

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISCELLANEOUS CIVIL CAUSE NUMBER 61 OF 2007**

BETWEEN

THE STATE

-AND-

**THE SPEAKER OF THE NATIONAL ASSEMBLY RESPONDENT
HONOURABLE YUNUS MUSSA
AND 40 OTHERS RESPONDENTS**

**EX-PARTE: UNITED DEMOCRATIC FRONT AND
HONOURABLE NGA MTAUFU, MP APPLICANTS**

CORAM: SINGINI, SC, J.

: Kasambara, Assani, Kaphale, of counsel for the Applicants
: Kaferanthu, Court Clerk

RULING

On 28th June, 2007, sitting as the motion Judge of the week, I heard an ex- parte application in chambers of Honourable Yunus Mussa, Member of Parliament, joined by 40 other Members of Parliament, for an order to grant them leave to apply for judicial review over the decision of the Speaker of Parliament in acting upon the petitions the Speaker had received seeking the seats of the concerned Members of Parliament to be declared vacant under section 65 of the Constitution averring that those Members had crossed the floor within the meaning of that section. The action of the Speaker consisted in his sending letters to the Members of Parliament asking them to respond to the petitions. The application of the Members of Parliament also sought a consequential order of an interlocutory injunction restraining the Speaker from proceeding with his action until the determination of the matter for judicial review.

Upon hearing the application and considering the affidavits in support of the application, I proceeded on the same day and on the record to grant the Applicants the order of leave for them to apply for judicial review and the consequential order of interlocutory injunction.

On the next day, 29th June, the United Democratic Front, one of the political parties represented in Parliament that had petitioned the Speaker against some of the concerned Members of Parliament including Honourable Yunus Mussa, joined by the Party's leader in Parliament, Honourable Nga Mtafu MP, filed before the Court three applications, viz, for an order that they be joined as parties

to the proceedings commenced by the Members of Parliament; for an order to vacate the order of leave for judicial review; and for an order to vacate the interlocutory injunction. I agreed with counsel that I first had to hear the application for the joinder of parties before I could hear the other two applications. I heard counsel in chambers on the application for joinder of parties. After hearing counsel I adjourned the matter for me to make my ruling on the application for the joinder of parties.

The application for the joinder of parties as I have outlined has been made under Order 15, r.6 (2) (b), and in their submission before me, counsel were able to explain that the application was made in terms of both sub-paragraphs (i) and (ii) of the rule. I reproduce the provision, together with subrule (3), thus:

“(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application-

(b) order any of the following persons to be added as a party, namely-

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon,

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him any party to the cause or matter.”.

As explained in note 15/6/8 to the rule, which is on intervention by persons who are not parties, generally in common law a person who has a cause of action against another person is entitled to pursue his remedy against that other person alone. He cannot be compelled to proceed against other persons whom he does not desire to sue. However, the note also explains that the scope of the rule is such that a person who is not a party may be added as defendant even against the wishes of the plaintiff either on the application of the person sued as defendant or on his own application to intervene or by the Court on its own motion. The addition of such intervening party is entirely at the discretion of the Court. I would add that in the exercise of their discretion the courts must always consider the best interests of justice in the matter.

In the matter before me, I have come to the conclusion that it would better serve the interests of justice if Honourable Yunus Mussa and the forty others, and indeed the Speaker of Parliament as well, were given the opportunity to be heard on the application by the United Democratic Front and Honourable Nga Mtafu seeking to be added or joined as parties in the proceedings. I accordingly make an order that the application by the United Democratic Front and Honourable Nga Mtafu to be joined as parties be made inter-partes and I make a further order for an expedited process for the matter to be brought before this Court within seven days of this ruling when the Court shall finally hear the application for the joinder of parties.

MADE in Chambers at the Lilongwe District Registry this 4th day of July, 2007.

E.M. SINGINI, SC

JUDGE