



IN THE HIGH COURT OF MALAWI

LILONGWE HIGH COURT

MISCELLANEOUS CIVIL CAUSE NUMBER 190 OF 2017

BETWEEN

CHRISTOPHER EDWARD RITCHIE-----1ST CLAIMANT

DAN MSOWOYA-----2ND CLAIMANT

OWEN MUMBA-----3RD CLAIMANT

EARNEST KANYENDA-----4TH CLAIMANT

AND

HON. ENOCK CHAKUFWA CHIHANA-----DEFENDANT

CORAM: HON. JUSTICE M.C.C MKANDAWIRE

Mvalo, Counsel for the Claimants

Khonyongwa, Counsel for the Defendant

Itai, Court Interpreter

RULING

On 22nd of December 2017, the claimants and the defendant executed a consent order which in a nutshell provided as follows:

1. That the tenure of office bearers of the Alliance for Democracy (AFORD) had expired.
2. That according to the tradition and constitution of AFORD, after the expiry of tenure of office the President together with members of the National Executive Council (NEC) remain in office until the next election.
3. NEC is mandated by the constitution to oversee the holding of the Party's National Conference or Convention.

4. NEC shall meet on 27th of December to agree when to hold the National Conference or Convention of the Party and the President is to summon the meeting of NEC.
5. The President undertakes that it is his full responsibility to ensure the security of everyone.
6. Breach of any of these terms shall constitute contempt of court.

On 27th of December 2017 as per the consent order, the President of AFORD summoned the NEC meeting which was held at Damron Lodge in area 47 in Lilongwe. It is on record that before the consent order of 22nd December 2017, NEC had convened a meeting on 18th September 2017. The meeting was held at BYTE Lodge in area 47 in Lilongwe. During the September NEC meeting, the NEC had put in place a Convention Organizing Committee to oversee the holding of the AFORD National Conference which was scheduled to be held on 16th December 2017 a conference which as events will show has not yet taken place. NEC also recognized the Revamp Aford Movement (RAMO) as an affiliate of AFORD pending formulation of guide lines as to how RAMO should operate. At that same NEC meeting Hon. Frank Mwenifumbo was present as an AFORD member. The NEC had also co-opted and confirmed some members who included Mr Dan Msowoya the 2nd Claimant. When NEC met on 27th of December 2017, it co-opted more members. The Convention Organising Committee established on 18th September 2017 was dissolved and a new one was put in place. The main reasons for the dissolution of this committee was that it lacked transparency in the way it was handling funding issues and other related issues. The 1st Claimant was actually the Chairperson of the dissolved committee. The NEC also resolved that the convention should take place between 1st April to 30th April 2018. It further resolved that no any member of AFORD should speak or make a party statement to the media without authorization from the party. That only the Publicity Secretary is mandated to speak on behalf of the party in consultation with the party President and the Secretary General.

On 13th March 2018 the applicants filed an application in this court in which they are praying for the following orders:

- a) Annulling the appointment and co-option of new NEC Members into the NEC which took place prior to or at the AFORD NEC meeting of 27th December 2017.
- b) Re-instating the Convention Organizing Committee elected by NEC at its meeting of 18th September 2017 which the defendant with a compromised NEC dissolved without justifiable reasons at a meeting of the compromised NEC held on 27th December 2017 and which dissolution of the previously elected Convention Organizing Committee was outside the parameters of the consent order of 22nd December 2017.
- c) That RAMO an affiliate organ of the party participate in the organization of the convention by attending meetings of the Convention Organizing Committee as observers.
- d) Compelling the AFORD NEC which is headed by the defendant as President of the Party to appoint and announce within 7 days of the date of the order the date of 7th April 2018 as the date for commencement of the National Conference or Convention of AFORD.

This application is supported by a sworn statement made by the Secretary General of AFORD Mr Christopher Ritchie the 1st Claimant. There is also a supplementary sworn statement by the same Christopher Ritchie. Lastly, there is also in support a sworn statement by Mr Dan Msowoya the 2nd Claimant.

The sworn statement of Mr Ritchie has vehemently attacked the way the NEC meeting of 27th of December 2017 was conducted. The 1st Claimant during a very interesting and heated cross examination told the court that although the minutes of the 27th of December 2017 were signed by him as Secretary General, he however did that under duress. He attributed the duress having come from Grace Chupa who had followed him with the minutes in area 3. Having been assaulted before by AFORD vigilantes, he was fearing for his life hence his succumbing to the signing although the minutes did not capture all that had transpired during the meeting. Let me be honest to state that I failed to be persuaded by the story told by Mr Ritchie. Much as his version sounded interesting, but there was no iota of truth in it. I observed that Mr Ritchie was more bent to make things interesting in this court than telling the truth. I did not really believe that he could be intimidated by the mere presence of Ms Grace Chupa. He did not at all describe as to what Grace Chupa had done when she

came with the minutes that could have scared a man of his stature to be so fearful and sign minutes which he did not agree with. To show that there was no seriousness in all this, Mr Ritchie who had made two sworn statements in this court, did not even include any sentence in his sworn statements that he had been intimidated to sign the minutes of 27th of December 2017. I therefore found the claim of duress or intimidation as a mere afterthought when he realized that the cross examination was getting hotter and hotter. No wonder this claim only came out during cross examination. I therefore take it that the minutes of 27th of December 2017 reflect what had actually transpired at that meeting.

The sworn statement of Mr Dan Msowoya the 2nd Claimant did not introduce any new thing to this debate. In the original application which was the genesis of the application for an injunction against the defendant in December 2017, Dan Msowoya had also filed a sworn statement in which he was claiming that he is a member of the Campaign and Election Committee which is established under the genuine AFORD Constitution. The 2nd Claimant has exhibited what he calls a genuine constitution of AFORD that has been obtained from the Registrar of Political Parties where all constitutions for political parties in Malawi are deposited. A similar copy of this constitution has also been attached to the supplementary sworn statement by Mr Christopher Ritchie. Mr Msowoya says that pursuant to section 7.3(8) of the AFORD constitution, he is a member of the Party's Campaign and Election Committee which he has to serve for 5 years and that it is this committee that co-ordinates and supervises all elections of officials of the party. He goes on to say that unlike the NEC, his committee is still subsisting until September 2018. In support of his statement, he has attached a letter DM2 dated 16th December 2017 which he wrote to the chairperson of the Convention Organizing Committee (COC). This is the committee that NEC had established during the 18th September 2017 meeting which has also been mentioned by Mr Ritchie.

The defendant has replied to these claims through the sworn statement of Tanilani Chipeta who is the 2nd Vice-President of AFORD. He is the current organizing chairman of the Convention Organizing Committee. According to Mr Chipeta, the NEC of 27th December 2017 had a similar composition like that of 18th September 2017. As the minutes of the meeting show, there was no objection raised by the 1st claimant if there were any irregularities during the

meeting. The minutes of this meeting according to Mr Chipeta were taken by the 1st Claimant as Secretary General and he signed confirming that the minutes reflected what had transpired during the meeting. It is Mr Chipeta's view that the decisions taken by NEC on 27th of December 2017 were arrived at democratically after very exhaustive discussions. He further said that due to low funding, the party was not able to hold the National Conference or Convention. It was however very certain that the convention would be held from 28-29 April 2018. He therefore said that it was pre-mature for the claimants to bring this matter to this court. Mr Chipeta exhibited several minutes of the Convention Organizing Committee to show that the Committee has done quite a lot in preparation for the convention to be held in April 2018.

On the participation of RAMO in the Convention Committee meetings, he said that there is no merit as to why RAMO should be allowed to sit in during these meetings. He said that it was proper for the claimants to have brought this matter to NEC and not to the court. It is therefore the prayer of Mr Chipeta that the claimants' prayers should be dismissed with costs. I noted that just as the 1st Claimant was disowning some parts of the NEC minutes of 27th of December 2017, Mr Chipeta was also disowning some parts of the NEC minutes of 18th September 2017. Mr Chipeta said that he could not remember NEC co-opting Dan Msowoya as National Director of Elections. He also said that he could not remember NEC admitting RAMO as an affiliate of AFORD. It was his view that since the 1st Claimant was the author of these minutes and he was the custodian of the same, it was possible that he could have tampered with the minutes in order to achieve what he wanted. Let me put it on record that I found the reasons given by Mr Chipeta to be baseless. The fact that he could not remember what was contained in the minutes of 18th September 2017 did not mean that these minutes did not exist. With regard to the 1st Claimant tampering with the minutes, Mr Chipeta did not lead any evidence to that effect. I therefore found that these minutes were genuine.

Before I further delve into the matter, I have an observation to make in relation to the sworn statement of Mr Dan Msowoya. Much as I did enjoy the evidence of Dan Msowoya, it is however unfortunate that most of what he said is not directly

connected to the orders that the 1st Claimant is inviting this court to make. I however learnt something very important with regard to his evidence. First, he gave a clear picture that in AFORD, party business is taken very casually. For example, he said that in 2016 he was appointed by the President of AFORD to the position he claims he holds up to now through a telephone call that he received from the President. Asked if he had any documentary evidence on his appointment, he said no. The second example is that although section 7.3(8) of the AFORD constitution requires that the National Conference or Convention should approve the appointment of members to the Campaign and Election Committee which Dan Msowoya claims that he heads, he did confess that such approval was not done in 2013 after the Conference or convention in Mzuzu. This therefore means that Mr Dan Msowoya was not endorsed by the National Conference hence he cannot claim to be what he is. Mr Msowoya was very honest to say that things in AFORD have been done in a chaotic manner since 2013. I am however aware that both Mr Chipeta and the AFORD President Hon. Enock Chihana have said that Dan Msowoya is no longer an AFORD member having joined Umodzi Party as per Nyasa Times of 10th September 2014. With due respect, I do not think that this court would put much weight on such an article. In order to show that this was not true, during the NEC meeting of 18th September 2017, the same Dan Msowoya who is said to have joined Umodzi Party was co-opted and confirmed as a NEC member of AFORD. The truth of the matter is therefore that Dan Msowoya is still a member of AFORD. He may have gone passive and it is not strange to have passive members. He also explained as to why he has been passive because he said there has been no real activities involving campaign and elections.

I have approached this case from the perspective that following the consent order of 22nd December 2017, NEC was ordered by the court to go and meet in order to agree on the day of the convention. During the said meeting, NEC also confirmed co-opted members who are 4 in number according to the 1st Claimant. I take it that co-options of the 4 members was democratically done by the NEC members. Even the 1st Claimant was part and parcel of that process. I also noted that during the NEC meeting of 18th September 2017, there was also co-option and confirmation of members. The 1st Claimant did not lay down any foundation as to why the 4 co-opted members should have turned the entire NEC which is

composed of around 56 members to be compromised. I therefore do not find any basis on which I can annul the co-options of these 4 members.

As for the re-instatement of the Convention Organizing Committee elected by NEC on 18th September 2017, I find that it would be problematic for this court to re-instate a Committee which had no confidence of NEC. The court should desist in meddling into the intricacies of political parties. If the majority have lost trust in a particular committee as was the case here, it is advisable for the court to trade with care before it can make a decision reversing the decision of its constituents especially where it is based on a factual situation as is the case here. The order is therefore not granted.

On the participation of RAMO in the organization of the convention by attending meetings of the Convention Organizing Committee as observers, this court again finds this to be problematic. The AFORD constitution does not provide for that. Moreover, RAMO is just an affiliate of AFORD and for it to start demanding that it has to sit in during the meetings of the Convention Organizing Committee is rather farfetched. I listened to the reasons for this demand and it would appear it has to do with the funding that RAMO was to pump into the organization of the Convention. I however take it that it is the duty of NEC to decide on these internal politics than the court dictating to political parties as to which affiliate should be where and when. This is diluting the responsibilities of the judiciary. Let political parties deal with their internal dynamics. RAMO as an affiliate will of course be on the delegation list to the National Conference of the Party pursuant to Section 7.5(7) of the Constitution. This order is therefore not granted.

The Claimants finally prayed to this court to compel the AFORD NEC to appoint and announce within 7 days the date of the convention to be 7th April 2018. In the first place, even if i had decided to make that order, it is now not practical since the judgment is delivered on the 9th of April 2018 two days after the proposed date of the convention. Let me however strongly put it on record that I do not think that it is the business of courts to be dictating to political parties dates for their conventions. Political parties have their own internal structures that have the mandate to do that. Political parties should not surrender their political sovereignty to the courts. Having listened to the evidence on record, it is clearer than before that the dates for the AFORD Convention as assured by the 2nd Vice

President Mr Tanilani Chipeta are now 28-29 April 2018. From what I gathered during the hearing of this case, a lot of groundwork has already been done by the Convention Organizing Committee that is chaired by the 2nd Deputy president Mr Tanilani Chipeta. The court would not want to disturb that process with other dates. All I would say at this moment is that the AFORD Convention will be held on 28-29 April 2018 as per the Convention Organizing Committee headed by Mr Tanilani Chipeta. NEC should ensure that this is fulfilled. I therefore do not make any order for the dates of the AFORD convention.

This application is therefore dismissed with costs.

MADE THIS

DAY OF APRIL 2018 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE