judicial Review Matters: A Review.*” Obligatory Essay, School of Law (2001), 24.

²² Rules of the Supreme Court of England (1999 EDITION).

²³ Mulenga S. Kapilima, “*Judicial Review and Protection of Human Rights in Zambia. A Critical Evaluation of Order 53 in the Protection of Human Rights.*” Obligatory Essay, School of Law (2003), 34.

The leave requirement benefits both parties however as for an applicant it is: 'a remarkably quick, cheap and easy method of obtaining the view of an experienced High Court judge as to whether the applicant has any merit in the matter or not.'²⁴

1.2 Problem statement

Despite there being laws in the quest for justice, most victims of mal-administration do not get to have their cases heard in the High Court and subsequently on appeal to the Supreme Court due to the need for granting leave in judicial review matters. Thus no application for judicial review will be heard without leave of court. This simply means that even though the applicant observe the laws such as Order 53, and section 31 of the Supreme Court of England which govern applications for judicial review, the court will not entertain an application for judicial review unless leave is granted.

In judicial review cases the court can only entertain a matter which has been granted leave failure to which the case will be considered unmeritorious for further hearing. The Court of Appeal held in the case of *R v. Secretary of States for the Home Department, ex parte Rukshanda Begum*²⁵ that the test to be applied in deciding whether to grant leave to move for judicial review is whether the judge is satisfied that there is a case fit for further investigation at a full *inter partes* hearing of a substantive application for judicial review. Thus, the problem which the requirement for leave creates is that most cases which have not been granted leave are not heard by the court.

This state of affairs means that the applicant will not get to have their case adjudicated upon by the court and ultimately the quest for justice will not be attained. If such circumstances continue to exist public officers will continue with their mal-administration without being

²⁴ William H. R. Wade and Christopher F. Forsyth, *Administrative Law*, 7th ed. (Oxford: University Printing House, 1994), 454.

²⁵ (1990) C.O.D 107.

held accountable by the judiciary which has been given the mandate as an organ of the Government to enforce laws in an effort to ensure that justice prevails. This then means that applicants who are injured by the mal-administration will have no redress as long as these rules remain strict.

From the research conducted it has been found that the rules for granting leave in judicial review proceedings are too strict as certain cases do not get to be heard by competent courts if the requirements for leave are not fulfilled. The requirement for promptness states that an application must be made within three months failure to which leave will not be granted. Arguable case requires that the case must be fit for further investigation at a substantive hearing. *Locus standi* provides that the applicant must have sufficient interest in the matter to which the applicant relates. Thus if these requirements are not fulfilled, leave for judicial review will not be granted. Therefore, in as much as these rules are necessary in ensuring that only cases which have merit are heard, they should be liberalised to enable most cases adjudicated upon. By liberalising the rules, it will become flexible for one to apply for judicial review and be granted leave so that the case is heard and justice is delivered.

1.3 Objectives of the research

The objective of this essay is to analyse the rationale for obtaining leave in judicial review of administrative actions. The following shall be the main areas of focus;

- (i) Understanding the scope of judicial review of administrative actions,
- (ii) The elements of leave in judicial review proceedings,
- (iii) Why it is necessary to apply for leave in judicial review proceedings,
- (iv) What happens when leave is granted or when it is not granted,
- (v) To suggest practical solutions in an effort to improve the need for leave in judicial review

proceedings.

1.4 Significance of the research

The importance or significance of this research cannot be overemphasized because, as abovementioned attainment of justice is the ultimate objective of the law and justice can only be attained if people who are victims of mal-administration are granted leave or rather permission to have their cases adjudicated upon by the relevant courts. It is therefore imperative that the elements that are necessary for the granting of leave are made flexible or are relaxed. This would ensure that people have access to courts in an effort to have their cases adjudicated upon. Thus the importance of leave must be understood not only by judges presiding over cases but also by public authorities responsible for decision-making as well as the victims of mal-administration.

1.5 Specific research questions

- (i) What is judicial review?
- (ii) Who is entitled to bring an action under judicial review?
- (iii) What is the significance of leave in judicial review proceedings?
- (iv) What is the effect of granting leave at the discretion of the courts?
- (v) Do the requirements of *locus standi*, promptness and arguable case that need to be fulfilled before leave is granted act as a hindrance to accessing justice ?
- (vi) With the aid of case law, does the Zambian legal regime recognise leave as an important element in judicial review proceedings?

1.6 Research methodology

The methodology for the proposed study will embrace mainly desk research in which available literature will be consulted. In particular, this desk research will be done through the collection of secondary data from relevant Law Reports, books, dissertations, other published and unpublished works on the subject. In addition, the assessment of the possible legal issues and rulings arising from leave cases in judicial review proceedings and lastly, advanced opinions from experts of the specific field of study.

1.7 Conclusion

This chapter gave the framework of the dissertation. It encompassed the brief introduction of judicial review, statement of the problem, the significance of the study, the objectives and also the methodology of the study. From the above discussion, it has been found that leave is granted at the discretion of the judge and it is likely that it can be granted subjectively which in most cases would lead to justice being denied if leave is not granted. Nonetheless, leave still remains an important tool in judicial review as it helps the courts to determine which cases are fit for consideration at the *full inter partes* hearing. Chapter two focuses on the scope of the concept of judicial review in Zambia. It is of great importance that one understands this concept, its functions as a public law remedy and the law governing judicial review in Zambia.

CHAPTER TWO

2.0 SCOPE OF THE CONCEPT OF JUDICIAL REVIEW IN ZAMBIA

2.1 Introduction

Judicial review, being concerned with the making of decisions and the taking of actions by the executive branch of government, is a concept of fundamental constitutional importance.¹ The political legitimacy of judicial review depends, in the ultimate analysis, on the assignment to the courts of that function by the general consent of the community.² The efficacy of judicial review depends, in the ultimate analysis, on the confidence of the general community in the way in which the courts perform the function assigned to them.³ Therefore, it is of great importance that one understands this concept, its functions and the law governing judicial review in Zambia.

2.2 Definition of judicial review of administrative actions

Judicial review involves the reviewing of the acts, decisions, determinations, orders and omissions of individuals and bodies performing public functions.⁴ This provides a basic protection for individuals and prevents those performing public functions from abusing their powers to the disadvantage of the public.⁵ It is by judicial review that the High Court can exercise its supervisory jurisdiction over inferior bodies, tribunals, public bodies and individuals performing public functions.⁶

¹ Michael Taggart, *Judicial Review of Administrative Actions in the 1980s: Problems and Prospects* (New York: Oxford University Press, 1984), 18.

² Michael Taggart, *Judicial Review of Administrative Actions in the 1980s: Problems and Prospects*.

³ Michael Taggart, *Judicial Review of Administrative Actions in the 1980s: Problems and Prospects* (New York: Oxford University Press, 1984), 18.

⁴ William H. R. Wade and Christopher F. Forsyth, *Administrative Law*, 9th ed Indian Edition. (Oxford: Oxford University Press, 2004), 33-34.

⁵ William H. R. Wade and Christophe F. Forsyth, *Administrative Law*, 9th ed Indian Edition.

⁶ Article 94 of the constitution, Chapter 1, of the Laws of Zambia. The Constitution has conferred upon the High Court original and unlimited jurisdiction to hear and determine any issue.

Judicial review can also be described as a procedure whereby the court examines the exercise of a delegated discretionary decision making power, in order to ensure that the power has been properly exercised for its lawful purpose. The court can also intervene where the person or body which has been given the power fails to act, when it is required to or when it makes a decision which it ought not to have made when acting properly within the terms of the mandate given to it⁷ Apart from being a procedure, judicial review is one of the public law remedies that is open to a person who is aggrieved by a decision of a public authority, in as far as such a decision affects his or her private rights. It is worth to note that this remedy is concerned with reviewing not the merits of the case of the decision in respect of which the application for judicial review is made but the decision-making process.⁸

Whichever way one looks at it, the purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is not part of that purpose of judicial review to substitute the opinion of the judiciary of the individual judges for that of the authority making the decision as constituted by law to decide the matter in question.⁹

Judicial review is a control mechanism used to check public authority, be it government, local authority, minister, policeman and other kinds of bodies or people exercising public authority.¹⁰ The courts play a very important role in ensuring that administrative authorities act within the legal limits of their power. The courts have inherent jurisdiction as a matter of common law, to prevent administrative authorities from exceeding their power or neglecting

⁷ Elizabeth A. Martin and Jonathan Law, ed., *Dictionary of Law*, 6th ed. (Oxford: Oxford University Press, 2006), 210.

⁸ Moses Mwelwa, “*The Legal Fiction of Judicial Review: A Critique*.” Obligatory Essay, School of Law (2003), 2.

⁹ De Smith, Wolf and Lowell, *Principles of Judicial Review* (London: Sweet and Maxwell, 1999), 275.

¹⁰ Moses Mwelwa, “*The Legal Fiction of Judicial Review: A Critique*.” Obligatory Essay, School of Law (2003), 3.

their duties.¹¹ By controlling administrative authorities in this manner the courts are in fact seeking to protect the legal rights of the individuals affected by the administrative authority's act of failure to act.¹²

According to the nature of judicial review, Alder notes that judicial review is about striking a balance between two competing concerns. On the one hand, the rule of law has been said to require that the legality of government action must be subject to review by independent and impartial tribunals. The principle of judicial review gives effect to the rule of law. They ensure that administrative decisions will be taken rationally in accordance with a fair procedure and within the powers conferred by Parliament.¹³ On the other hand, the separation of powers requires the courts to check misuse of power by the Executive but also to avoid trespassing into the political territory of the government.¹⁴

2.3 A public law remedy

Judicial review is a remedy that lies exclusively in public law. Since the House of Lords' decision in *O'Reilly v. Mackman*,¹⁵ the courts have had to establish boundaries between public and private law. The House of Lords determined that if proceedings are directed to challenging the decision of a public authority, as a general rule, an application for judicial review will be not, as previously, an option, but, henceforth an obligation.¹⁶ Lord Diplock in *Council of Civil Service Unions and Others v. Minister for the Civil Service*,¹⁷ stated that:

For a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made will lead to

¹¹ William H. R. Wade, *Administrative Law*, 6th ed. (Oxford: ELBS, 1994), 284.

¹² William H. R. Wade, *Administrative Law*, 6th ed.

¹³ John Alder, *Constitutional and Administrative Law*, 5th ed. (New York: Palgrave Macmillan, 2005), 357.

¹⁴ John Alder, *Constitutional and Administrative Law*, 5th ed, 358.

¹⁵ [1983] 3 ALL ER 1124.

¹⁶ Dawn Oliver and Jeffrey Jowell, *New Directions in Judicial Review: Current Legal Problems* (London: Stevens and Sons, 1988), 5.

¹⁷ [1985] 3 ALL ER 950.

administrative action or abstention from action by an authority endowed by law with executive powers.

In *O' Reilly v Mackman*,¹⁸ when the prisoner wanted to challenge the decision of the disciplinary body as having been taken in breach of natural justice, the House of Lords held that such a claim should not be heard since it was brought by way of an ordinary writ which is a private law remedy. The case therefore, propounds a principle that judicial review is a public law remedy, the procedure that must be adopted on an application thereof must be founded in public law.

Secondly, it is further the principle of law that the fact that a body against which judicial review is sought is a public one does not in itself grant an automatic right to an aggrieved party to challenge by way of judicial review, however illegal or unreasonable its decision may be.¹⁹ It must further be shown that the subject matter of the application lies in public law and not in private law. This is what was decided in the case of *R v. East Berkshire Area Health Authority ex parte Walsh*.²⁰ In this case, a nurse sought to challenge his dismissal by the authority and applied for judicial review. It was held that this procedure was inappropriate because the claim fell within employment law, which was a private law matter, that the fact that the employer, a health authority, was a public body did not make dismissal a public law matter.

Finally, as a public law remedy, judicial review only lies against public bodies. However, for the purpose of judicial review, the test as to whether a given authority or body is a public one is one of functions.²¹ Therefore, a public body, for the purposes of judicial review, is that one which exercises public functions analogous to those performed by the government

¹⁸ [1983] 3 ALL ER 1124.

¹⁹ Moses Mwelwa, "The Legal Fiction of Judicial Review: A Critique." Obligatory Essay, School of Law (2003), 6.

²⁰ (1984) 3 ALL ER 425.

²¹ Moses Mwelwa, "The Legal Fiction of Judicial Review: A Critique." Obligatory Essay, School of Law (2003), 6.

department whatever the source of the powers. It was observed by Lord Lloyd LJ in the case of *R v City Panel on Takeovers and Mergers ex parte Datafin Plc*,²² that:

In determining whether the decision of a particular body were subject to judicial review, the court was not confined to considering the source of that body's powers and duties but could also look at their nature. Accordingly, if the duties imposed on a body, whether expressly or by implication, was a public duty and the body was exercising public law functions, the court had jurisdiction to entertain an application for judicial review of that body's decision.

2.4 Grounds for judicial review

The inherent power of the courts to review the actions of administrative agencies is based on the allegation that the agency has usurped, exceeded or abused its powers or failed to comply with its public duties. The court is required to measure what has been done, or not done, against the relevant statutory provisions interpreted in accordance with the appropriate presumptions of legislative intent. Therefore, administrative action is subject to control by judicial review under three heads namely; illegality, irrationality and procedural impropriety.²³ This does not in any way mean that there are no other grounds coming up. For instance, the ground of proportionality is recent and is only recognised by the European Economic Community.²⁴

2.4.1 Illegality

An administrative decision is flawed if it is illegal. A decision is illegal if; (a) it contravenes or exceeds the terms of the power which authorises the making of the decision; or (b) it pursues an objective other than which the power to make the decision was conferred.²⁵

²² (1987) 2 QB 815.

²³ Katrina M. Walubita, "Autonomy of the Judiciary and Effective Judicial Review: Case Study of Zambia." Obligatory Essay, School of Law (2007), 22.

²⁴ Brian L. Jones, *Garner's Administrative Law*, 6th ed. (London and Edinburgh: Butterworths, 1989), 203.

²⁵ John P. Sangwa, *Judicial Review of Administrative Decisions*, lecture notes, unpublished, 75.

Therefore, under illegality this is where the decision-making authority has been guilty of an error of law, for example by purporting to exercise a power it does not possess. Thus, the decision-maker must not misunderstand or misapply the appropriate law.²⁶ By illegality as Lord Diplock put it in the case of *Council of Civil Service Unions and Others v. Minister for the Civil Service* :²⁷

By illegality as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

The nature of illegality is a primary ground for judicial review of administrative decisions. It is constituted by a public body consciously or consciously exceeding its express or implied statutory or *de facto* powers, or misconstruing the extent of its duties.²⁸ Evidence of dishonest conduct, bad faith, or merely innocent misconstruing of matters of law, procedural irregularities, contravening mandatory provisions, or unreasonableness which thwarts the policy behind legislation have all been described as illegality although they can also be brought within other categories of grounds for judicial review. Allegations of illegality are common in cases where the extent of statutory discretion is in issue. The court cannot determine the ‘right’ way to exercise a discretionary power; it can only indicate the parameters of the powers.²⁹

2.4.2 Irrationality

Irrationality is a ground used in judicial review proceedings for challenging the quality of a decision, by reference to the reasoning behind it. The decision-maker’s decision must not be vitiated by irrationality, where the decision is outrageously absurd, or utterly illogical or

²⁶ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (Oxford: Oxford University Press, 2007), 554.

²⁷ [1985] 3 ALL ER 950.

²⁸ John P. Sangwa, *Judicial Review of Administrative Decisions*, lecture notes, unpublished, 75.

²⁹ John P. Sangwa, *Judicial Review of Administrative Decisions*, lecture notes, unpublished, 75.

perversely defies accepted standards to such an extent that no rational person could have taken it.³⁰ Cases where the courts are called upon to adjudicate on the rationality of administrative action most frequently arise where public authorities are given by statute wide powers to act according to their own discretion and are not bound by detailed rules.

Irrationality is also known as *Wednesbury* unreasonableness, after the case of *Associated Provincial Picture Houses Ltd v. Wednesbury Corp*,³¹ which stated that a decision would be unreasonable if it is so unreasonable that no reasonable authority could ever have come to it.

By irrationality as Lord Diplock put it in the case of *Council of Civil Service Unions and Others v. Minister for the Civil Service*:³²

By irrationality I mean what can by now be succinctly referred to as *Wednesbury* unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

Probably the most difficult ‘*Wednesbury* principle’ relates to acting reasonably, as this is where there may be temptation for the courts to substitute their own values for those of the decision-maker.³³ It has been held that the fairness and reasonableness (and their contraries) are objective concepts; otherwise there would be no public law.³⁴ It is now well established that the *Wednesbury* principle itself constitutes a sliding scale of review, more or less intrusive according to the nature and gravity of what is at stake.³⁵

The concept of a decision being so unreasonable that no reasonable authority could have come to it is necessarily difficult to define. The courts have to decide whether a reasonable

³⁰ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (Oxford: Oxford University Press, 2007), 561.

³¹ (1948) 1 KB 223.

³² [1985] 3 ALL ER 950.

³³ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (Oxford: Oxford University Press, 2007), 570.

³⁴ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. 561.

³⁵ *R v. Secretary of State for Education and Employment ex parte Begbie* [1999] EWCA Civ 21000 par Laws L.J at para 78.

tribunal could have come to a particular decision not whether the decision is reasonable.³⁶

The concept of unreasonable has, despite its rhetoric, not been confined to cases where the decision in question is totally arbitrary, but has been used to justify judicial interference on the basis of burdens being placed upon the owners of property rights and even (arguably) where the court has disagreed with a public body's assessment of how much weight ought to be attached to a particular consideration.³⁷

In *The People v. The Attorney General ex parte Derrick Chitala*,³⁸ the applicant applied for certiorari to remove into the High Court for purposes of quashing the decision by the president and his cabinet to have the next constitution enacted by parliament. One of the grounds advanced in support of the application was that the decision was unreasonable in that it was contrary to the recommendations of the Constitution Commission and based on the totality of the evidence before the commission, there was no evidence to support the government's decision to have the constitution enacted by parliament. It was 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. This was because after a perusal of the relevant documents, the Supreme Court considered that the arguments did not support that there was an issue of irrationality fit to go to a full hearing.

Under the heading of irrationality are encompassed the following grounds; (i) decisions taken in bad faith; (ii) decisions made with consideration of irrelevant matters (including fettering of discretion by adopting rigid rules of policy, or by agreement or improper delegation); (iii) decisions made taking into account irrelevant matters; (iv) decisions where no reasonable

³⁶ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 7.

³⁷ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

³⁸ SCZ Judgment No. 14 of 1995.

authority could come to; and (v) decisions taken without regard to procedural requirements including the rules of natural justice.³⁹

2.4.3 Procedural impropriety

The decision-maker must not be vitiated by procedural impropriety. In other words, the public authority must act in accordance with the correct procedure. A public body will be open to challenge where it has acted unfairly towards the applicant, by failing to observe basic rule of natural justice, or failing to act with procedural fairness. Even where an applicant has not been denied natural justice, there may be good challenge where the body has failed to observe procedural rules expressly laid down by statute or delegated legislation.⁴⁰ By procedural impropriety as Lord Diplock put it in the case of *Council of Civil Service Unions and Others v. Minister for the Civil Service*:⁴¹

I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

In many situations, parliament has provided that certain procedures must be followed by an authority in exercising its power and by the citizen when the citizen uses the administrative machinery of the modern state.⁴² If parliament has not laid down statutory procedural rules, the courts may infer that long accepted common law standards of fair procedure shall apply. These common law procedures are usually referred to as the right to fair hearing.

³⁹ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 7.

⁴⁰ Katrina M. Walubita, “*Autonomy of the Judiciary and Effective Judicial Review: Case Study of Zambia.*” Obligatory Essay, School of Law (2007), 24.

⁴¹ [1985] 3 ALL ER 950.

⁴² David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (Oxford: Oxford University Press, 2007), 611.

Under the heading of procedural impropriety, are encompassed the following grounds; (i) the decision made was biased; (ii) the decision maker failed to provide a fair hearing; and (iv) the decision maker failed to provide reasons for the decision after it was taken.⁴³

2.4.4 Proportionality

Continental courts have developed a doctrine of ‘proportionality’, that the administrative decision or action must not be out of all proportion to the circumstances of the case.⁴⁴ In general, this doctrine has not been recognised in English Administrative law, though in the *Council of Civil Service Unions case* Lord Diplock spoke of the possible adoption in the future of the proportionality principle which is recognised in the Administrative law of several of our fellow members of the European Economic Community.⁴⁵ The nearest the English courts have come to this doctrine was in *R v. Bamsley Metropolitan Borough Council ex parte Hook*,⁴⁶ where the punishment imposed on a stall-holder (the loss of his market licence) for having urinated in public and cheeked the market superintendent was described by Lord Denning MR as too ‘severe punishment.’

The principle of proportionality in essence means that there must be a proportionate relationship between the objective which is being sought to be achieved by a public authority and the method used by the public authority to achieve that objective.⁴⁷ Proportionality is relied on or asserted when an individual considers that an administrative decision is harsh or excessive in comparison with what should have happened.

For proportionality to be an appropriate means of challenge, the public authority must have the power to act, there must be no error of law, the correct procedure must have been

⁴³ De Smith, Wolf and Jowell, *Principles of Judicial Review* (London: Sweet and Maxwell 1999), 245-447.

⁴⁴ Brian L. Jones, *Garner's Administrative Law*, 6th ed. (London and Edinburgh: Butterworths 1989), 203.

⁴⁵ Brian L. Jones, *Garner's Administrative Law*, 6th ed.

⁴⁶ [1971] 3 ALL ER 452.

⁴⁷ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (Oxford: Oxford University Press, 2007), 597.

followed, and, most important, there must be open to the authority a choice of several actions, discretion to operate on a sliding scale.⁴⁸

However, the principle of proportionality was given greater acknowledgement and support, where the issue involved what were termed ‘constitutional’, ‘basic’ or ‘fundamental’ rights. The more substantial interference with human rights, the more the court will require by way of justification before it is satisfied that the decision is reasonable.⁴⁹ In all these cases, the importance of the right was directly relevant to the lawfulness of what had been done to interfere with its enjoyment.

2.5 Who is amenable to judicial review

Judicial review is only available to test decisions made by public bodies. These public bodies are; government departments, local authorities, tribunals and state agencies exercising powers which are governmental in nature.⁵⁰ If judicial review is applied for, and the court rules that the body whose decision is being challenged is a private body, then the remedy will not be granted.

In *Ludwig Sondashi v. Godfrey Miyanda (sued as National Secretary of the Movement for Multi-Party Democracy)*,⁵¹ the appellant had been expelled from the respondent political party and he sought judicial review and a declaration that he had been wrongly expelled. The trial court found that the wrong procedure had been adopted, as the respondent was a society dealing with private matters. The application was dismissed.

⁴⁸ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (Oxford: Oxford University Press, 2007), 599.

⁴⁹ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed.

⁵⁰ Katrina M. Walubita, “*Autonomy of the Judiciary and Effective Judicial Review: Case Study of Zambia.*” Obligatory Essay, School of Law (2007), 25.

⁵¹ (1995/1997) Z.R. 1.

On appeal to the Supreme Court, the question to be considered was whether the tribunal, against which the order was sought, was one, dealing with public law. The court said the respondent, being a political party and its concerns being those of a private association, its tribunal deals with private not public law, judicial review could not lie against a political party. It further stated that the appellant was entitled to come to court but had picked the wrong procedure.

Lord Lloyd LJ in the case of *R v. City Panel on Takeovers and Mergers ex parte Datafin Ltd*,⁵² stated that for the most part, the source of power will be decisive. Accordingly, if a body is set up under a statute or by delegated legislation, then the source of that power brings the body within the scope of judicial review. However, Lloyd LJ, also recognised that in some cases the matter would be unclear, where that situation existed, it was necessary to look beyond the source of power and consider the nature of power exercised. In Lloyd LJ's view, if a body in question is exercising public functions, or if the exercise of its functions have public law consequences, then that may be sufficient to bring the body within the reach of judicial review.

In determining whether or not the body whose decision is being challenged on an application for judicial review is a public body, as opposed to a private one, the court will look at the functions. The test is not whether or not the authority is a government body as opposed to a private body. The functions will be looked at to see whether it is a body exercising powers analogous to those exercisable by government bodies.⁵³

2.6 Who can bring an action under judicial review

Any person can bring an action under judicial review as long as it is under public law. It is important to remember that the granting of judicial review is not as of right but at the

⁵² [1987] QB 815.

⁵³ De Smith, Wolf and Jowell, *Principles of Judicial Review* (London: Sweet and Maxwell, 1999), 66.

discretion of the court. It is important to note that certain conditions have to be met before one can bring an action under judicial review.

All developed legal systems have had to face the problem of resolving the conflict between two aspects of the public interest the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interloper involving the jurisdiction of the courts in matters in which he is not concerned.⁵⁴ The conflict has been resolved by developing principles which determine who is entitled to bring proceedings; that is who has *locus standi* or standing to bring proceedings. The whole issue of *locus standi* has constitutional significance.

In *Mwamba Maxwell and Another v. The Attorney General*,⁵⁵ the four judges of the Supreme Court (majority) observed that:

However, on the question of locus standi, we have to balance two aspects of the public interest, namely 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.

Rule 3(7) of Order 53 of the White Book edition provides that:

The court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

The language of the rule makes it clear that the requirement that the applicant has a sufficient interest is a threshold test of standing which applies when the applicant is seeking leave. If the applicant does not have sufficient interest at that stage, the court cannot grant leave.

⁵⁴ Katrina M. Walubita. "Autonomy of the Judiciary and Effective Judicial Review: Case Study of Zambia." Obligatory Essay, School of Law (2007), 27.

⁵⁵ SCZ Judgment No. 10 of 1993.

2.7 The law governing judicial review in Zambia

In England, judicial review is regulated by Order 53 of the Rules of the Supreme Court otherwise known as the White Book. In 1977, the former prerogative remedies of certiorari, prohibition and mandamus were replaced by the new and comprehensive public law remedy of “judicial review.”⁵⁶ The major reform brought in, by the new Order 53, was that, an applicant apart from seeking the prerogative writ of certiorari, mandamus and prohibition, can in the same action now seek a declaration, an injunction or even damages.⁵⁷

English law is a source of law in Zambia by virtue of various statutory provisions.⁵⁸ However, of importance to this discussion are the provisions of section 9 and 10 of the High Court Act.⁵⁹ Section 9 (1) of the High Court provides that:

The Court shall be a Superior Court of Record, and, in addition to any other jurisdiction conferred by the Constitution and by this or any other written law, shall, within the limits and subject as in this Act mentioned, possess and exercise all the jurisdiction, powers and authorities vested in the High Court of Justice in England.

It is worth noting that the Constitution in Article 94⁶⁰ also confers on the High Court unlimited and original jurisdiction to hear and determine any civil or criminal proceedings.

Section 10 of the High Court further 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.

⁵⁶ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 5.

⁵⁷ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*, 4.

⁵⁸ The English law (Extent of Application) Act provides that common law, equity and English statutes shall have force of law in Zambia. The British Acts (Extention) Act provides for post 1911 English Statutes that have the force of law in Zambia.

⁵⁹ Chapter 27 of the Laws of Zambia.

⁶⁰ Chapter 1 of the Laws of Zambia.

As cited above in section 10 of the High Court Act⁶¹, the law governing judicial review in Zambia is the law and practice for the time being observed in English Court of justice. It was stated in the case of *Ruth Nkumbi v Robinson Kaleb Zulu*⁶² by counsel for the appellant, Mr Malambo in his submissions in the Supreme Court that:

Now by statute, the Zambian Courts are obliged to follow all rules of procedure and practice as stated in the 1999 edition of the White Book.

In England, the supervisory jurisdiction is exercised by a Divisional Court (Queen's Bench Division) of the High Court. Similarly, in Zambia, the High Court exercises supervisory jurisdiction and as such judicial review proceedings are commenced in the High Court using the procedure outlined in Order 53 of the Rules of the Supreme Court of England.⁶³

2.8 Conclusion.

As articulated above, judicial review is one of the public law remedies that is open to a person who is aggrieved by a decision of a public authority, in as far as such a decision affects his or her private rights. This chapter has given the general overview of judicial review, its importance as a public law remedy, grounds for judicial review, persons amenable to judicial review, and the law governing judicial review in Zambia. The next chapter focuses on the grant of leave in judicial review proceedings.

⁶¹ Chapter 27 of the Laws of Zambia.

⁶² SCZ Judgment No. 19 of 2009.

⁶³ Chishala G. Chama, "*Shortcomings of Judicial Review and Human Rights Protection in Zambia.*" Obligatory Essay, School of Law (2008), 24.

CHAPTER THREE

3.0 THE GRANT OF LEAVE IN JUDICIAL REVIEW PROCEEDINGS

3.1 Introduction

No application for judicial review can be made unless the leave (or ‘permission to proceed’) of the High Court has first been obtained.¹ Before leave is granted, the affected individual must have been granted legitimate expectation by the decision maker that something was going to be done of which the public authority has failed to fulfil.² It is from this background that the court is able to grant leave, but even then, there are certain elements that the affected person has to show before leave is granted. These elements include; *locus standi*, promptness and arguable case.

3.2 Concept of legitimate expectation

A concept which has been fashioned to help identify interests of administrative authorities and affect individuals deserving legal protection is the concept of legitimate expectation.³ Legitimate expectation refers to the principle of good administration or administrative fairness that, if a public authority leads a person or body to expect that the public authority will, in future, continue to act in a way either in which it has regularly (or even always) acted in the past or on the basis of a past promise or statement which presents how it purposes to act, then, *prima facie* the public authority should not, without an overriding reason in the public interest, resile from that representation and unilaterally cancel the expectation of the

¹ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 481.

² Dawn Oliver and Jeffrey Jowell, *New Directions in Judicial Review: Current Legal Problems*. (London: Stevens and Sons, 1988), 37.

³ C. K. Takwani, *Lectures on Administrative Law*, 3rd ed. (Lucknow: Eastern Book Co., 1998), 278.

person or body that that state of affairs will continue.⁴ This is of particular importance if an individual has acted on the representation to his or her detriment.⁵

The concept of legitimate expectation made its first appearance in the case of *Schmidt v. Secretary of State*,⁶ wherein it was held that an alien who was granted leave to enter the United Kingdom for a limited period had legitimate expectation of being allowed to stay for the permitted period. A legitimate expectation arises where the citizen has been led to believe by a statement or conduct of the government that he is singled out for some benefit or advantage of which it would be unfair to deprive him.⁷ The expectation might be generated by a promise or assurance either announced generally⁸ or given specifically to an individual.⁸

The public authority must create an expectation in the mind of an individual.⁹ It may happen that a public authority by an express undertaking or past practice or a combination of the two has represented to those concerned that it will give them a right to be heard before it makes any change in its policy upon a particular issue which affects them.¹⁰ If so, it will have created a legitimate expectation that it will consult them before making changes. In *Council of Civil Service Unions and Others v. Minister for the Civil Service*,¹¹ it was held that the trade unions would have had a legitimate expectation that they would be consulted before the terms of employment were changed, but for the fact that the considerations of national security prevailed. In the same case, Lord Diplock stated that:

The decision must affect such other person by depriving him of some benefit or advantage which either (i) he has in the past been permitted by the

⁴ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 583.

⁵ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (1969) 1 ALL ER 904.

Chishala G. Chama, "Shortcoming of Judicial Review and Human Rights Protection in Zambia." Obligatory Essay, School of Law (2008), 25.

John Alder, *Constitutional and Administrative Law*, 5th ed. (New York: Palgrave Macmillan, 2005), 373.

David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 529.

⁶ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. [1985] 3 ALL ER 950.

decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment or (ii) he has received assurance from the decision-maker that the benefits or advantage will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

The key feature of Lord Diplock's concept of legitimate expectation is that it focuses upon the conduct of the decision-maker. It is the expectation created by his conduct which creates the legitimate expectation which in turn provides the justification for judicial intervention.¹²

The existence of a legitimate expectation may have a number of consequences. Firstly, it may give *locus standi* to a claimant to seek leave to apply for judicial review. Secondly, it may mean that the authority ought not to act as to defeat that expectation without justifiable cause.¹³ It may also mean that before defeating a person's legitimate expectation, the authority should afford him an opportunity of making representation on the matter.¹⁴ The claim based on legitimate expectation can be sustained and the decision resulting in denial of such expectation can be questioned provided the same is found to be unfair, unreasonable, arbitrary or violative of principles of natural justice.¹⁵

3.2.1 The doctrine of legitimate expectation under Zambian jurisprudence

Despite the importance of the doctrine of legitimate expectation in the development of the law on judicial review, there are few reported Zambian judicial decisions on this branch of the law. In *The People v The Attorney General ex parte Fredrick Jacob Titus Chiluba*¹⁶, the applicant had his immunity removed when the National Assembly passed a resolution under Article 43 (3) of the Zambian Constitution so that he could be prosecuted on criminal

¹² Dawn Oliver and Jeffrey Jowell, *New Directions in Judicial Review: Current Legal Problems* (London: Stevens and Sons, 1988), 39.

¹³ Chishala G. Chama, "Shortcoming of Judicial Review and Human Rights Protection in Zambia." Obligatory Essay, School of Law (2008), 17.

¹⁴ Chishala G. Chama, "Shortcoming of Judicial Review and Human Rights Protection in Zambia."

¹⁵ C. K. Takwani, *Lectures on Administrative Law*, 3rd ed. (Lucknam: Eastern Book Co., 1998), 280.

¹⁶ SCZ Judgment No. 125 of 2002.

allegations. It was argued by counsel for the applicant that there was a legitimate expectation as demanded by the rules of natural justice that the applicant was going to be given the right to be heard. On appeal to the Supreme Court, it was held that there is nothing in Article 43 (3) to suggest that before lifting the immunity of former President the National Assembly should give the former President the opportunity to be heard, and that the National Assembly is not obliged to religiously follow its own rules of procedures. Arising from this decision, it can be submitted on the question of procedure that the Supreme Court failed to appreciate basic principles of natural justice thereby not upholding the legitimate expectation of the right to be heard. Therefore, it can be submitted that legitimate expectation in Zambia may be found in judicial decisions as well as the rules of natural justice.

Furthermore, there is little literature on the subject. It is recommended that the use of the doctrine as a ground for review be encouraged particularly through academic writing.¹⁷ Furthermore, since the rules on standing in Zambia are not sufficiently liberal, the doctrine can be used to give *locus standi* to a claimant to seek leave to apply for judicial review.¹⁸

3.3 Rationale for obtaining leave in judicial review proceedings

The granting of leave to apply for judicial review is of importance in judicial review proceedings as no application for judicial review will be heard without leave of court.¹⁹ A necessary first step is to obtain leave of the court which will be granted only if an arguable case is shown.²⁰ An application to the High Court must be made in accordance with the procedure known as an application for judicial review.²¹ The requirement for leave to apply

¹⁷ Chishala G. Chama, “*Shortcoming of Judicial Review and Human Rights Protection in Zambia.*” Obligatory Essay, School of Law (2008), 17.

¹⁸ Chishala G. Chama, “*Shortcoming of Judicial Review and Human Rights Protection in Zambia.*”

¹⁹ Dawn Oliver and Jeffrey Jowell, *New Directions in Judicial Review: Current Legal Problems.* (London: Stevens and Sons, 1988), 37.

²⁰ William H. R. Wade, *Administrative Law*, 6th ed. (Oxford: Clarendon Press, 1988), 673.

²¹ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 481.

for judicial review gives the court control over the proceedings from the beginning and because the respondent does not have to appear at the leave stage, the court is relieved of the need to take any steps to get weak claims struck out.²²

Perhaps the feature of applications for judicial review which most distinguishes them from other proceedings is that the leave of the High Court has to be obtained before they can be commenced.²³ Applications for leave to apply for judicial review are made *ex parte* (without involving the other party) and so the proposed respondents to any applications are not necessarily put to any trouble or expense at this early stage.²⁴ The court may, however, adjourn the application for leave in order that the proposed respondents may be represented to object if need be and to give any reasons why the action should not be allowed to commence.²⁵ This application is normally made to a single judge who need not hold a hearing unless requested and not sit in open court.²⁶

Authors and judges have argued that the requirement of leave is necessary in order to eliminate frivolous, vexatious or hopeless applications without the need for *inter partes* judicial review hearing.²⁷ Thus the leave stage is used to identify, at an early stage, claims which may be trivial or without merit. The need for leave empowers the court to dispose of applications for judicial review summarily without taking evidence or hearing submissions of the body alleged to have acted unlawfully. It is meant to protect public bodies from being

²² Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 173.

²³ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 125.

²⁴ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

²⁵ Richard J.F Gordon, *Judicial Review: Law and Procedure* (London: Sweet and Maxwell, 1985), 85.

²⁶ William H. R. Wade, *Administrative Law*, 6th ed. (Oxford: Clarendon Press, 1988), 673.

²⁷ Mulenga S. Kapilima, "Judicial Review and Protection of Human Rights in Zambia. A Critical Evaluation of Order 53 in the Protection of Human Rights." Obligatory Essay, School of Law (2003), 24.

harassed by applicants making ill-founded challenges.²⁸ In the case of *R v. Inland Revenue Commissioner of Self Employed Small Business Ltd*,²⁹ Lord Diplock in his opinion stated that,

Leave prevents the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error and to remove the uncertainty in which public officers and authorities might be left with to whether they could safely proceed with Administrative action while proceeding for judicial review of it were actually pending even though misconceived.

Furthermore, Lord Donaldson in the case of *R v. City Panel on Takeovers and Mergers ex parte Guinness Plc*³⁰ noted that the leave stage assists a case flow management as it ensures prudent management of limited judicial resources.

The leave stage therefore, assists case-load management by deterring unmeritorious applications with the minimum use of resources.³¹ However, there is no evidence to suggest that without a leave requirement settlement patterns in judicial review would differ significantly from those commenced by writ.³² Another function of the leave stage is the protection of administrative bodies by being required to send a notice to the defendant that leave has been granted. This might assist the respondent in deciding how to react to the legal challenge and it might 'buy time' as when permission has been granted, the respondent might become aware that they may incur costs, which might act as an incentive to settle the issue privately, hence perhaps the high rate of withdrawals.³³ The leave requirement benefits both parties however, as for an applicant it is a remarkably quick, cheap and easy method of

²⁸ Chishala G. Chama, "Shortcoming of Judicial Review and Human Rights Protection in Zambia." Obligatory Essay, School of Law (2008), 29.

²⁹ (1982) AC 617.

³⁰ (1990) 1 QB 146.

³¹ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 127.

³² Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

³³ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 125.

obtaining the view of an experienced High Court judge as to whether the application has any merit.³⁴

To sum it all, according to the case of *The People v The Zambia Police Force ex parte Rajan Lekhraz Mahtani (Dr) and John Sangwa*³⁵ it was submitted in the ruling that the purpose under Order 53/14/21 for granting leave to apply for judicial review is: (i) to eliminate vexatious or hopeless applications without the need for substantive *inter parte* hearing, and (ii) to ensure that an applicant is only allowed to proceed to a substantive hearing if the court is satisfied that there is a cause fit for further investigation at full *inter parte* hearing.

3.3.1 Procedure for obtaining leave in judicial review proceedings

There are two routes by which an application for leave may be considered. It may be considered at the hearing before the judge or it may first be considered in private by a judge on the documents alone and then only if leave is not granted need there be a hearing.³⁶ It was stated in *The People v The Bank of Zambia ex parte Finsbury Investments Limited and Patrick Simuntala Chamunda*³⁷ that it is trite law that an application for leave to issue proceedings for judicial review is ordinarily entertained upon Notice of Application returnable *ex parte*. The notice of procedure is made by the applicant at the time of filing the application and depends upon whether or not a hearing is requested in the notice of application.³⁸ In either case the application commences by the applicant filing the notice of application and the affidavit in support. An affidavit verifies the facts relied on by the

³⁴ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 128.

³⁵ 2010/HP/1079.

³⁶ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 128.

³⁷ 2010/HK/690.

³⁸ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 128.

applicant.³⁹ The requirement of an affidavit commits an applicant to stating the basis for his case on oath, thus making him liable in perjury.⁴⁰ The affidavit must contain all the basic factual material on which reliance will eventually be placed for, if leave is granted, this affidavit will form the basis of the applicant's application for judicial review together with the notice of application.⁴¹ Since the application is made *ex parte*, there is a positive duty to disclose all material facts in the supporting affidavit in order to ensure that the court is not misled.⁴²

If no hearing is requested, then the application will be considered by a High Court judge in private by reading the notice and the supporting affidavit evidence.⁴³ If the judge considers that the documents reveal an appropriate case for an application for judicial review, then leave be granted without a hearing.⁴⁴ If leave to proceed is granted, the applicant may then bring judicial review proceedings. A notice of motion should be prepared and, along with the court order granting leave to proceed with the judicial review and both the statement of grounds and the affidavit prepared for the earlier stage, served on all persons directly affected by the application.⁴⁵ If upon considering the documents the judge refuses leave or grants it on terms, the applicant will be informed by service of the judge's order and the application may then be renewed by an application in the open court.⁴⁶

³⁹ Order 53 Rule 3 (2) (b). Rules of the Supreme Court of England (1999 EDITION).

⁴⁰ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 127.

⁴¹ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

⁴² Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 127.

⁴³ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

⁴⁴ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 128.

⁴⁵ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

⁴⁶ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 128.

3.4 Elements of leave in judicial review proceedings

It was submitted in *The People v The Bank of Zambia ex parte Finsbury Investments Limited, Patrick Simuntala Chamunda and Others*,⁴⁷ by counsel for the applicant in the supplementary submissions in support of an application for leave to apply for judicial review that in order for leave to be granted, three elements must be fulfilled so that an application for judicial review is entertained by the court. These include; the applicant must have *locus standi* (sufficient interest), the application must be made promptly (undue delay) and lastly, the applicant must demonstrate that they have a case sufficiently arguable to merit investigation at a substantive hearing.⁴⁸

3.4.1 *Locus Standi*

Even if a body is amenable to judicial review, not every citizen can make an application for such review.⁴⁹ The courts in exercising their power to grant prerogative orders have always reserved the right to be satisfied that the application had some genuine standing in the case.⁵⁰ Therefore, in order to be entitled to a remedy to restrain a public law wrong, an individual must show that he has sufficient standing.⁵¹ The requirement of standing indicates that the law's primary concern is not to control government illegality, as such, but rather to control it at the suit of persons affected by it in a particular way.⁵²

In order to obtain leave to apply for judicial review, an applicant must satisfy the court that he has a sufficient interest in the matter to which the application relates.⁵³ This in effect is the

⁴⁷ 2010/HK/690.

⁴⁸ *The People v The Bank of Zambia ex parte Finsbury Investments Limited, Patrick Chamunda and Others* 2010/HK/690.

⁴⁹ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 509.

⁵⁰ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed.

⁵¹ Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 156.

⁵² Peter Cane, *An Introduction to Administrative Law*.

⁵³ Order 53 Rule 3(7). Rules of the Supreme Court of England (1999 EDITION).

filter provided to bar busy bodies from pursuing doomed applications through the courts.⁵⁴ It is worth noting that, in its terms, this rule applies only to applications for leave. The leading case on the interpretation of this rule is *R v Inland Revenue Commissioners ex parte National Federation of Self Employed and Small Business Ltd*,⁵⁵ it was held that the applicants lacked sufficient interest in the matter because the revenue had acted within the discretion permitted to it in the day-to-day administration of the tax system. Following the decision of the House of Lords in the above case, the issue of whether a particular person or body is entitled to ask the court for relief is closely linked to the merits of the complaint which is being made.⁵⁶ In such circumstances the issue of *locus standi* is not one which can necessarily be determined at the leave stage or even as a preliminary point on the substantive hearing. Leave ought, therefore, to be granted where an applicant can show that he may have *locus standi* to ask the court for relief.⁵⁷

The Supreme court in the case of *Mwamba Maxwell and Another v The Attorney General*,⁵⁸ noted that in considering *locus standi*, there is need to balance two aspects of the public interest, namely 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. The justification of standing lies in the need to limit challenges to administrative decision making to genuine cases of grievance and to avoid unnecessary interference in the administrative process by those whose objectives are not authentic.⁵⁹

⁵⁴ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 125.

⁵⁵ [1982] AC 617.

⁵⁶ Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 156.

⁵⁷ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 509.

⁵⁸ SCZ Judgment No. 10 of 1993.

⁵⁹ Chishala G. Chama, “*Shortcoming of Judicial Review and Human Rights Protection in Zambia*.” Obligatory Essay, School of Law (2008), 32.

Therefore, *locus standi* is an element which must be fulfilled in order that the rationale for leave in judicial review proceedings is given its efficacy. Leave can only be obtained when an applicant has sufficient interest in the matter hence the need for this requirement to be met by applicants who are affected by the administrative decision.⁶⁰

3.4.2 Promptness

An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made.⁶¹ In the case *The People v Anti-Money Laundering Investigations Unit ex parte Rajan Lekhraj Mahtani and Others*,⁶² the decision which gave rise to this application was made by the Anti-Money Laundering Investigation Unit on 26th January, 2011 and the applicant filed the notice of application for leave to apply for judicial review on 7th February, 2011 thus satisfying the requirement under Order 53 Rule 4 (1)⁶³ as they were within the three months time limit. This time limit cannot be extended by agreement between the parties. If the High Court considers that there has been undue delay in making the application for judicial review, the court may refuse to grant leave for the making of the application or any relief sought on the application, if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of any person or would be detrimental to good administration.⁶⁴

⁶⁰ Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 157.

⁶¹ Order 53 Rule 4 (1). Rules of the Supreme Court of England (1999 EDITION).

⁶² 2008/HP/118.

⁶³ Rules of the Supreme Court of England (1999 EDITION).

⁶⁴ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 482.

The chief function of the short-time limit is to prevent public programmes from being unduly held up by litigation challenging the legality of such programmes.⁶⁵ One of the purposes of the requirement for leave is to filter out applications which through inexcusable delay have been left so late as to threaten the consistency and certainty which is thought necessary to good public administration.⁶⁶ In any case, where delay has occurred, the reasons for it should be explained in the notice of application for leave and the verifying affidavit.⁶⁷

Therefore, the requirement for promptness as regards the need for leave is there simply to ensure that the matter is brought within the shortest possible period of time so that leave is granted and justice is delivered as quickly as possible.

3.4.3 Arguable case

Another requirement to be considered in deciding whether or not to grant leave to the applicant is whether there is sufficiently arguable case fit for further investigation at a full *inter partes* hearing of a substantive application for judicial review.⁶⁸ This requirement is stipulated in Order 53/14/54 of the Rules of the Supreme Court of England. It is also clearly stated in the case of *R v Inland Revenue Commissioners ex parte National Federation of Self Employed and Small Businesses Limited*,⁶⁹ where Lord Wilberforce said:

If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief.

⁶⁵ Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 174.

⁶⁶ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 130.

⁶⁷ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

⁶⁸ *R v Secretary of State for the Home Department ex parte Rukshanda Begum* (1990) C.O.D, 107

⁶⁹ (1981) 2 ALL ER 93.

It was submitted by the High Court in *The People v Anti-Money Laundering Investigations Unit ex parte Rajan Lekhras Mahtani and Others*⁷⁰ that, in order to determine whether there is a sufficiently arguable case fit to be left to a full *inter partes* hearing, there is no requirement to go into the matter in depth or delving into the merits of the case to consider the grounds upon which judicial review is sought by the applicants in a particular case.

Therefore, in granting leave to apply for judicial review, the element of an arguable case plays a vital role as it only enables cases which have merit be entertained by the High Court at a substantial hearing.

3.5 What happens when leave is granted

When leave is granted, what follows is the hearing of the application. Thus where leave to move for judicial review has been granted by the High Court, the next stage is for the applicant to institute a substantive application for judicial review. The substantive application is made by originating motion (unless the court has directed, at the leave stage, that it be commenced by originating summons to a Judge in Chambers).⁷¹

The manner of application will depend upon whether the case is criminal or civil in nature. In criminal cause or matter the application must be by way of originating motion.⁷² The category of criminal cause or matter is widely interpreted to include any proceedings where the ultimate outcome may result in the punishment of a person for an alleged offence. Thus the review of proceedings for the extradition of a fugitive criminal is a criminal cause or matter.⁷³ In non- criminal cause or matter the application is normally by originating motion to

⁷⁰ 2008/HP/118.

⁷¹ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 135.

⁷² Order 53 Rule 5(1). Rules of the Supreme Court of England (1999 EDITION).

⁷³ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths 1985), 135.

a single judge sitting in open court,⁷⁴ unless the court directs that it shall be made by originating summons to a judge in chambers.⁷⁵ The notice of motion or summons must be served at least 10 days before the hearing date of the application.⁷⁶ The court may, however, abridge or extend this time limit.

The motion applying for judicial review must be entered for hearing within 14 days after the granting of leave.⁷⁷

3.6 Conclusion

This chapter examined the concept of legitimate expectation, which, if not granted by the decision maker, the affected individual can apply for leave to apply for judicial review. Leave eliminate at an early stage any applications which are frivolous, vexatious or hopeless and to ensure that an applicant is only allowed to a substantive hearing if the court is satisfied that there is a case fit for further consideration at a full *inter partes* hearing. In this way only judicial review cases with merit are entertained by the High Court. In order for this to be fulfilled, the elements of *locus standi*, promptness and arguable case as discussed above must be established. The next chapter focuses on the remedies under judicial review proceedings.

⁷⁴ Order 53 Rule 5(2). Rules of the Supreme Court of England (1999 EDITION).

⁷⁵ Order 53 Rule 5(2)(b). Rules of the Supreme Court of England (1999 EDITION).

⁷⁶ Order 53 Rule 5(4). Rules of the Supreme Court of England (1999 EDITION).

⁷⁷ Order 53 Rule 5(5). Rules of the Supreme Court of England (1999 EDITION).

CHAPTER FOUR

4.0 REMEDIES UNDER JUDICIAL REVIEW PROCEEDINGS

4.1 Introduction

The granting of leave and the subsequent substantive application for judicial review leads to the granting of remedies to the applicant who has applied for judicial review. This chapter attempts to give a survey of the judicial remedies available against administrative bodies.¹ The remedies are granted at the discretion of the court. In addition, in an event where leave is not granted, the affected person is not left without any recourse as he or she can renew an application for judicial review.² This is provided for in Order 53 rule 3(4) (5).³

4.2 Court's discretion in granting remedies in judicial review proceedings

The word “discretion” is often used in several senses. In its general use, it signifies an option to do an act, free decision, unrestrained will.⁴ There are also diverse legal meanings. One of the earliest definitions of the term was by Edward Coke in *Rooke v Bernard*⁵. He said;

Discretion is a science of understanding, to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences.

A discretionary power implies freedom of choice; the competent authority may decide whether or not to act and if so, how to act.⁶ The problem that this is likely to create is that

Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed. (London: Penguin Books 1989), 584.

Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed. 584.

Rules of the Supreme Court of England (1999 EDITION).

John P. Sangwa, *Judicial Review of Administrative Decisions*, lecture notes, unpublished, 24. (1963) 2 ALL ER 432.

Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed. (London: Penguin Books, 1989), 571.

some judgments may be decided subjectively according to what the judge thinks is right which may eventually be to the detriment of the applicant or rather the affected individual.⁷

In *The People v The Zambia Police Force ex parte Rajan Lekhras Mahtani (Dr) and John Sangwa*,⁸ it was stated by the High Court that access to judicial review is not a matter of right and is subject to the discretion of the court. The discretion of the judiciary is its powers to choose between various rules in deciding cases. The area of judicial discretion varies from case to case and are narrowest where the facts of the case are covered by a pre-existing decision or legislative provision and widest where neither applies yet.⁹ This simply means that where there is a decision made in earlier cases or legislation, the court is bound by such earlier decision hence limiting its discretion in dealing with a particular case or legislation at hand. It is limited because of the theory of *stare decisis* and by the general recognition that judicial process must be followed by courts in deciding cases.¹⁰

In light of the above discussion, it can thus be said that the courts grant judicial remedies or prerogative remedies by the use of their discretionary powers. The term ‘prerogative’ is given to remedies which have developed from the prerogative powers of the king, which were originally used by the king to control (through the courts) his servants, and which have now been developed to provide redress for the citizen against the administration generally.¹¹

4.3 Availability of remedies in judicial review proceedings

The remedies used in judicial review proceedings fall in two broad groups. On the one hand are the prerogative orders: certiorari, prohibition, and mandamus; on the other hand there are

⁷ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 478.

⁸ 2010/HP/1079.

⁹ Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed. (London: Penguin Books 1989), 571.

¹⁰ Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed. 571.

¹¹ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 478.

'private law' remedies of declaration, injunction, and damages.¹² Stay of execution is yet another remedy which is available where certiorari and prohibition are prayed for in an application for judicial review. It is common practice for the applicant to apply for more than one remedy in one application.¹³ In discussing each of the remedies it is important to appreciate the historical development and the procedure for initiating review.¹⁴ This is vital because one has to understand what actually led to the development of such remedies, the procedure that must be employed during judicial review proceedings and the benefits of the remedies to an applicant.

4.3.1 Certiorari

Certiorari was originally used as writ (now an order) which Queens Bench issued to protect the king's interest.¹⁵ Certiorari was, as its Latin name suggests a writ whereby the king asked to be informed of a matter, had the case brought to Westminster before his court of Kings Bench, and if the king or rather the court did not approve of the matter, the decision was annulled or quashed.¹⁶

Certiorari is employed to quash a decision, which has been made and not intended for prospective decisions of a variety of public bodies.¹⁷ Certiorari will not lie unless something has been done that the court can quash.¹⁸ It is different from prohibition in that prohibition is not available unless there is something that remains to be done that the court can prohibit.¹⁹

Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 145.

John P. Sangwa, *Judicial Review of Administrative Decisions*, lecture notes, unpublished, 24.

John P. Sangwa, *Judicial Review of Administrative Decisions*, lecture notes, unpublished, 24.

David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 478.

David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed.

John P. Sangwa, *Judicial Review of Administrative Decisions*, lecture notes, unpublished p 66.

David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 478.

John P. Sangwa, *Judicial Review of Administrative Decisions*, lecture notes, unpublished, 66.

Certiorari is unique among the judicial review remedies in that it lies not only where a decision is ultra vires but also where an error of law exists upon the face of the record.²⁰ To be reviewable by certiorari an error must on one hand, be jurisdictional in which case it is immaterial whether or not it appears on the record.²¹ A decision which has never had any legal effect cannot be deprived of legal effect, and so when we say that certiorari quashed a decision which is ultra vires (jurisdictional error) what we really mean is that the order formally declares that, from the moment it was purportedly made (*ab initio*), the decision had no effect in law, thus anything done in execution of it is illegal.²² On the other hand, it must be an error of law which can be discovered from a perusal of the material which makes up the tribunal's 'record'.²³ Thus certiorari may be ordered to quash a decision for excess or lack of jurisdiction, error of law on the face of the record, unfairness and breach of the rule of natural justice, or decision made in bad faith or produced by fraud or perjury.²⁴

In *The People v Minister of Information and Broadcasting Services ex parte Francis Kasoma*,²⁵ an order of certiorari was issued by the High Court to quash the decision of the Minister to create a statutory body known as Media Council of Zambia. The decision was quashed on the premise that it was made in bad faith and that the rules of natural justice were never observed in that the people who were to be affected by the decision were never heard before the decision was made.

It is worth to note that certiorari is discretionary and that the courts will not grant the remedy if no substantial injustice has been caused, if the remedy would not be of use to the citizen, or

²⁰ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 36.

²¹ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

²² Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 145.

²³ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 36.

²⁴ *R v Bolton JJ, ex parte Scally* [1991] 1 QB 537.

²⁵ 1995/HP/2959.

if by his or her conduct a person has precluded himself or herself from relief by way of judicial review.²⁶

4.3.2 Prohibition

Prohibition as the name suggests, was an order of the Kings Bench to prohibit another court from acting in a particular matter.²⁷ The prerogative order of prohibition, as the name implies, performs the function of ordering a body amenable to it to refrain from the illegal actions.²⁸ Prohibition is only available to restrain illegal actions and so it plays no part in correcting errors of law within jurisdiction (on the face of the record) for which certiorari is the only remedy.²⁹

Prohibition issues to prevent a public body from exceeding its jurisdiction.³⁰ Prohibition is not available in respect of concluded decisions but the courts treat this limitation generously and the order will issue as long as there remains something to be done to give effect to it.³¹ As already noted prohibition is not available unless something remains to be done, which the court can prohibit. Thus in *R v Minister of Health ex parte Davis*,³² a property owner successfully applied for prohibition to prevent the Minister proceeding to consider the scheme with a view to confirmation. It is thus convenient to apply for both certiorari and prohibition. Certiorari lies to quash what has already been done and prohibition to prohibit the public body from continuing to do that which is not within its authority.³³

²⁶ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 479.

²⁷ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed.

²⁸ Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 146.

²⁹ Peter Cane, *An Introduction to Administrative Law*.

³⁰ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 51.

³¹ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

³² [1929] 1 K.B 619 para 588.

³³ Sangwa J. P., *Judicial Review of Administrative Decisions*, lecture notes, unpublished, 66.

4.3.3 Stay of Proceedings

Under Order 53 Rule 3(10) (a)³⁴, the court is empowered to grant a stay of proceedings where the application is for an order of certiorari or prohibition. Where leave is granted to apply for judicial review the court will usually grant an injunction in order to maintain the status quo. The Privy Council in, *Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Limited*,³⁵ held, obiter that a stay of proceedings is merely an order which puts a stop to the further conduct of proceedings in court or before a tribunal at the stage which they have reached. The object is to avoid the hearing or trial taking place. Further in *The People v The Attorney General and Lusaka City Council ex parte Wynter Kabimba*,³⁶ the Supreme Court stayed the implementation of the decision of the Minister of Local Government transferring the applicant to another district until after the hearing and determination of the case on merit. The stay was granted after the Minister had already made the decision to transfer the applicant. The effect of the stay was to stop the implementation of the decision and maintain the status quo until after the matter was determined on merit. Similarly, the Supreme Court in *The People v Minister of Information and Broadcasting Services ex parte Francis Kasoma*,³⁷ granted a stay of the Minister's decision to create the Media Council of Zambia.

4.3.4 Mandamus

Mandamus as its name suggests, was originally a royal command from the King to an inferior body telling that body to perform a duty.³⁸ The mandatory order (mandamus) will lie to

³⁴ Rules of the Supreme Court of England (1999 EDITION).

³⁵ [1991] 1 WLR 500 at 556.

³⁶ (1995-1997) Z.R 152.

³⁷ 1995/HP/2959.

³⁸ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 479.

compel a body to carry out a duty to give reasons for a decision or to give adequate reasons.³⁹

If any authority required to exercise discretion in a matter fails to consider it on its merits because it has improperly sub-delegated its powers or acted under dictation or fettered its own discretion by unauthorised promises or rigid self imposed rule, mandamus will lie.⁴⁰ It will also lie to order an authority which has abused its statutory discretion to hear and determine the matter according to law.⁴¹ An applicant will often seek order of certiorari and mandamus together, for instance certiorari to quash an unlawful decision, with mandamus to compel the public body to re-take that decision in accordance with the law, as helpfully clarified by the court. In *The People v The Attorney General ex parte Derrick Chitala*,⁴² the applicant applied for certiorari to quash the decision by government to have the constitution enacted by parliament and mandamus to compel the government to have the constitution brought into effect by way of constituent assembly and referendum as recommended by the Constitution Review Commission. It was held by the Supreme Court 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.

Unlike certiorari and prohibition, mandamus has no necessary connection with courts and jurisdictions superior or inferior, but depends upon the notion of a public duty.⁴³ The scope of mandamus depends upon the tribunal or authority having legal duty to perform some act.⁴⁴ Therefore, for the purpose of mandamus the duty in question must be to perform some

³⁹ Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed. (London: Penguin Books, 1989), 586.

⁴⁰ Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed.

⁴¹ Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed. (London: Penguin Books, 1989), 586.

⁴² SCZ Judgment No. 14 of 1995.

⁴³ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 53.

⁴⁴ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

positive act required by law rather than any general duty to undo the imposition of a positive duty upon a public authority.⁴⁵

There are also private law remedies. These are called private law remedies because they were originally used only in private law but came to be used later in public law.⁴⁶ These include; injunctions, declaration and damages.

4.3.5 Declaration

The declaration, as its name implies, only declares what the legal position of the parties is; it does not change their legal position or rights.⁴⁷ Thus a declaratory judgment is one which is merely declaratory of the legal relationship of the parties and is not accompanied by any sanction or means of enforcement.⁴⁸ A declaration (or a declaratory judgment) is a statement by the court as to the existing basis of parties' rights and the obligations and the courts may make binding declarations of rights whether or not any consequential relief is or could be claimed.⁴⁹ Once the existing state of the law is declared, the parties know their position and can act or not act accordingly. The declaration is also a discretionary remedy; thus the court may refuse a declaration if its award would serve no useful purpose or if there are more appropriate alternative remedies.⁵⁰ Of great importance is the fact that a declaration merely declares rights and does not quash ultra vires exercise of power.

⁴⁵ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 53.

⁴⁶ Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 147.

⁴⁷ Peter Cane, *An Introduction to Administrative Law*.

⁴⁸ Emlyn C. S. Wade and Anthony W. Bradley, *Constitutional and Administrative Law*, 5th ed. (Oxford: Clarendon Press, 1987), 607.

⁴⁹ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 481.

⁵⁰ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed.

In *The People v The Attorney General ex parte Ludwig Sondashi*,⁵¹ the applicant, Dr. Sondashi, applied to the High Court by way of originating summons to seek a declaration that the decision by the Minister of Home Affairs rejecting his application to operate a fire arms dealers business at Stand No. 942, Solwezi, was contrary to section 26(2) and 27(3) of the Firearms Act,⁵² and thus null and void. It was held by the Supreme Court that in terms of Section 26(2) of the Firearms Act,⁵³ the Registrar of Firearms has powers vested in him to either register an applicant or refuse to register an applicant without giving any reason for such refusal. However, the proviso to Section 26(2) circumscribes the discretion of the Registrar. Section 26 (2) provides that; an applicant shall not be registered-(i) if a disqualification order against him is in force; or (ii) unless the Registrar is satisfied that the applicant is conversant with the provisions of this Act; or (iii) if the Registrar is satisfied that for the applicant to carry on the business of a firearms dealer would endanger the public safety or the peace.

4.3.6 Injunction

An injunction is important as it performs essentially the same function as the order of prohibition, namely to restrain a person or body from illegal action.⁵⁴ In *The People v The Attorney General and Lusaka City Council ex parte Wynter Kabimba*,⁵⁵ the applicant was granted *ex parte*, an injunction against the second respondent preventing the second respondent from transferring the applicant and ordering that the second respondent should not interfere with the applicant's performance of his duties as Town Clerk for Lusaka City Council. Essentially the injunction is a stopping remedy, a prohibitory injunction being used to prevent future interference with the applicant's rights, a mandatory injunction being used

⁵¹ SCZ Judgment No. 27 of 2000.

⁵² Chapter 110 of the Laws of Zambia.

⁵³ Chapter 110 of the Laws of Zambia.

⁵⁴ Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 148.

⁵⁵ (1995-1997) Z.R 152.

to remove interference with the applicant's rights, an interlocutory injunction to prevent a change in the status quo until the substantive matter is determined, and a perpetual injunction to be used at the end of the proceedings.⁵⁶

A private individual can sue to restrain 'a public wrong' if his own legal rights have been encroached upon, or are threatened by the defendant and perhaps in exceptional circumstances when the individual is threatened with special damage over and above that which 'wrong' inflict on the rest of the public.⁵⁷

It must be emphasised that an injunction is a discretionary remedy. Although a plaintiff may have a strictly legal case, the court may refuse the remedy if the injury is trivial, damages would be an adequate remedy, or the plaintiff has delayed too much.⁵⁸ For instance in *Glynn v Keele University*,⁵⁹ it was held that, although there had been a breach of the rules of natural justice in that Glynn had not been given a proper hearing, an injunction would not be granted, because there was no dispute as to the facts and the penalty was entirely 'proper'.

4.3.7 Damages

The court may award damages where, and only where, the applicant has joined a claim for damages to his application and the court is satisfied that if the claim had been in private law proceedings, the applicant would be awarded damages.⁶⁰ Unlike the declaration and the injunction, which are private law remedies (i.e. remedies for the redress of private law wrongs) that have been extended to redress public law illegality, damages is a purely private

⁵⁶ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 479.

⁵⁷ Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed. (London: Penguin Books, 1989), 594.

⁵⁸ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 480.

⁵⁹ [1971] 1 WLR 487.

⁶⁰ Order 53 Rule 7(1) (a) and (b). Rules of the Supreme Court of England (1999 EDITION).

law remedy.⁶¹ In other words, in order to obtain an award of damages, it is necessary to show a private law wrong.⁶² The relevance of the remedy in public law is that public bodies can commit private law wrongs and so damages is a remedy available against public bodies.

Applicants may also claim on the basis of the tort of misfeasance in public office.⁶³ According to Oxford Dictionary of Law, misfeasance is the negligent or otherwise improper performance of a lawful act. Misfeasance in public offices is the only tort available solely against authorities or persons holding public offices.⁶⁴ This is available only against public officers who have exceeded their powers or acted in bad faith or without reasonable cause, and who have been actuated by malice against the applicant.⁶⁵

4.4 What happens when leave is not granted

As stated earlier on, in an event where leave is not granted the affected person is not left without any recourse as he or she can renew an application for judicial review.⁶⁶ Order 53 Rule 3(5)⁶⁷ states that in order to renew his application for leave the applicant must, within 10 days of being served with notice of the judge's refusal, lodge the application. Appeals against the refusal or grant of the application for review are not a method of appeal against the decision of the inferior body which is the subject of the application for judicial review.⁶⁸ Thus no appeal can be made against the refusal to apply for judicial review, or against the terms upon which it has been granted; if the application can be renewed.⁶⁹

⁶¹ Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 148.

⁶² Peter Cane, *An Introduction to Administrative Law*.

⁶³ Peter Cane, *An Introduction to Administrative Law* (Oxford: Clarendon Press, 1987), 148.

⁶⁴ Elizabeth A. Martin and Jonathan Law, ed., *Oxford Dictionary of Law*, 6th ed. (Oxford: Oxford University Press, 2006)

⁶⁵ John P. Sangwa, *Judicial Review of Administrative Decisions*, lecture notes, unpublished, 72.

⁶⁶ Stanley De Smith and Rodney Brazier, *Constitutional and Administrative Law*, 6th ed. (London: Penguin Books, 1989), 594.

⁶⁷ Rules of the Supreme Court of England (1999 EDITION).

⁶⁸ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 158.

⁶⁹ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice*.

To the contrary, Zambian jurisprudence does indicate that in an event where leave is not granted, the applicant still has an opportunity to approach the High Court by way of an appeal which operates as a renewal of the application for leave to apply for judicial review. This is evidenced in *The People v The Attorney General ex parte Derrick Chitala*,⁷⁰ where it was stated by the Supreme Court that:

Under the Supreme Court of Zambia Act, this is an appeal against the decision of a High Court Judge refusing to grant leave to bring judicial review proceedings. Under the Rules of the Supreme Court of England which apply to supply and cassus omissus in our own rules of practice and procedure, this would be a renewal of the application for leave to the appellate court.

4.5 Conclusion

From the above discussion it can be stated that leave plays an important role in the delivery of justice or access to justice. It is the granting of leave that leads to the awarding of remedies in an effort to assist the applicant so that they are relieved of the mal-administration committed by public authorities. Even when leave is not granted, an applicant still has recourse by virtue of Order 53 Rule 3 (4) (5) of the Rules of the Supreme Court of England.

The next chapter focuses on the recommendations and conclusion.

⁷⁰ SCZ Judgment No. 14 of 1995.

CHAPTER FIVE

5.0 RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

The main objective of this research was to consider the analysis of the rationale for obtaining leave in judicial review matters in Zambia. The research is divided into five chapter outline. Chapter one focused on a general introduction of the paper. Some of the objectives of the study include; (i) understanding the scope of judicial review of administrative actions, (ii) the elements of leave in judicial review proceedings, (iii) why it is necessary to apply for leave in judicial review proceedings. From the research conducted, the statement of the problem was found to be that the rules for granting leave in judicial review proceedings are too strict as certain cases do not get to be heard by competent courts if the requirements for leave are not fulfilled. The significance of the study was that the elements that are necessary for the granting of leave are made flexible or are relaxed. This would ensure that people have access to courts in an effort to have their cases adjudicated upon. Further, in understanding this work research questions were posed, some of which include; (i) what is judicial review? (ii) who is entitled to bring an action under judicial review? (iii) what is the significance of leave in judicial review proceedings?

Chapter two focused on the scope of the concept of judicial review. It discussed judicial review as a public law remedy. The grounds for judicial review include; illegality, irrationality, procedural impropriety and proportionality. These grounds for judicial review were established by Lord Diplock in *Council of Civil Service Unions and Others v. Minister*

for the Civil Service.¹ The chapter also establishes that individuals who can bring an action under judicial review are those with *locus standi*.

Chapter three focused on the grant of leave in judicial review proceedings. It has been established that before leave is granted, the affected individual must have been granted legitimate expectation by the decision maker that something was going to be done of which the public authority has failed to fulfil.² The chapter shows that even where it has been established that the applicant has legitimate expectation, he or she has to show that they have *locus standi*, that the application is made promptly and that they have an arguable case.

Chapter four focused on the remedies that are available under judicial review proceedings which include mandamus, certiorari, prohibition, damages, declaration and injunction. It was established that these remedies are granted at the discretion of the judges adjudicating on the matter. Further, it was established that were leave is not granted, an applicant is not left without a recourse as they can renew the application as provided for in Order 53 Rule 3 (5).³

Chapter five therefore, seeks to give an elaborative conclusion to the research. Further, recommendations are also given which are aimed at improving the rationale for obtaining leave in judicial review proceedings.

5.2 Conclusion

This essay has shown that mal-administration is ever present in our society. One remedy or tool to fight this vice is judicial review, a public law remedy, by which an individual can challenge the legality of decisions, determinations, orders or even omissions of persons or

¹ [1985] 3 ALL ER 950.

² Dawn Oliver and Jeffrey Jowell, *New Directions in Judicial Review: Current Legal Problems*. (London: Stevens and Sons, 1988), 37.

³ Rules of the Supreme Court of England (1999 EDITION).

bodies performing public functions.⁴ By way of judicial review, the High Court exercises its supervisory jurisdiction over the proceedings and the decisions of tribunals and other bodies exercising quasi-judicial functions or who are charged with the performance of public duties.⁵

Therefore, in order to apply for judicial review, one must be granted leave by the High Court which is the concern of this essay. Leave eliminates frivolous, vexatious and unmeritorious cases. It has been shown that certain elements must be present for one to be granted leave, these include; *locus standi*, promptness and arguable case. It has been established that though these elements may be present, the judge has discretion whether to grant leave or not. This has been found to be a hindrance to accessing justice by an applicant who has suffered from the act of mal-administration by public officers. This essay has therefore, given recommendations which when employed would improve the rationale for the need to obtain leave in judicial review proceedings.

5.3 Recommendations

5.3.1 Rationale for leave requirement in judicial review proceedings

It is said that leave enables unmeritorious, vexatious and frivolous cases to be disposed of summarily if an arguable case cannot be shown.⁶ The problem with this test is that it has no substance because there is no universally accepted standard to determine what frivolous, vexatious and unmeritorious matter is.⁷ It is therefore, submitted that there is need to set a universally accepted standard as to what constitutes a frivolous, vexatious and unmeritorious matter so that only unwanted cases are disposed of summarily using the same standard.

⁴ Chishala G. Chama, “*Shortcomings of Judicial Review and Human Rights Protection in Zambia.*” Obligatory Essay, School of Law (2008), –iv–.

⁵ Halsbury’s Laws of England vol. 37, 4th ed. 432.

⁶ Mulenga S. Kapilima, “*Judicial Review and Protection of Human Rights in Zambia: A Critical Evaluation of Order 53 in the Protection of Human Rights.*” Obligatory Essay, School of Law (2003), 26.

⁷ Mulenga S. Kapilima, “*Judicial Review and Protection of Human Rights in Zambia: A Critical Evaluation of Order 53 in the Protection of Human Rights.*”

5.3.2 Discretion given to the Judges in granting leave and judicial remedies

The most problematic aspects of judicial review procedures are the uncertainty and unpredictability as most of the requirements for judicial review are in the judge's discretion.⁸ As discussed in chapters three and four, it has been established that the granting of leave by the High Court is done discretionarily. The problem that this is likely to create is that some judgements may be decided subjectively according to what the judge thinks is right which may eventually be to the detriment of the applicant or rather the affected individual.⁹

It is therefore, recommended that the discretionary powers given to the courts must be checked to ensure that there is access to justice. Perhaps one way these concerns may be addressed is by having codified set of rules in an Act of Parliament stating who may make a claim for judicial review, the granting of leave and where leave is not granted, the High Court must justify its decision. By taking such approach, the wide discretion which seems to lead to so much uncertainty would become less of a problem.

5.3.3 *Locus Standi*

Furthermore, Chama G. Chishala in his obligatory essay established that Order 53 Rule 3(7)¹⁰ does not address the issue of what sufficient interest exactly is.¹¹ It is therefore, left to the courts to set parameters of what does and does not constitute sufficient interest and whether to apply different standards depending upon the precise remedy being sought.¹² It is hereby recommended that there has to be rules to lay down a general test of *locus standi* for instance

⁸ Dawn Oliver and Jeffrey Jowell, *New Directions in Judicial Review: Current Legal Problems* (London: Stevens and Sons, 1988), 53.

⁹ David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law*, 4th ed. (New York: Oxford University Press, 2007), 478.

¹⁰ Rules of the Supreme Court of England (1999 Edition).

¹¹ Chishala G. Chama, "Shortcomings of Judicial Review and Human Rights Protection in Zambia." Obligatory Essay, School of Law (2008), 33.

¹² Penjani M. Longwe, "Locus Standi in Judicial Review Matters: A Review." Obligatory Essay, School of Law (2001), 25.

that the claimant has been or will be adversely affected, or that it is in the public interest for the claim to be brought by way of judicial review. In this way the courts will be guided by the same standards as to what does and does not constitute sufficient interest.

5.3.4 *Ex parte* Applications

Order 53 Rule 2¹³ states that application for leave to apply for judicial review must be made *ex parte* to a single judge. Therefore, the other reform or recommendation to the rationale for leave requirement is that there must be a move away from *ex parte* to *inter parte* at the leave stage which requires the defending authority to be given a full notice of the application. According to this recommendation, the claimant must gather all the relevant materials and disclose their case in full to the defendant, while the defendant only has to give his defence in outline. This will enable both parties involved to have the right to be heard and at the same time the High Court will be guided to grant leave on merit.

5.3.5 Need for domestic Legislation

The criticism that is peculiar to Zambia's system of judicial review is that to do with the application of English law in judicial review matter.¹⁴ Section 10 of the High Court Act¹⁵ 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.

¹³ Rules of the Supreme Court of England (1999 EDITION).

¹⁴ Chishala G. Chama, "Shortcomings of Judicial Review and Human Rights Protection in Zambia." Obligatory Essay, School of Law (2008), 39.

¹⁵ Chapter 27 of the Laws of Zambia.

From this section, by virtue of which Order 53¹⁶ is the law that governs judicial review, it is clear that the application of English law is to be in ‘substantial conformity’ with the law and practice for the time being observed in England.¹⁷ This therefore makes the law somewhat uncertain in that the court may decline to strictly follow the procedure outlined under Order 53¹⁸ and instead substitute its own procedure. According to Zambian jurisprudence, in an event where leave is not granted, the applicant still has an opportunity to approach the Supreme Court by way of an appeal which operates as a renewal of the application for leave to apply for judicial review. This is evidenced in *The People v The Attorney General ex parte Derrick Chitala*,¹⁹ where it was stated by the Supreme Court that:

Under the Supreme Court of Zambia Act, this is an appeal against the decision of a High Court Judge refusing to grant leave to bring judicial review proceedings. Under the Rules of the Supreme Court of England which apply to supply and cassus omissus in our own rules of practice and procedure, this would be a renewal of the application for leave to the appellate court.

The soundness of this procedure is questionable as it is not required under Order 53 to appeal but rather to renew the application for leave to apply for judicial review.²⁰ Being a Supreme Court decision and bearing in mind the principle of *stare decisis*, this precedent is dangerous and unhelpful if it is enforced in that a number of legitimate actions will be unchallenged. However, one must equally appreciate that the provision in Section 10 of the High court Act cannot be faulted as the situation or conditions in England are not similar to the Zambian situation.²¹

¹⁶ Rules of the Supreme Court of England (1999 EDITION).

¹⁷ Chishala G. Chama, “*Shortcomings of Judicial Review and Human Rights Protection in Zambia.*” Obligatory Essay, School of Law (2008), 39.

¹⁸ Rules of the Supreme Court of England (1999 EDITION).

¹⁹ SCZ Judgment No. 14 of 1995.

²⁰ Grahame Aldous and John Alder, *Application for Judicial Review: Law and Practice* (London: Butterworths, 1985), 158.

²¹ Chishala G. Chama, “*Shortcomings of Judicial Review and Human Rights Protection in Zambia.*” Obligatory Essay, School of Law (2008), 41.

It is therefore, recommended that there is need to enact domestic legislation to regulate judicial review proceedings. This domestic legislation should take into consideration the legal system prevailing in Zambia as regards judicial review, the grounds for judicial review and clearly outline the procedure for judicial review proceedings.

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