

N/S. D.F. Nawangulu.

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 160 OF 1993



BETWEEN:

A W M'NTHAMBALA (representing himself  
and Members of the Alliance for  
Democracy (AFORD)).....APPLICANT

- and -

THE ATTORNEY GENERAL.....RESPONDENT

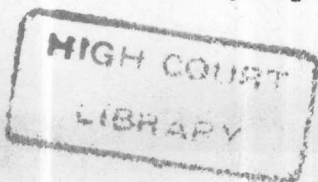
CORAM: CHATSIKA, J.

Mhango, of Counsel, for the Applicant  
Chatsika, of Counsel, for the Respondent  
Kadyakale, Law Clerk

R U L I N G

This is an application made by A W M'nthambala in his representative capacity as Vice Chairman of the Alliance for Democracy (which shall hereinafter be referred to as AFORD) on behalf of himself and on behalf of all the members of his group who seeks a declaration that the decision by the Police to cancel the group's mass rally which was scheduled to take place on the 31st January 1993 at Kasungu Boma was both unlawful and discriminatory. The application is supported by an affidavit sworn to by the said A W M'nthambala. The application is made under Order 15 rule 16 of the Rules of the Supreme Court.

The circumstances which preceeded and formed the background to the present application were these. AFORD, a pressure group which advocates multi-partyism as a policy of government in Malawi, intended to hold a mass rally at Kasungu Boma on the 31st January 1993. It is common ground that prior to the holding of any such meeting, the group (and indeed any other group) must first, as a pre-requisite, obtain permission from the Police for the holding of the meeting. AFORD applied for and obtained the permission to hold their mass rally at Kasungu Boma on the 31st January 1993. Notices for the rally were sent out to members of AFORD and to the public at large and on the 31st January 1993 many of them converged at Kasungu for the purpose of the rally. On the very day when the rally was to be held, the Executive Members of AFORD were informed by a senior Police Officer that the permission to hold the rally on that day had been cancelled and advised them not to hold the rally.



It is stated in the affidavit in support of the application that although the senior Police Officer did not give any good reason for the cancellation of the rally, the deponent gathered that the real reason was to give way to a meeting organised by the Malawi Congress Party which was scheduled to take place at the same place on the same day. The deponent further swore to in his affidavit that at the time AFORD obtained permission to hold their meeting which was subsequently cancelled, the Malawi Congress Party had had not obtained permission to hold their meeting. The deponent of the affidavit expressed concern that the Police may continue to act in this partial manner and that if redress is not promptly obtained, the group may face some difficulties in their campaign for the forthcoming referendum.

It is common ground that a referendum on Malawi's political system is going to take place soon in this country. For the purpose of the smooth conduct of the referendum, regulations made under the Constitution of Malawi have been formulated. They are entitled "Constitution (Referendum on Malawi's Political System) Regulations, 1993". Regulation 34 of the said regulations provides:

"Every public officer and public entity or authority shall give or be seen to give equal treatment to all special interest groups to enable each of the groups conduct its campaign freely."

Both the Malawi Congress Party and AFORD are special interest groups in the outcome of the referendum. According to the above regulation, the Police Officer, as a public officer should give or should be seen to give equal treatment to both groups. If AFORD had obtained permission to hold their meeting before the Malawi Congress Party obtained their permission, cancellation of the AFORD meeting for the purpose of giving way to the Malawi Congress Party meeting would not be said to constitute "equal treatment". The decision of the Police to cancel the AFORD meeting infringed regulation 34 of the Constitution (Malawi's Political System) Regulations, 1993.

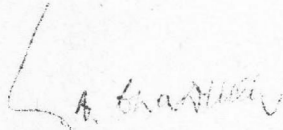
As already stated above, the Applicant merely seeks a declaration to assert that the Decision of the Police to cancel the meeting for the reasons that have been given was wrong and thereby avoid its repetition. Order 15 rule 16 of the Rules of the Supreme Court gives power to the Courts to make binding declarations on matters where a public officer or authority has performed his or its public function in a wrong manner and where such wrong performance of the public duty occasions injustice to a member or members of the public. The declaration must be given irrespective of whether or not any consequential relief is or could be claimed vide Lord Denning in *Barnard and Others -v- National Dock Labour Harbour* (1953) 2 Q.B. 18 and also in *Pyx Granite Company Limited -v- Ministry of Housing and Local Government* (1960) A.C. 260.

From the facts of this application, which have not been disputed by the Respondent, I am satisfied that it has been proved that the Police acted wrongly when they cancelled the Applicant's permission to hold their meeting at Kasungu on the 31st January 1993. The Applicant is therefore entitled to redress and I therefore make a declaration as follows:-

- (a) that the decision taken by the Police to cancel the permission previously given to AFORD to hold their public rally which was scheduled to take place at Kasungu Boma on the 31st January 1993 was improper and that it resulted in a violation of the rights of members of AFORD of their freedom of political association.
- (b)) that the decision of the Police was biased and discriminatory.

Costs of this application to the Applicant.

MADE in Chambers this 23rd day of February 1993, at Blantyre.

  
L A Chatsika  
JUDGE