

REPUBLIC OF MALAWI

MALAWI JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL DIVISION

MISCELLANEOUS CIVIL APPEAL NO. 113 OF 2018

Between

DR. SAULOS KLAUS CHILIMA..... APPELLANT

-and-

REGISTRAR OF POLITICAL PARTIESRESPONDENT

Coram: Honourable Mr. Justice J. M. Chirwa

Mr Goba Chipeta, of Counsel for the Appellant

Mrs Michongwe, of Counsel for the Respondent

Mr O. Chitatu Official Court Interpreter

Judgment

1. Introduction:-

This is an appeal by Dr. Saulos Klaus Chilima ("the Appellant") against the decision of the Registrar of Political Parties ("the Respondent") made on the 21st day of September, 2018 rejecting the Appellant's application for the registration of UTM as political party under the Political Parties (Registration and Regulations) Act ("the PPRRA")

The grounds of appeal are as follows: -

- (a) The Respondent erred in the law and in fact in holding that the name UTM closely resembles that of another political party known as the United Transformation Party.
- (b) The Respondent erred in law and fact in holding that the office bearers of UTM were misleading the Registrar as the true name of UTM was that of United Transformation Party.
- (c) The Respondent erred in law and fact in deciding the issue of whether to register UTM by taking into account matters and evidence that was not presented before him by either UTM or any of its officials and thereby acted as prosecutor, witness and a judge in the same case.
- (d) The Respondent erred in law and fact by deciding a matter based on evidence that was within the knowledge of the Respondent without inviting the Appellant, UTM or any of its office bearers to be heard on the matter as required by Section 43 of the Constitution.
- (e) The Respondent erred in law and fact in that the whole process that he took was in violation of the Appellant's constitutional right to fair

administrative justice as enshrined in Section 43 of the Constitution in that:

- (i) The decision was not valid in view of the reasons given;
 - (ii) The Appellant, UTM or any office bearer of UTM was not given an opportunity to be heard on allegations that were outside the application form and evidence submitted by the UTM and
 - (iii) The Respondent was an interested party in that he was a witness in a matter that he had to decide, to collate evidence on it without first inviting the office bearers of UTM to make their representation on it.
- (f) The Respondent erred in law and fact in refusing to register UTM on grounds that are outside Section 7 of the PPRRA.

And the reliefs sought by the Appellant are as follows:

- (a) That the decision of the Respondent refusing to register UTM as a political party be quashed;
- (b) That the Respondent be directed to register UTM as a political party within 48 hours of the pronouncement of this Court's decision or such other time as the Court may direct;
- (c) That the Court should make such orders and/or directions as may be fit and expedient in the circumstances; and
- (d) That the Respondent do bear the costs of these proceedings.

Being dissatisfied with the decision of the Respondent, the Appellant proceeded to make this appeal under Section 8(1) of the PPRRA, hence these proceedings.

Both the Appellant and the Respondent have filed Skeleton Arguments in support of their positions in this matter.

2. Issue for Determination:-

Albeit the Appellant has lodged six (6) grounds of appeal, the issue for determination, in this Court's considered view, can be simply put as: was the Respondent justified in refusing to register UTM as a political party under the "the PPRRA")?

3. The Law:-

The PPRRA is an Act which provides for the registration and regulation of political parties in Malawi. This is evident from the preamble to the Act itself. Section 5 of the PPRRA which deals with the manner of making an application provides as follows:

"(1) A political party consisting of not less than 100 registered members may apply in writing to the Registrar for registration under this Act.

(2) An application for registration shall be signed by the office bearers of the political party and shall-

(a) specify the name of the party; and

(b) be accompanied by-

(i) two copies of the constitution, rules and manifesto of the party, duly certified by the leader of the party;

(j) (ii) the particulars of the registered office of the party;

(iii) a list giving the names and addresses of the leader and other office bearers of the party;

(iv) a list giving the names and addresses of not less than 100 registered members of the party; and

(v) Such further information or document as the Registrar may require for the purpose of satisfying himself that the application complies with this Act or that the party is entitled to be registered under this Act.

(3) The list referred to in paragraphs (b) (iii) and (iv) of subsection 2 shall be signed by each of the of the persons named therein.

(4) A person shall not be considered to be a member of a political party for the purpose of this Act unless he is a citizen of Malawi and has attained the voting age of voters in parliamentary general elections prescribed in a written law".

The grounds upon which the Registrar may refuse the registration of a political party are also provided for in Section 7 of the PPRRA. The Section is reproduced as follows: -

"7(1) The Registrar may refuse to register a political if he is satisfied that-

(a) the application is not in conformity with this Act;

(b) the name of the party-

(i) is identical to the name of a registered party or political party whose registration has been cancelled under this Act;

(ii) so nearly resembles the name of a registered political party or a political party whose registration has been cancelled under this Act;

(iii) denotes a religious faith;

(iv) is provocative or offends against public decency or is contrary to any other written law.

(c) any purpose or object of the party is unlawful.

(2) A political party shall be deemed to have a purpose or object which is unlawful for the purpose of this Act if –

(a) It seeks, directly or indirectly, to further ethnical, racial or religious discrimination or discrimination on the grounds of colour;

(b) Its objectives or membership is based on a religious faith;

(c) It advocates or seeks to effect political change in the Republic through violence or unlawful means; and

(d) It seeks to secede any part of the Republic from the Republic.

(3) For the purposes of determining whether a political party has an unlawful purpose or object the Registrar may consider any document issued or statement made by, or on behalf of, the party or by an office bearer of the party.

(4) Where the Registrar refuses to register a political party, he shall forthwith serve upon the party a notice in writing to that effect and shall specify the grounds for his refusal".

And Section 18 provides as follows:

"(1) Every person who-

(a) for the purpose of obtaining the registration of a political party, wilfully-

(i) furnishes any false or misleading information;

(ii) makes any false declaration; or

(iii) forges or otherwise submits any document which he knows is false or misleading,

to the Registrar or any person authorised by the Registrar;

(b) fails to furnish the Registrar or any person authorised by the Registrar with any information, document or extract when required or within the time required;

(c) obstructs the Registrar or any person authorised by the Registrar in the performance of his functions under this Act,

Is guilty of an offence and liable to a fine of K2,000 and imprisonment for twelve months".

4. Determination: -

In the determination of the issue "was the Respondent justified in refusing to register UTM as a political party under the PPRRA?" this Court has borne in mind the fact that every person has a constitutional right to the freedom of

association, which includes the freedom to form associations (vide: Section 32(1) of the Constitution of the Republic Malawi ("the Constitution"). And this being a Constitutional right, the only restrictions or limitations which may be placed on its exercise are those which are reasonable, recognised by international human rights standards and necessary in an open and democratic society (vide: Section 44(1) of the Constitution).

This Court is inclined to concur with Singini J (as he then was) in the case of Honourable Uladi Mussa, MP, of Malawi People's Party vs Minister for the Protected Flag Emblems and Names Act and Another, Civil Cause No. 99 of 2007 or [2007] MWHC 26(16 May 2007), cited in the Appellant's Skeleton Arguments, when he said:

"The right to freely form a political party must extend to freely choose the name of the party, subject only to restrictions imposed by the Act or by any other law."

Now, the Appellant having presented to the Respondent an application for the registration of a named party which had fulfilled all the requirements under Section 5 of the PPRRA, was the Respondent justified in rejecting the registration thereof as per his letter of 21st September, 2018 where he said:

"it is public knowledge that UTM is an abbreviation of United Transformation Movement. The office bearers of UTM have been holding meetings across the country under the United Transformation Movement (UTM) and there is in public domain a plethora of party promotion materials such as fabric, clothing, flags, branding on motor vehicles which bear the inscription of the United Transformation Movement with the abbreviation UTM as part of the party's symbol or insignia....."?

After carefully perusing the provisions of Section 7 of the PPRRA, it is the considered view of this Court that the Respondent was not justified to do so. This Court is inclined to concur with the contention of the Appellant that the Respondent had wrongly taken into account/ consideration matters and evidence which were not presented before him by either UTM as a party or its

office bearers because the name of the party is that which was stated in the documents which had been duly presented to him and not that which was in the public domain.

It may be worth reiterating that under Section 7 of the PPRRA the Respondent is entitled to refuse the registration of a political party only if any of the grounds provided therein is satisfied. The said grounds are as follows:

- (a) If the application is not in conformity with the PPRRA;
- (b) If the name of the party is either identical to the name of a registered political party or a political party whose registration has been cancelled under the Act or if the name of the party so nearly resembles the name of a registered political party or a political party whose registration has been cancelled under the PPRRA or if it denotes a religious faith; or of it is provocative or offends against public decency or is contrary to any other written law; and
- (c) If any purpose or object of the party is unlawful.

The maxim of statutory interpretation, *expressio unius est exclusio alterius* (i.e. the mention of one means the exclusion of another) thus applies.

This Court is also mindful of the, cardinal rule of statutory interpretation that, where the words of a statute are plain and unambiguous, they must be read in their ordinary meaning (see: **Mussa v Reginam** (1923-60) ALR (Mal) 693 at pp696 and 697 per **Spenser – Wilkison, CJ** and **Malawi Law Society v Banda and Attorney General** 12 MLR 29 at p42). The PPRRA having specified the grounds upon which the Respondent may refuse to register a political party, it was, in this Court's considered view, thus not open to the Respondent to consider what was at that particular time in the public domain.

This Court has carefully perused the provisions of the PPRRA as a whole but has found nothing therein stopping a political party which had previously been

known by one name to proceed to apply for registration under Section 5 using a different name. It is the further considered view of this Court that what is relevant for consideration by the Respondent at the time of registration is the name as presented in the requisite documents, to wit, the Constitution, the Manifesto, etc, of the party.

This Court is, in the premises, inclined to hold that the Respondent, had indeed taken into account irrelevant considerations when deciding to refuse the registration of UTM as a political party. The decision of the Respondent was thus unreasonable in the *Wednesbury* sense (see: **Associated Provincial Picture House Principal Limited vs Wednesbury Corporation** [1948] 1 KB 233 per **Lord Green**).

This Court is not inclined to subscribe to the contention of the Respondent that the Respondent, in exercising his statutory functions, cannot be restricted to the information on the application form and disregard obvious information in the public domain. Indeed, if the Respondent had the liberty to ignore what had been duly presented to him and look for information in the public domain for what purpose then would the legislature have laboured itself to enact an Act which in its preamble specifically describes itself as an Act to provide for the registration and regulation of political parties in Malawi; and to provide for matters connected with or incidental thereto?

An attempt was made by the Respondent to justify the refusal of the registration of UTM as a political party on the pretext of avoiding criminality under Section 18 of the PPRRA. With due respect to the Respondent, it is the considered view of this Court that had the legislature intended to give powers to the Respondent to refuse to register any political party on the mere suspicion of the commission of an offence under Section 18 of the PPRRA, the said provision would not have contained a penalty for its contravention. It is noteworthy that the law presumes a person innocent until proved guilty. As such, it would be contrary to the law to hold the Appellant or any other office bearer of UTM guilty before being held so by a court of law.

It is also pertinent to note that while Section 18(1) (a) (i) of the PPRRA creates an offence for one to wilfully furnish any false or misleading information, for the purpose of obtaining the registration of political party, it would be against the rules of natural justice for the Respondent to whom the alleged false or misleading information was furnished to charge the Appellant with the commission of an offence and at the same time hold him or any other office bearer of the party guilty of the alleged offence. And as rightly, in this Court's view, contended by the Appellant, the Appellant and the other office bearers of the party were entitled to be treated fairly in that rules of natural justice had to be followed as part of the Respondent's constitutional duty to enforce, protect and promote their constitutional right to fair administrative justice under Section 43 of the Constitution. In this regard this Court fully subscribes to the views of **Chipeta J** (as he then was) in the case of **Ex-parte Joy Radio Ltd and Malawi Communication Regulations Authority (MACRA)** (143 of 2008) [2009] MWHC1 (16 January 2009) when he said:

*"Another guideline relates to the observation of principles of natural justice, where they are applicable. In such instance employment of shortcuts in reaching a decision under review, if principles of natural justice are skipped when they should otherwise have been observed, will render the decision making process equally faulty. See: **Ridge vs Baldwin** [1963] 2ALL ER 66".*

Albeit the present proceedings, are not judicial review proceedings, the rules of natural justice are, no doubt, applicable thereto. The Respondent is thus to be faulted for not according the Appellant and the other office bearers of the party an opportunity to be heard on matters that affected their political rights under Section 40 of the Constitution.

5. Conclusion:-

It is on the foregoing premises that this Court finds that the Respondent was thus not justified in refusing to register UTM as a political party under the PPRRA. The Appeal ought thus to be allowed.


Now, in exercise of the powers vested in this Court by Section 8 (1) of the PPRRA, this Court orders the Respondent to proceed to register UTM as a political party under the PPRRA within the next 7 days from the date hereof. This registration is to be with effect from the 21st day of September, 2018. It is so ordered.

6 Costs:-

The costs of any proceedings are in the discretion of the court (vide: Order 31 Rule 3 (1) of the Courts (High Court) (Civil Procedure) Rules. The unsuccessful party pays the costs of the successful party (vide: Order 31 Rule 3 (2) of the said Rules).

In the exercise of the Court's discretion on costs, it is now the order of this Court that the Respondent do pay the costs of the Appellant. The said costs are to be assessed by the Registrar of this Court in the event that the parties hereto are not able to reach an amicable agreement on the same. It is further so ordered.

Dated this 2nd day of November 2018



J. M. Chirwa
JUDGE