



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 39 2014

BETWEEN:

Dr. MIGUEL ELIAS PLAINTIFF
AND
MR JAP J.J. SONKE 1ST DEFENDANT
AND
REGIONAL GOVERNOR (S) OF THE UNITED
DEMOCRATIC FRONT 2ND DEFENDANT
AND
DIRECTOR OF ELECTIONS OF THE UDF 3RD DEFENDANT
AND
SECRETARY GENERAL OF THE UDF 4TH DEFENDANT
AND
THE NATIONAL EXECUTIVE COMMITTEE OF
THE UNITED DEMOCRATIC FRONT 5TH DEFENDANT
AND
THE REGISTERED TRUSTEES OF THE UDF 6TH DEFENDANT

JUDGMENT

The plaintiff commenced this action by way of originating summons claiming against the defendants the following declarations and orders:

- (i) A declaration that the plaintiff is the duly elected parliamentary candidate for the United Democratic front (UDF) for the Blantyre Kabula Constituency after beating the 1st defendant in the party's primary elections for the Constituency on 6th November 2013.
- (ii) A declaration that the party's decision to identify as its Parliamentary candidate a candidate who lost in the party's primary elections is against the due democratic process and against the purpose for which primary elections were conducted

and ultimately against the democratic system in which the Party operates.

- (iii) A further declaration that, in the circumstances, the said defendants' decision to install the 1st defendant as the party's parliamentary candidate for the said constituency is unlawful, irregular and / or against the party's own constitution.

The plaintiff also sought the following orders and reliefs from the court.

- (i) An order that the plaintiff (rather than the 1st defendant) be duly recognised and installed as the party's duly elected parliamentary candidate for the constituency following the results of the said primary elections.
- (ii) An order that the 1st defendant be stopped from holding himself out to be the party's duly elected parliamentary candidate for the constituency.
- (iii) An order that the 2nd, 3rd, 4th, 5th and 6th defendants be stopped from recognizing and installing the 1st defendant as the party's duly elected parliamentary candidate for the constituency.

Pending the hearing and determination of the summons the plaintiff sought an order of interim injunction restraining the defendants from imposing a candidate who lost the primary elections, as the defendant's actions were considered irregular and inequitable in the circumstances.

The plaintiff filed an affidavit in support of the summons for an interim injunction deposing as follows from paragraph 3.

- 3. *That at all material times, I was one of the two aspiring candidates (the other being the 1st defendant) for the candidacy for Members of Parliament for Blantyre – Kabula constituency on the ticket of the United Democratic Front (UDF) for the 2014 tripartite elections in the country.*
- 4. *That the UDF to identify its candidate for the said they conducted primary elections.*
- 5. *That I, and the other aspiring candidate, fulfilled all the requirements for contesting during such primary elections, including paying a nomination fee of K30,000.00.*

6. *That the party arranged to have the primary elections on 6th November, 2013 at Paradise Motel in Chirimba in the City of Blantyre.*
7. *That on the said date (6th November, 2013) the primary elections were conducted and I got 480 votes while the 1st defendant got 258. It therefore meant that I had won the primary election we were advised by the organizers that the Secretariat of the party would formally advise us of the outcome of the primary elections.*
8. *That to my utter shock I was told by the area's constituency Governor that the Secretary general of the Party had written a letter addressed to the 1st defendant and copied among other people to the constituency governor that following the said primary elections he had been identified as the party's parliamentary candidate for the constituency. There is produced to me a copy of the said letter from the Secretary General exhibited hereto and marked "ME1".*
9. *That the results of the primary elections held have not been challenged and / or nullified and the decision to identify the 1st defendant as the parliamentary candidate for the constituency is aimed at defeating the due democratic process and install the 1st defendant as the Party's candidate in the constituency.*

The defendants prepared an affidavit in opposition to the summons in which it reveals that the purported victory by the plaintiff emanated from an improper and unlawful activity which was a clear breach of the elections code of conduct. The respondents mentions that the "plaintiff was seen dishing out money and campaigning to the voters during the electoral process". The copies of the report of the Team Leader and the Director of Elections are produced and appear as exhibit marked DK 1 and DK 2.

The defendants contend that due to the commotion that erupted in the hall, it was impossible to have a fair and free electoral process. The elections were cancelled owing of the unlawful conduct of the plaintiff herein and the plaintiff was disqualified from contesting in the said primary elections which culminated in the 1st defendant being declared a winner. The facts raised by the defendants were not contradicted or opposed by the plaintiff during the hearing. The defendant argues that the law does not allow a person to pursue a legal remedy if it arises in connection with his own alleged illegal

activity. The defendants are of the view that it is improper for a court to lend its aid to a man who founds his cause of action upon an immoral or illegal act. The defendants submits that since the elections were halted and never took place the plaintiff cannot claim to have been validly elected from the elections which never took place and in which he was no longer a valid contestant.

The defendants argue that the plaintiff's application should fail as the court cannot grant an interim injunction as doing so will be aiding an illegality. It is the view of the defendants that there is no serious question of fact or law to be tried since there subsisted a valid ground for the plaintiff's disqualification and the failure to conduct the primaries. The 6th defendant also argues that it already had a parliamentary candidate in the said constituency and it could not hold another primary election since the period for holding the same long expired. Further, that the Electoral Commission having already closed nominations of candidates on 14th February 2014 the application was overtaken by events as the plaintiff submitted nomination papers to contest in the said constituency as an independent candidate and the plaintiff's right to participate in the parliamentary elections would not be regarded at all. The 6th defendant also stated that if Mr. Sonke was disqualified it meant that the UDF party would not be able to field a candidate in the said constituency.

Having read the documents as well as heard the parties this Court finds that as has been argued by the defendant's Counsel the intra party electoral process was halted and the primary elections were not conducted due to the plaintiff's disregard of the code of conduct and "accepted ethics and norms" in that the plaintiff was allegedly "dishing out money and campaigning to the voters during the electoral process" and that two of his campaign leaders "were seen removing voters from the 1st defendants queue". The evidence shows that while the primary elections provided an opportunity to the Plaintiff to exercise his political right, however he was disqualified owing to his own unlawful conduct which culminated in the 1st defendant being declared a winner.

The plaintiff has not responded to these serious allegations pertaining to his conduct and an injunction being an equitable

remedy, it is expected that the plaintiff would have approached the court with clean hands. The defendants averred and the plaintiff did not dispute that the Electoral Commission had already closed nominations of candidates before the matter was set down for hearing. On the basis of the above observations and findings this court agrees with the defendants that the plaintiff lacks a good and arguable case to sustain the originating summons and the prayers for an interim injunction. Both the originating summons and the prayer for an injunction are accordingly dismissed.

I exercise my discretion and order that each party bears its own costs.

9th September
Delivered in open court this 29th day of August, 2018 at Chichiri, Blantyre.


Dorothy nyakaunda Kamanga
JUDGE

Case information:

Mr. Tandwe,
Mr. Kanyenda,
Mrs. Ndunya,
Mr. Phiri/ Ms. Million,

Counsel for the Plaintiff
Counsel for the Defendants
Senior Personal Secretary
Court Clerks