



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 14 OF 2019

**BETWEEN:**

**DAMSON CHELEWANI..... CLAIMANTm**

**AND**

**UTM.....1<sup>ST</sup> DEFENDANT**

**DR. MICHAEL USI.....2<sup>ND</sup> DEFENDANT**

**CORAM: THE HON JUSTICE HEALEY POTANI**

**Mr. Mickeus, Counsel for the Claimant**

**Mr. Chokhotho, Counsel for Defendants**

**Mr. Mathanda, Court Clerk**

**RULING**

On January 14, 2019, the claimant commenced these proceedings against the 1<sup>st</sup> defendant, UTM, one of the political parties geared to contest in the tripartite elections to be held in the country in May, 2019, seeking some declarations and orders regarding the declaration by UTM to the effect that Dr. Michael Usi is its parliamentary elections candidate for Mulanje Central Constituency. Simultaneous to the commencement of the action, the claimant made an *ex parte* application for an interlocutory injunction restraining the UTM from effecting its decision to declare Dr. Michael Usi as its parliamentary elections candidate for Mulanje Central Constituency. The court, however, directed that the application should be heard *inter partes*. Subsequently, Dr Michael Usi made an application which was readily

granted, to join the matter as 2<sup>nd</sup> defendant. The court now proceeds to make its determination on the claimant's application.

There are a number of sworn statements filed by the parties in aid of their respective cases. The concise pertinent facts, as they emerge from the sworn statements, are that the claimant and the 2<sup>nd</sup> defendant were among those vying to contest in the forthcoming tripartite elections in the Mulanje Central Constituency under the banner/ticket of the UTM party. In line with the party's governing rules, primary elections had to be conducted in order to come up with one candidate who would stand on the party ticket. There is no dispute that the agreed date for the elections was January 3, 2019. The point of departure is that it is alleged by the claimant the elections were to be held at Chisitu Primary School and he went there to contest but the 2<sup>nd</sup> defendant did not show up as he was reportedly at Ntenjera Magistrate's Court where parallel elections were being held. According to the claimant, when this anomaly came to light, the party authorities entrusted to conduct the elections ordered that the elections be suspended to another date in order to resolve the issue of the venue. It is therefore the case for the claimant that no primary elections having taken place, an injunction order as prayed for be granted restraining the 1<sup>st</sup> defendant from declaring the 2<sup>nd</sup> defendant as its candidate and that an order be made directing the 1<sup>st</sup> defendant to conduct primary elections within 4 days. On the part of the defendants, it is averred and contended that the venue of the elections was Ntenjera and that the 2<sup>nd</sup> defendant being the only candidate who availed himself, he was declared as the party's torch bearer in line with relevant provisions in the party's governing rules/constitution hence the prayer for the injunction by the claimant is baseless and must be dismissed. The defendants have also implored the court not to entertain the claimant's case as he has rushed to the court before exhausting the

internal dispute resolution mechanisms provided for in the UTM party's constitution.

The court considers it imperative to first deal with the issue whether or not the claimant's case should be thrown out because the claimant has rushed to court before exhausting the internal dispute resolution mechanisms provided for in the UTM party's constitution. Indeed, at the commencement of the hearing of the application, the court subscribed to the school of thought that holds that political parties are akin to clubs as such *intra* party disputes should be dealt with through mechanisms contained in the party's governing rules and that courts should be slow in entertaining such disputes. A similar kind of question arose in a case recently decided by Justice Kenyatta Nyirenda being **Bandawe v Malawi Congress Party**, High Court Lilongwe District Registry, Civil Cause No. 1010 of 2018. In that case, just like in the present case, the claimant through, an application for an injunction, was challenging the declaration of a rival candidate as winner of primary elections and one of the arguments advanced by the defendant in opposition was that the action was premature as the claimant had not lodged his complaint to some relevant committee in line with Article 20(5) of the Constitution of the Malawi Congress Party. The judge found, on the sworn statements, that indeed the claimant did not take recourse to Article 20(5) but went on into a meticulous analysis of the submissions presented by counsel on the issue. While agreeing that *intra* party disputes should be resolved in accordance with the party's constitutive document and rules made thereunder, he went on to say that there is no denying that courts have jurisdiction over political disputes that raise issues of judicial nature and reference was made to section 103(2) of the Constitution to fortify this position. He had this to say:

*To my mind, the question whether or not a court should exercise its jurisdiction over a “political dispute” is not one that can be decided in abstract, without paying special attention to the facts of a particular case. In the premises, it seems to me, in my not-s-o fanciful thinking, that the developing trend of wholesome bracket categorization of “political disputes” as being non-justiciable is not only wrong in principle but also unwittingly give the impression that the judiciary is ingeniously hiding behind “political disputes” to shrink the duty imposed upon it by section 103(2) of the constitution to determine issues of a judicial nature, whether or not such issues touch upon politics*

He went on to say that:

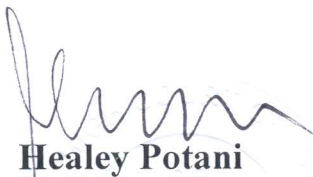
*Having applied the foregoing principles to the present case, I am satisfied that the present application is rightly before the Court in that it falls within the categories of cases that are an exception to the general rule that “political disputes” are not amenable to judicial intervention. There is the issue of the Defendant being in breach of rules on natural justice and the issue of the dispute being one that falls outside the purview of Article 20(5) of the Constitution of the Malawi Congress Party*

This court largely agrees with the position the learned judge took that wholesome bracket categorization of “political disputes” as being non-justiciable is not only wrong in principle but also unwittingly gives the impression that the judiciary is ingeniously hiding behind “political disputes” to shrink the duty imposed upon it by section 103(2) of the Constitution to determine issues of a judicial nature, whether or not such issues touch upon politics. Again the court agrees that the question whether or not a court should exercise its jurisdiction over a “political dispute” is not one that can be decided in abstract, without paying special attention to the facts of a particular case. This leads to the facts of the present case.

There is no dispute that Article 21(7) of the UTM Constitution provides for an internal grievance procedure for complaints relating to elections. In totality, the facts show that the claimant did not follow that procedure. Apart from bare verbal assertions, there is no evidence that the claimant lodged a complaint to the relevant committee. Surely, a complaint over such a serious matter should have been in writing. The court would also wish to note that unlike in the **Bandawe v Malawi Congress Party** case where it was found that the issue in contention did not fall under Article 20(5) of the Constitution of the party, there is no dispute in this case that the issue in contention falls within Article 21 of the UTM Constitution. The court, would therefore, find and hold that the issue the claimant has brought to the court falls under Article 21 of the UTM Constitution which provides for a grievance procedure the claimant did not take recourse to before coming to court. Perhaps before concluding, it should be said that the internal dispute resolution mechanisms provided for in the various constitutive instruments of political parties and other organizations are in tandem with section 13 (1) of the Constitution which encourages settlement of differences through negotiation, good offices, mediation, conciliation and arbitration.

In the end result, the claimant's application is dismissed without even considering its merits for being made prematurely. Costs incidental to the abortive application are for the defendants.

**Made this day of January 28, 2019, at Blantyre in the Republic of Malawi.**

  
**Healey Potani**  
**JUDGE**