JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NO. 1010 OF 2018

BETWEEN

PATRICK BANDAWE ….…… CLAIMANT

AND

MALAWI CONGRESS PARTY ……...…… DEFENDANT

CORAM: **THE HONOURABLE JUSTICE KENYATTA NYIRENDA**
Mr. Kubwalo, of Counsel, for the Claimant
Messrs Mvalo and Mhone, of Counsel, for the Defendant
Mr. D. K. Itai, Court Clerk

ORDER

Kenyatta Nyirenda, J.

This is this Court's Ruling on an application by the Claimant for an order restraining the Defendant, its servant and/or agents from effecting its decision declaring Honourable Juliana Lunguzi the winner of the primary elections for Dedza East Constituency pending the determination of the main action herein.

The application was filed with the Court on 28th November 2018 and there was filed along with it a statement sworn by the Claimant [Hereinafter referred to as the "Claimant's sworn statement"] which reads:

> *"2. **THAT** I am a member of the Defendant party.*
>
> *3. **THAT** I am one of the persons that took part in the primary elections for the Defendant party for Dedza East Constituency which elections were aimed at electing the party's candidate for the office of Member of Parliament in the forthcoming Tripartite elections. The other persons who participated in the primaries are Honourable Juliana Lunguzi, Mr. Mussa M'bwana, Mr. Steve Van Biziwick and Mr. Davie Kupempha.*

4. ***THAT*** *the primary elections took place on the 25th November, 2018 at Mankhamba Ground, Mtakataka, Dedza.*

5. ***THAT*** *the primaries were presided over by a team comprising Honourable Peter Chalera, Honourable Peter Mazizi, Mr. Gerald Banda and Miss Luwanisa Chapola.*

6. ***THAT*** *after the voting I came out the winner having amassed 821 votes and Honourable Juliana Lunguzi came second with 815 votes. I now produce a copy of the report on the Primary elections which the presiding team stated in the immediately preceding paragraph produced and mark the same* ***PB1***.

7. ***THAT*** *sadly on the 26th November, 2018, the party released a Press Statement which I only came to know about through the social media. Through the statement the Defendant stated that its Directorate of Elections had carried out an independent inquiry into the primaries and on the basis of the inquiry, the Defendant declared Honourable Juliana Lunguzi the winner of the primaries mainly because of suspected or assumed collusion between myself and another candidate in the primaries according to the statement. The statement claims that I colluded with the said other candidate to withdraw from the primaries so that the delegates who had wanted to vote for him could vote for me. I produce a copy of the statement by the Defendant and mark the same* ***PB2***.

8. ***THAT*** *before coming up with the position exhibited in PB2 the Defendant and/or its Directorate of Elections never bothered to hear me despite it being abundantly clear that I had an interest in outcome of the alleged independent inquiry.*

9. ***THAT*** *I refer to the immediately preceding paragraph and state that conduct of the Defendant in not affording me an opportunity to be heard before it set aside the results of the primaries for Dedza East constituency and declaring Honourable Juliana Lunguzi winner of the primaries flies in the face of the notion of natural justice as well as my constitutional right to participate in the activities of a political party.*

10. ***THAT*** *I aver that the loss that I stand to suffer as a result of the Defendant's conduct which invades my constitutional right to participate in the activities of a political party as well as the notion of natural justice cannot be compensated by way of damages.*

11. ***THAT*** *in the premises, it is only fair that an order of injunction restraining the Defendant from effecting its decision declaring Honourable Juliana Lunguzi the winner of the primary elections for Dedza East Constituency.*

12. ***THAT*** *I undertake to compensate the Defendant in damages should it later on transpire that the application herein was wrongly granted, if it is granted, as a result of which the Defendant has suffered damage."*

The application came before me on 28th November 2018 and I ordered the application to be by way of an inter-partes hearing and the same was set for 11th December 2018.

The Defendant is opposed to the application and it, accordingly, filed two statements in opposition, sworn by Maureen Kajedula, the Defendant's Director of Social Services for Dedza East Constituency and Josephy Bazilio, the Defendant's Publicity Secretary for Dedza East Constituency. The material part of the sworn statement by Maureen Kajedula states:

> *"4.* ***THAT*** *on or around the 20th November 2018, we had our primary elections in Dedza East Constituency in which the aspirants were: (a) Mussa M'bwana; (b) Patrick Bandawe; (c) Steven Biswick; (d) Davie Kupempha; and (e) Juliana Lunguzi.*
>
> *5.* ***THAT*** *at all material times I was there and I witnessed everything that happened on the day.*
>
> *6.* ***THAT*** *the presiding officer, on the day, was Peter Chalera and after he had advised the aforesaid aspirants to take their positions, he advised delegates to rally behind their preferred candidates.*
>
> *7.* ***THAT*** *by the said reason, all candidates had delegates behind them.*
>
> *8.* ***THAT*** *when the said presiding officer started counting the number of delegates behind the Claimant, Mussa M'bwana, Steven Biswick, and Davie Kupempha withdrew from the race and advised their delegate to rally behind the Claimant*
>
> *9.* ***THAT*** *although I advised the presiding officer of the irregularity so that he curtails the process until the irregularity was resolved, he refused to stop counting the delegates behind the Claimant.*
>
> *10.* ***THAT*** *again, when the pressing officer started counting the delegates who were behind Juliana Lunguzi, he advertently disregarded other delegates and by reason of the said matter, the presiding officer declared the Claimant the winner.*
>
> *11.* ***THAT*** *it was clear in the circumstances that the Claimant had colluded with the presiding officer and the other aspirants so as to bend the people's choice.*
>
> *12.* ***THAT*** *by reason of the said matters, we reported the matter to the Constituency Committee in Dedza East which later instituted an inquiry as to the circumstances surrounding the elections.*
>
> *13.* ***THAT*** *the said Committee found that there was indeed collusion between the Claimant and the other aspirants and the presiding officer and by reason of*

which, the Committee resolved to disqualify the Claimant and declare Juliana Lunguzi as the winner.

14. ***THAT*** *I refer to paragraph 7 of the Claimant's sworn statement and state whilst it is true that the Claimant was disqualified, however, the decision to disqualify him was made by at the Constituency level and not by the Directorate of Elections.*

15. ***THAT*** *under Article 20(5), if the Claimant was, at all, aggrieved he ought to have lodged his complaint with the Committee and by reason of which, the Constituency Committee would have referred the matter to the District Committee. A copy of the Constitution of Malawi Congress Party is attached hereto and marked as exhibit "**MK1**".*

16. ***THAT*** *in the circumstance, the Claimant has not exhausted the internal remedies as provided by the Constitution of Malawi Congress Party and by reason of which, this matter is premature before this Honourable Court."*

In his sworn statement, Josephy Bazilio confirms the facts as deposed by Maureen Kajedula and further states that the Claimant has not lodged any complaint with the Constituency Committee to indicate that he is aggrieved by the decision to disqualify him.

The application was heard on 17th December 2018. At the hearing, I requested the parties to address me, by way of written submissions, on the question whether the Court should be involved at all in determining the dispute herein having regard to the school of thought that holds that political parties are akin to clubs and, such being the case, disputes between a political party and its members should be dealt with through mechanisms contained in its constitutive instrument.

Both parties obliged by duly filing their respective written submissions on the question. The Court is indebted to Counsel for their guidance on a question that is recurrent and in need of definition.

The Claimant takes the position that the Court is properly seised (not seized) of this matter. The submissions were couched thus:

"2.1 The starting point is section 9 of the Republic of Malawi Constitution. The provision provides for the separate status, function and duty of the Judiciary. It states that,

> ***The judiciary shall have the responsibility of interpreting, protecting and enforcing this Constitution and all laws and in accordance with this Constitution in an independent and impartial manner with regard only to legally relevant facts and the prescriptions of law.***

Section 41(3) of the Constitution provides for the right to an effective remedy by a court for the violation of one's constitutional rights and freedoms.

From the above, it is clear that the core mandate of the Court is to interpret, protect and enforce the Constitution and the rights and freedoms provided thereunder.

*2.2 In the case of **HASSAN HILALE AJINGA V UNITED DEMOCRATIC FRONT** Civil Cause Number 39 of 2007 (unreported), Chikopa J discusses the law on how disputes in the context of political parties should be handled. He states that,*

> *"Political parties are no more than clubs. Membership is voluntary. Members are free to leave in much the same way they are free to join. The members conduct however is regulated by the clubs' rules/constitution which acts like some contract between the members and the club and between the members themselves. The clubs (in this case the parties0 activities are regulated by the clubs rules/constitution. In the case of party primaries they must be run in accordance with the party's rules/constitution. If there are disputes they should be resolved in accordance with the party's rules/constitution. The courts should be slow, again very slow, to intervene in a party's internal dynamics. It should instead allow the party and its membership to deal with the matters in dispute using their own internal dispute resolution mechanisms. Where a member is not happy either with the party's conduct or a fellow member's conduct he is free to leave the club/party and join one that accords with his ideals. Or be without a club or party. The only time a court should intervene in a club's or party's activities is where the club/party fails to comply with its own rules/constitution, where it acts in breach of the rules of natural justice or when it or its members conduct themselves in breach of the laws of the country …'*

*2.3 In **Christopher Edward Ritchie and 4 others v Frank Chakufwa Chihana and Another** Misc. Civil Cause Number 190 of 2017 Mkandawire J. agrees with the position in the **HASSAN HILALE AJINGA V. UNITED DEMOCRATIC FRONT** case and lamented the fact that the parties in the case had brought to Court a dispute which was purely political which did not call upon the Court to interpret any of the laws of Malawi.*

2.3 From the above cases, we submit that purely political disputes should not be entertained by the Courts. They should be resolved in accordance with the rules of the political party in issue. However, where the disputes calls upon the Court to interpret, protect and enforce the laws of the country and the Constitution the Court will rightly be called upon to adjudicate on the same. Stopping such matters from the Court would not sit well with the constitutional mandate of the Judiciary as discussed above.

2.4 As the present matter calls the Court to decide whether the conduct of the Defendant in not hearing the Claimant before it decided to disqualify him is consistent with his constitutional right to participate in the activities of a political

party, we submit that the matter is rightly before the Court. This cannot be a purely political matter."

The Defendant submitted that courts have held, with an almost crusading zeal, that political matters ought to be resolved politically by a consideration of their governing rules. The relevant part of the submissions will also be quoted in full:

*"3.2 In **Hon. Gwanda Chakuamba vs. Dr. Peter Chiona** Civil Cause No. 2563 of 2000, the court had this to say:*

> *"I have just referred to a constitutional provision and I have to state that MCP has a constitution which regulates the affairs of the party. I am very grateful to Mr Bazuka Mhango for his clear submission on the position in law of a political party and its members. He has cited several cases including the dictum of Lord Romilly MR in Hopkinson v Marquis of Exeter (1867) LR 5 Eq 63 at Page 67 where he said: - **"In order to secure the principal object of the club, the members generally enter into a written contract in the form of rules … It is clear that every member has contracted to abide by that rule … must not be capricious or arbitrary."** This squarely puts membership of unincorporated bodies on contractual basis. I agree with it and I may slightly add that reference to a member to abide by the rules and not to be capricious or arbitrary extends not only to members but even those holding or being elected to hold leadership positions. They too should not be capricious or arbitrary. Mr. Mhango also submitted relying on the dictum of **Fletcher-Moulton LJ in Osborne vs Amalgamated Society of Railways Servants** (1911) 1 Ch. 540 that Court will concern itself to protect contractual rights but that in doing so the Court must be careful that it does not enlarge those rights. The Court must ensure that the parties should abide by the express or implied agreements which they made and observe the set rules. I would give my qualified support for this position to the extent that as long as such rules are in conformity with superior laws of the land."*

*3.3 When the preceding case went for appeal as **Dr. Peter Chiona v Hon. Gwanda Chakuamba** MSCA Civil Appeal No. 40 of 2000 (unreported) Chief Justice Richard Banda (as he then was) stated that:*

> *"The issue of who is the legitimate leader of Malawi Congress Party is a political question which must be resolved by the generality of the membership of the party. This Court cannot be the proper forum for it. Nor can this Court be the proper forum to resolve the deep divisions which now exist in the Malawi Congress Party."*

*3.4 In **Ajinga v. United Democratic Front** Civil Cause Number 2466 of 2008 (unreported), the court stated as follows:*

> *"In the case of* ***Wallace Chiume & Others v Aford, Chakufwa Chihana & Another*** *Civil Cause Number 108 of 2005 (Mzuzu Registry, unreported) we, borrowing a leaf from the Constitutional Court in South Africa and the House of Lords in England, opined that judicial officers are not best placed to decide on matters inter alia of politics. The considerations operating in politics are different to those obtaining in the courts. The courts are preoccupied with the law, facts, evidence and ensuring that their decisions are in accordance with legal, factual and evidential merit. Politics on the other hand deals primarily in numbers with emotions and egos taking a not too distant second. In politics he who has the numbers carries the day. Merit in whatever respect is not a primary consideration. We talk of the foregoing not because we have some particular distaste for politics but to drive home* ***our view that as much as possible the courts should be slow, very slow in our humble view, to adjudicate on matters that though dressed up as legal are really political disputes****. In fact our position is that the more political a dispute is the more amenable it should be to a political solution. The less political it is or becomes the more amenable it is or becomes to juridical intervention."*

3.5 In ***Ishmael Chafukira vs John Zenus Ungapake Tembo and Malawi Congress Party*** *Civil Cause No. 371 of 2009 (unreported), the court also affirmed the position that members of a political party or club are deemed to have entered into a written contract in the form of rules and every member contracts to abide by those rules. The court further added that it was in the interest of political groupings to avoid judicialisation of political disputes and that democracy by its very nature means dialogue or discussion among persons of different political persuasion, inclination or even thought.*

3.6 In ***Mr. Stowell Gondwe and others vs. Hon. Dr. Lazarus Chakwera*** *Civil Cause No. 28 of 2018, Honourable Justice J.M. Chirwa dismissed the Claimant's action on the grounds that the Claimants' action was premature the Claimants having commenced the matter before exhausting the internal remedies provided in the Constitution of Malawi Congress Party. In making the said order, the Court had this to say:*

> *"This Court finds the Claimants' contention that the fact that the said Constitution has a provision for internal resolutions of disputes is tantamount to an ouster of the jurisdiction of the courts erroneous. It is to be noted that both the courts and the law encourage the resolution of disputes by alternative means hence the "out of court settlements" and the provisions of Alternative Dispute Resolutions (ADR). The fact that it is the current membership of the National Executive Committee which is being questioned cannot, in this Court's view, be a sufficient reason for a party to rush to the court before attempting to resolve the matter internally as provided by the parties' own constitutional provisions.*

3.7 What comes out clearly from the foregoing is that it is a settled principle of law that political parties are in similar terms as clubs and by the aegis of which, it is the

court's concern that parties abide by the express or implied agreements which they made and observe the set rules. Where a party has rushed to court without following the set rules as provided in the governing constitution, the court will dismiss it for being premature.

3.8 In the present case, the Claimant's action hinges on the fact that the Claimant is a member of the Defendant political party which has its own Constitution to which the Claimant contracted to abide by. Notwithstanding the fact that the said Constitution provide for internal remedies for resolving disputes, the Claimant advertently ignored the same and rushed to this Honourable Court.

3.9 Under the strength of the foregoing authorities, it is clear that the present claim is premature and that it ought to be dismissed with costs on the grounds that the Claimant has not exhausted the internal remedies as provided in the Constitution of the Defendant political party."

Having carefully considered the respective submissions and the cases referred to therein, I have been able to distil therefrom the following principles. Firstly, disputes between a political party and its members should be resolved in accordance with the party's constitutive document and rules made thereunder.

Secondly, the mere provision in a political party's constitutive document for internal resolutions of disputes, without prohibiting an aggrieved party that has exhausted internal remedies from seeking the intervention of courts of law, does not amount to ouster of the jurisdiction of the courts. The point being made is that an attempt to have the matter resolved internally as provided by the political party's constitutive document should first be made: a political party or its members should not rush to court.

Thirdly, a political party or its members will be allowed to have recourse to a court of law regarding disputes relating to activities of the political party where (a) the political party is in breach of its constitutive document or rules made thereunder, (b) the political party acts in breach of the rules of natural justice, (c) the political party or its members act in breach of the laws of Malawi, (d) the political party or its members conduct themselves in a capricious or arbitrary way.

Fifthly, and perhaps more importantly, it is not uninteresting to note that the language used in the cited cases is cautious and well measured such as *"... the courts should be slow ..."*, "*... parties should not rush to court..*", *"...the present case is premature..."*, etc. That courts have used such language and not framed their respective holdings in absolute terms is not surprising: there is no denying that courts have jurisdiction over "political disputes" that raise issues of judicial nature: see section 103(2) of the Constitution.

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 the particular case. In the premises, it seems to me, in my not-so-fanciful thinking, that the developing trend of the wholesome bracket categorization of "political disputes" as being non-justiciable is not only wrong in principle but might also unwittingly give the impression that the judiciary is ingeniously hiding behind "political disputes" to shirk the duty imposed upon it by section 103(2) of the Constitution to determine issues of judicial nature, whether or not such issues touch upon politics.

I will add this much. Once a court has determined that a matter falls within its jurisdiction, it must not hesitate to deal with the matter to its logical conclusion in accordance, of course, with the applicable law and procedures, including exhaustion of alternative remedies, where the same is required by law. Needless to say, this is jurisdiction that must be guided jealously by the judiciary – not to be relinquished anyhow.

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 juridical intervention. There is the issue of the Defendant being in breach of the rules of natural justice and the issue of the dispute between the parties being one that falls outside the purview of Article 20(5) of the Constitution of the Malawi Congress Party.

Having held that this Court is properly seised (not seized) of this matter, I now revert to the application. The main issue for determination is whether this Court should grant the Claimant an interlocutory injunction, as was argued by Counsel Kubwalo, or dismiss the application, as was argued by Counsel for the Defendant.

An interlocutory injunction is a temporary and exceptional remedy which is available before the rights of the parties have been finally determined: see O. 29, r. 1(2) of the RSC, **Series 5 Software Ltd v. Clarke & Others [1996] 1 ALL ER 853** and **Ian Kanyuka v. Thom Chumia & Others, PR Civil Cause No. 58 of 2003.** In the latter case, Justice Tembo, as he then was, observed as follows:

> *"The usual purpose of an interlocutory injunction is to preserve the status quo until the rights of the parties have been determined in the action. The injunction will almost always be negative in form, thus to restrain the defendant from doing some act. The principles to be applied in applications for injunction have been authoritatively explained by Lord Diplock in* ***American Cyanamid Co. v. Ethicon Limited [1975] A.C. 396****".*

In any application for an interlocutory injunction, the first issue before the court has to be "*Is there a serious issue to be tried?*". Indeed this must be so because it would be quite wrong that a party should obtain relief on the basis of a claim which was groundless. It is, therefore, important that a party seeking an interlocutory injunction has to show that there is a serious case to be tried. If he or she can establish that, then he or she has, so to speak, crossed the threshold; and the court can then address itself to the question whether it is just or convenient to grant an injunction: **R v. Secretary of State for Transport, Ex-parte Factortame Ltd & Others (No.2)**, supra**.** If the answer to the question whether there is a serious issue to be tried is "*no*", the application fails in *limine* (see **C.B.S. Songs v. Amstrad [1988] AC 1013**.

In the present case, the Claimant contends that the Defendant erred in disqualifying him and declaring Honourable Juliana Lunguzi as the winner without first giving him an opportunity to be heard. The contention was framed as follows:

> *"the right in respect of which the Claimant seeks the court's protection is the right to participate in the political activities of a political party. The right is provide for under section 40(1)(a) of the Constitution of the Republic of Malawi. The relevant part of the provision reads,*
>
> > *'subject to this Constitution, all persons shall have the right to … to participate in the activities of a political party…'*
>
> *The Claimant in this case effectively complain that his right to participate in the activities of the Defendant party the specific activity being primary elections aimed at electing the party's candidate for the office of Member of Parliament for Dedza East Constituency has been violated by the Defendant or is at threat of being violated hence the need of protection. The basis of the Claimant's position is that the Defendant has decided to set aside the results of the primary elections for Member of Parliament for Dedza East Constituency which the Claimant won and has gone on to declare Honourable Juliana Lunguzi who came second as the winner without hearing the Claimant when the Defendant knew too well that the Claimant had an interest in the decision by the Defendant. The Claimant feels the right to participate in the activities of a political party does not end at merely allowing a person to take part in the said activities but ensuring that there is fairness in the manner in which the participants of the activities in issue are treated. The Claimant feels by not hearing him before the Defendant made the decision which is the subject matter of this action and the present application, the Defendant treated him unfairly thereby violating his right to participate in the primaries."*

On the other hand, the Defendant takes the position that, as the Claimant failed to exhaust internal remedies before commencing these proceedings, there is no serious issue to go for trial. The matter is covered in the paragraph 3.2.4 and 3.2.5 of the Defendant's Skeleton Arguments:

"3.2.4 Again, it is a principle of law that where the applicant fails to comply with the preliminary requirements before commencing an action at the High Court, the action becomes premature and incompetent and cannot be sustained unless the applicant has exhausted the preliminary remedies (See Jefred Brown Mchali v. Collins J.F. Kajawa and another Electoral Case Number 14 of 2014)

Analysis

3.2.5 In the present case, the Claimant has failed to lodge a complaint in respect of the decision by the Constituency Committee as required by Article 20(5) of the Malawi Congress Party Constitution. The Claimant having elected to become a member of the Malawi Congress Party contracted to abide by amongst others Article 20(5) of the Malawi Congress Party Constitution. Since the Claimants have failed to exhaust the internal dispute resolution mechanisms, their application for an order of injunction is premature."

Article 20(5) of the Constitution of Malawi Congress Party states:

"Every Constituency Committee shall resolve any dispute among members of the committee, between Ward Committees and any dispute referred to it by any ward Committee through negotiation, mediation and arbitration facilitated by the committee and, where negotiation, mediation and arbitration does not resolve the dispute, the Constituency Committee shall refer it to the District Committee in whose area of jurisdiction the Constituency Committee operates."

Counsel Kubwalo submitted that Article 20(5) of the Constitution of Malawi Congress Party is not applicable to the present case in that the dispute herein is not one (a) among members of the committee, (b) between Ward Committees and (c) referred to the Constituency Committee by a ward committee. Counsel Kubwalo also invited the Court to note that the Defendant does not dispute that the decision to disqualify the Claimant was not made at the constituency level but by the Directorate of Elections.

I have carefully read and considered the sworn statements and the submissions by Counsel. To my mind, there are several serious questions for trial in the present application. For example, there is firstly the question of whether or not the present dispute is one that falls within the purview of Article 20(5) of the Constitution of the Malawi Congress Party.

Secondly, there is the question whether or not the decision by the Defendant to nullify the results of the primary elections which showed the Claimant as the winner without first affording the Claimant an opportunity to be heard does not violate the Claimant's constitutional right to participate in the activities of a political party.

In light of the contestation on both factual matters and the legal questions arising therefrom, I really doubt, and I do not think that Counsel expects, that this case can

be resolved at an interlocutory stage before the factual landscape of the case unfolds during the hearing of the substantive case: see **John Albert v. Sona Thomas (Nee Singh), Sukhdev Singh, Samsher Singh and Hellen Singh, MSCA Civil Appeal No. 46 of 2006 (unreported)**. As was aptly put in **Mwapasa and Another v. Stanbic Bank Limited and Another, HC/PR Misc. Civ. Cause No. 110 of 2003 (unreported)**, *"a court must at this stage avoid resolving complex legal questions appreciated through factual and legal issues only trial can avoid and unravel"*.

In the result, we have to proceed to the second stage to consider compensability, that is, the extent to which damages are likely to be adequate remedy for each party and the ability of the other party to pay.

Counsel Kubwalo submitted that damages would not be an adequate remedy. The submission was put thus:

> *"We submit that the nature of the right at the centre of the dispute herein makes the present case a case where damages may not be an adequate remedy. Should at the end of the day the Court find that the conduct of the Defendant violates or threatens to violate the Claimants the loss the Claimant shall have suffered would be impossible or difficult owing to the nature of the right. Furthermore, by the time the action herein is concluded, the tripartite elections in the country may have been already held thereby leaving the Claimant with literally no remedy."*

On his part, Counsel Mhone contended that as there was no triable issue, it was not necessary for the Defendant to make submissions on the other elements in Order 10, rule 27, of the Courts (High Court) (Civil Procedure) Rules, namely, whether or not (a) damages may be an adequate remedy and (b) it may be just to grant an interlocutory injunction.

I agree with Counsel Kubwalo that the potential inconvenience and damages to be suffered by the Claimant cannot be calculated in monetary terms. What is at stake here is a political contest for ascendancy, through primary elections at an initial stage, to the office of MP for Dedza East Constituency. That office carries with it reverence that money cannot buy or compensate. It is, therefore, my finding, and I so hold, that the application before me lies outside the scope of pecuniary compensation and, in any case, damages would be difficult to assess.

Regarding balance of justice, it seems to me that it would be unwise to attempt to list all the various matters which may need to be taken into consideration in deciding where the balance of justice lies, let alone to suggest the relative weight to be attached to them. The matters will vary from case to case. Where other factors appear

to be evenly balanced it is counsel of prudence to take such measures as are calculated to preserve the status quo.

At the end of the day, the important question to ask is what would happen if the application is not granted. The Defendant would proceed to present Honourable Juliana Lunguzi as its candidate for Dedza East Constituency in the forthcoming Tri-partite Elections scheduled for May 2019. In my view, such an action would render nugatory the main action by the Claimant.

In view of the foregoing and by reason thereof, the application by the Claimant is granted. Accordingly, the Defendant, by itself or by or through its servant and/or agents, is restrained from effecting its decision declaring Honourable Juliana Lunguzi the winner of the primary elections for Dedza East Constituency until the determination of the main action herein or a further order by the Court.

Before resting, I wish to make the following observations. There is no dispute regarding the need to have this case resolved as quickly as possible. Surprisingly, the parties do not appear to be keen to prosecute the case with dispatch. Contrary to the initial direction made under Order 5, rule 20, of CPR, the Claimant has yet to file proof of service of the summons and the Defendant has yet to file a defence.

It would appear the parties are content with just giving attention to the issue of interlocutory injunction. This Court has on a number of times urged parties to remember that the right to an interlocutory injunction is not a cause of action in itself: see **The Siskina [1979] A.C. 210** and **Channel Tunnel Group Ltd v. Balfour Beatty Construction Ltd [1993] A.C. 334** at 360-362. To quote Lord Diplock in the former case at 256:

> *"A right o obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependent upon there being a pre-existing cause of action against the defendant … The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action."* – Emphasis by underlining supplied

Obviously, as the matter now stands, the Court is not in a position to give directions regarding the further conduct (expedited or otherwise) of this case particularly when there is no indication by the Defendant that it intends to contest these proceedings.

Pronounced in Chambers this 7th day of January 2019 at Lilongwe in the Republic of Malawi.

Kenyatta Nyirenda
JUDGE