

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CIVIL CAUSE NO. 2563 OF 2000**

BETWEEN :

HON. GWANDA CHAKUAMBA ..... PLAINTIFF

- and -

HON. DR. PETER H. CHIWONA (By himself and all others ..... presently  
unknown to the plaintiff) ..... DEFENDANTS

CORAM - CHIMASULA PHIRI, J.

Munlo SC )

Bazuka Mhango) - of counsel for the plaintiff

E. Banda )

R. Kasambara of counsel for the defendant

Selemani - Official Court Interpreter.

**JUDGMENT**

The plaintiff's action is brought under the originating summons procedure. On 9th August 2000 the plaintiff took out this summons in which he has sought declaratory orders against the defendants by themselves, their agents, servants and followers. The specific declaratory orders sought are as follows :-

(1) That the intention or purported holding by the defendants of an MCP extraordinary Convention or an MCP Convention of the kind in Lilongwe on 6th August 2000 parallel to the MCP extra-ordinary convention or an MCP convention of the kind scheduled to take place in Blantyre on the same date is unlawful and wrong in law vis-a-vis the MCP Constitution.

2. The defendants violated the MCP Constitution in planning or threatening to hold such a parallel convention.

3. An order of injunction be granted against the defendants permanently restraining

them from holding the purported parallel MCP convention in Lilongwe, or any parallel MCP convention elsewhere at any time.

4. An order that the purported holding of the convention in Lilongwe after service of an order of injunction stopping the holding of the same was unlawful and that the same is null and void ab initio

5. An order for costs of the action.

Prior to the filing of this originating summons the High Court had made two interlocutory injunction orders. On 5th August 2000 Justice Mkandawire on an ex parte summons and upon the usual undertaking as to damages, ordered and directed the defendants whether by themselves, their servants or agents or howsoever to be restrained by an injunction thereby granted against Dr Chiwona and enjoining all other persons acting in conjunction with him or otherwise from holding an extra-ordinary convention in Lilongwe, Central Region scheduled for 6th August 2000 until after the trial of this action or until further order. The Judge further ordered and directed that the MCP convention purported to be held in Lilongwe be thereby enjoined and/or stopped. There was a direction that the action be given an expedited date of hearing. This order was served on Dr Chiwona on 6th August 2000. On the same date Dr Chiwona applied to the High Court for an order to vacate the **ex parte** injunction order and he also cross motioned for an injunction order against the plaintiff restraining him and all persons acting under his direction from calling or proceeding with an MCP Convention at any place other than the party headquarters. I observe that the Court record is very scanty. It is not clear from the record when the matter was held. However there are two formal orders on the ruling of the court. One is dated 7th August 2000 and drawn by the defendants' lawyers. The other is dated 9th August 2000 and drawn by the plaintiff's lawyers. It is very clear in my mind that the lawyers on both camps did not co-ordinate or the plaintiff's lawyers were over-zealous. This was an application by the defendants and normally it should have been the duty of the defendants' lawyers to draw up a formal order. The good thing is that the contents of the orders are at par except for the date of issuance. The essence of the order by Justice Mwaungulu is that an injunction was granted restraining the plaintiff and the defendants, their agents, servants, followers howsoever from holding an extra-ordinary MCP convention scheduled for the 6th August 2000 at Paradise Motel in Blantyre and MCP Headquarters in Lilogwe respectively, and that in the event that the plaintiff has already held his convention in Blantyre, it was thereby ordered and an injunction granted restraining the implementation of the resolutions passed at the said convention. Like order of Justice Mkandawire, it was ordered that the hearing of the action be expedited. On 21st August 2000 the defendants applied to this Court to vacate the injunction and dismiss the action for lack of prosecution. The gist of that application was that there were two actions pending in this Court on the same matter i.e. one brought by writ and the other by originating summons. The Court ordered the plaintiff to choose only one mode of commencing action. On 25th August 2000 the plaintiff informed the Court of his choice to proceed with the originating summons. Counsel for the plaintiff emphasized on

the prayer to maintain the interlocutory injunction orders as well as the opportunity to serve affidavit evidence in support of the originating summons. There was prayer for date of hearing. The application was treated in the like manner of summons for directions. The Court directed on the affidavits to be filed and served and the duration for these aspects. The Court ordered cross-examination of deponents and set down the matter for hearing to commence on 11th September 2000. At that juncture there was no objection from lawyers on both sides on whether or not the action will encompass the two conventions. At the same time it was very clear, in my view that both parties knew and appreciated that both conventions would be subjected to a thorough scrutiny at the trial and that this Court would pass its decision on the validity or invalidity of such purported parallel conventions. In any event the parties should know that the interlocutory injunction orders which they obtained were to be in force until after the determination of this action. In addition, these orders are equitable remedy and subject to principles of equity. For instance, the Court has very wide discretionary powers in matters of injunctions. At the same time equity puts emphasis on clean hands and it would not be equitable for the plaintiff to shield his Convention and insist that only the Lilongwe convention should be put under a microscope. Courts would fail to protect the mantle of justice if they allowed technical procedural aspects to overshadow the substantive law provisions. The aspects raised in the originating summons will be dealt with having in mind this background and principles of law and equity as indicated above.

The plaintiff filed 5 affidavits of several deponents in support of the originating summons. These will be referred to where necessary. The defendants filed 20 affidavits in opposition. In reaction to these affidavits in opposition, the plaintiff filed 9 affidavits in Reply, which were all sworn on 6th September, 2000. The position at law is that affidavit evidence is as good as oral testimony and unless questioned or challenged, it should be accepted on record as evidence. The procedure at law for questioning or challenging affidavit evidence is through cross-examination of deponents thereof. In this particular case a lot of time was spent on cross -examination of deponents from both camps. At times it was unbearable to believe that the Court was dealing with originating summons and not an action commenced using a writ. In this judgment I will outline the background history which has led to the present action in so far as those facts are admitted or not in contention.

The plaintiff was elected in 1997 and reconfirmed party president of MCP at an extraordinary Convention which was held in Mzuzu in 1999. According to Article 35 of the MCP constitution the presidency is for a term of 5 years. 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 the 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 the 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. For example a member of the MCP would not be forced to observe an MCP constitutional provision which is not in agreement with the constitutional framework of the Republic of Malawi. So that in the interpretation of the MCP Constitution I will always bear in mind that there is now in Malawi since 1994 a Constitution which creates an open and democratic society as opposed to the tyrannical and dictatorial framework that existed before.

The plaintiff claims that before the expiry of 5 years from the time he was elected party president he has been challenged by his veep. As a result the President decided to call for a convention to test his popularity and confirm his legitimacy to the presidency. He claims that the constitution empowers him to decide on venue and date of such convention. He argues that he told the convention chairman that the convention should take place in Blantyre as a matter of Party's rotational policy for such a convention. The defendants particularly Dr Chiwona claims that following his election as convention chairman, he had powers to make arrangements for a convention including the decision for a venue. He has argued that the initial venue was supposed to be Zomba but due to non-availability of Chancellor College, there was a proposed shift to Chichiri Conference Centre in Blantyre. At a later stage in the preparation for the convention the plaintiff and/or his inner core of supporters threatened life of certain delegates, particularly those from the North and Central regions. Dr Chiwona in his wisdom decided to shift the venue of the convention to the MCP Headquarters in Lilongwe, on the same date as proposed by the plaintiff for the Blantyre convention.

It is an obvious fact that the plaintiff and Dr Chiwona are members of the MCP. Furthermore that when the plaintiff commenced this action, his desire was to include all members of the MCP who seemed to align themselves with Dr Chiwona. Therefore when looking at their contractual rights this Court will consider whether or not the MCP Constitution regulated those affected rights and if need be there, recourse to the Constitution of the Republic of Malawi will be made. The Constitution of MCP has provided for annual convention in Part 4 i.e. Articles 39 - 45.

The annual convention of the Party is the highest authority of the MCP and is supposed to take place annually at such places and times as the President may appoint. It is clear from Article 39 that the Annual Convention of the party has the highest authority of the party which cannot be overreached by any office bearer including the party president. The same Article makes it mandatory for the highest authority of the party to meet annually. Lastly the same Article gives the party president discretion to appoint place and time for such meeting. The words used are plain and unambiguous. The Article does not make it imperative for the President to appoint place and time for convention. The word used is not “shall” but “may”. This makes a lot of difference in meaning to be assigned to the entire clause. I will deal with this at its appropriate stage.

The plaintiff stated in his affidavit that on 12th April 2000 at the National Executive Committee meeting it was resolved that there be held an extraordinary convention in the Southern Region. The plaintiff stated that under Article 44 he is empowered to preside at such conventions and/or nominate a member of the National Executive Committee (NEC) to act in his place. On 13th April 2000 the plaintiff claims to have nominated Hon. Dr Chiwona to act as chairman of the extraordinary convention. The defendant Dr Chiwona denied that the plaintiff appointed him chairman and contends that NEC meeting of 2nd June 2000 elected him unanimously as Chairman. In the affidavit of Hon Kate Kainja she has stated that the plaintiff proposed the name of Hon. Chiwona as chairman to organise and preside over the emergency convention. There are several issues to be cleared. It has to be observed that both parties have not submitted minutes of that NEC meeting to assist the Court to reflect accurately on what might have taken place then. My guess from the affidavit evidence as well as the cross - examination of the deponents is that the plaintiff might have mentioned the name of Dr Chiwona by way of proposal for the candidature of the convention chairman and all the NEC members present at the meeting subscribed to that proposal or nomination hence the unanimous election of Dr Chiwona as convention chairman. I hold the view that Dr Chiwona was elected Convention Chairman by the National Executive Committee and that he did not hold his office by appointment as claimed by the plaintiff.

The MCP Constitution has provided for Annual Convention in Article 39 (1) (a) requiring not less than 30 days’ notice while Article 39 (1) (b) provides for an Emergency Convention of the party requiring not less than 2 days notice. These are the only known Constitutional conventions in the MCP. However, there is confusion over a purported third type of convention called extraordinary Convention. In Article 40 the heading is extra-ordinary Convention. However, the provisions of Article 40 talk of an extraordinary meeting of the Convention which implies that there is already a convention which is either annual or emergency and that during that time of such convention an extra-ordinary meeting may be summoned i.e. a meeting within the convention. This is what the parties in this action have stated as an extra-ordinary convention. This confusion has arisen from the very poor drafting of the MCP Constitution. For example Article 39 has sub-article 1 yet it does not have sub-article 2 or subsequent numbers.

Further under Article 39 (1) (a) and (b) talk of types of conventions yet 39 (1) (c) talks of news media admission during opening session of the convention. This is poor drafting because the issues are not related. In my view (c) should have been sub-article 2. Article 41 lists down delegates to Annual Convention and scrutiny of this list would reveal that apart from the Regional Committee of the party, members of NEC and District party Committee are very powerful components of the annual convention. It should therefore come with no surprise at all that these two groups can move the president to summon an extra-ordinary meeting of a convention. Can it be said that Dr Chiwona was elected to preside over annual convention or emergency convention or extra-ordinary meeting of a convention? Again there are no minutes of NEC meeting to provide assistance. However, if this were indeed to be an emergency convention requiring just two days prior notice, could it have been mooted in April or June 2000 for it to take place at the end of July 2000 or first week of August 2000? It makes it practically difficult to accept the suggestion of Hon. Kate Kainja that it was to be an Emergency Convention. Turning to the affidavit of the plaintiff and particularly paragraphs 12, 13, 14 and 15 thereof, the plaintiff has sworn on how Hon. Dr Chiwona's appointment was withdrawn and a new appointment of B.B. Mtawali made in his place. Further the plaintiff emphasized that the mandate he gave to B.B. Mtawali was to preside as chairman of extraordinary convention to be held at Paradise Motel. This was done on 4th August 2000 for extra-ordinary convention scheduled for 6th August 2000. I have already expressed my interpretation that there is no such convention as Extra-ordinary convention **per se** but an extra-ordinary meeting of a convention. I have no doubt that the plaintiff was wrong in appointing one Mtawali to preside over a non-existent convention. I will also deal with the aspect on whether or not the President could single-handedly dismiss and replace an officer who had been elected by NEC of the party without offending a democratic culture.

Article 43 has provided that the President who is leader of the party shall preside at the Annual Convention and in his absence shall nominate a member of the NEC to preside. In this provision it is mandatory that the president like the plaintiff herein should preside at the Annual Convention. The only time he is excused from presiding is only in his absence, where the President is obliged to nominate a member of NEC to preside. Therefore it was unconstitutional and unlawful for the plaintiff to propose Dr Chiwona or appoint B.B Mtawali to preside over the convention. There is no evidence whatsoever to suggest that the plaintiff would not be available during the convention. Actually what the plaintiff purported to do was tantamount to abdication of duty and responsibility. There would be no harm to appoint Chairman of convention organising Committee but certainly not chairman to preside over the annual convention in the presence of the party president. With greatest respect to the plaintiff, I do not appreciate his insistence on the practices of the party during the reign of the late Dr. Kamuzu Banda. The Constitution of the MCP and Government then bestowed all the powers in the President and there was no express provision of Bill of Rights in any of the Constitutions. The plaintiff should not expect the Banda position to be perpetuated and pass on to him. Even if the MCP Constitution provided for such dictatorial powers, the same would now be checked and curtailed by the Constitutional provisions of the country. The Court will not hesitate to strike down any provision or action or omission which is contrary to the provision of the

## Constitution of Malawi.

I will now make an assumption that the election of Dr Chiwona by the NEC of the MCP was for purposes of his presiding over the convention during the elections as well as making all the necessary prior arrangements for such elections. Indeed it would have been undemocratic for the plaintiff to preside over a convention to elect a party president whilst he himself was a contender for the position. It is common practice world over that an authority bestowed with the power to hire has power to fire as well unless there be express provision to a third party to exercise such power to fire. In the MCP Constitution, Article 43 has given powers to the President to nominate a presiding officer when the President is absent. In such a case the President would have the power to fire and replace such a nominee. However, that was not the case with Dr Peter Chiwona. He was unanimously elected by NEC meeting of 2nd June 2000 to be convention chairman and to organise a convention. Therefore the only organ of the party which could lawfully fire him from office was the NEC and not the plaintiff. The President could only do so if delegated by NEC to remove Dr Chiwona from office as convention chairman. The purported dismissal or removal of Dr Chiwona by the President as contained in Exhibit GC 3 dated 4th August 2000 was unlawful and of no consequences. It is very clear from that letter that the plaintiff was not conveying the decision of NEC but his own decision. Even for argument's sake one was to contend that the President was exercising disciplinary powers under Article 62 of the Constitution, that argument would fail because it has not been shown that the president did so on advice by NEC. The plaintiff appointed Hon. B.B. Mtawali as chairman of the extra-ordinary convention 2000 by exhibit GC 4 dated 4th August 2000. The letter indicated that this appointment is pursuant to exercise of presidential constitutional powers. In the letter it is indicated that it is the desire of the President and NEC that the appointee should exercise proper balance of judgment in the dispensation of his duties. What is the legal status of this exhibit? Firstly, it is evidence because it has been exhibited in compliance of Order 41 Rule 11 of the Rules of the Supreme Court. Secondly, what is the probative value of such evidence? Its contents have got to be analysed. It has not been denied by the plaintiff that he was replacing Hon. Mtawali for Hon. Chiwona. At law that could not be done because Hon. Chiwona was still in office. Further, if the practice in the party was to fill the office of convention chairman through election by NEC, the plaintiff breached that practice. The letter does not indicate that even where it is constitutionally clear that the President could nominate a member of NEC to preside over a convention, it was not indicated that the President himself would be absent from the Convention. As long as the President was going to be present and as a matter of fact from the evidence including the video film show, he was present, the appointment of Hon. Mtawali was unconstitutional. Again, I said earlier that the MCP has only two types of conventions, namely annual and emergency conventions. Hon. Mtawali was not being appointed chairman of any such constitutional conventions. In so far as the appointment was for a non-existent convention, the same could not be implemented and was null and void. For avoidance of doubt I am stating that Hon. Mtawali could not in the circumstances of this case validly hold the office of convention chairman and his acting in that capacity according to the video film evidence was unlawful and invalidates the convention over which he purported to chair. The convention in Blantyre held at Paradise Motel was not presided

over by the plaintiff or Dr Chiwona who had been elected by NEC to be the Convention Chairman.

The plaintiff has sought a declaration that the intention or purported holding by the defendants of an MCP extra-ordinary convention or MCP convention of the kind in Lilongwe on 6th August 2000 parallel to the one scheduled in Blantyre on the same date was unlawful and wrong in law in the light of the MCP constitution. Exhibit GC 1 is a letter dated 15th July 2000 from Dr Chiwona to the Secretary General of the MCP Hon. Kate Kainja with copies to the President, Veep, Administrative Secretary and Regional Chairman of the MCP. In his evidence Dr Chiwona admitted being author of this letter. It has been properly exhibited in the affidavit of the plaintiff. It is clear from this exhibit that from as far as 15th July 2000 it was known that there was going to be MCP convention on 6th August 2000. The venue was going to be Zomba. This can be presumed from two aspects in the letter making reference to accommodation in Zomba and feeding arrangements in Zomba. The evidence from the plaintiff is that the venue was to be Blantyre and hence reference to the Regional Chairman, South because Zomba is in the Eastern Region of the MCP. Hon. Kate Kainja in cross-examination stated that on receipt of this letter she tried to make arrangements in Zomba but Chancellor College venue was unavailable hence her endeavour to book Chichiri Conference Centre in Blantyre. I would not agree that the plaintiff had indicated from the word go that the venue would be Blantyre. The letter of Dr Chiwona was copied to him and as the President he did not challenge the arrangements which were being proposed for Zomba. I do not accept the plaintiff's argument that Dr Chiwona had made a correction in his letter by requesting the Regional Chairman, South to form sub-committees on a number of activities. If indeed the President had decided that Blantyre be the venue, he could have written Dr Chiwona. Article 39 of the MCP Constitution does not make it mandatory for the President to appoint date and venue of annual convention. This is exemplified in the letter of Dr Chiwona of 15<sup>th</sup> July 2000 where as Convention chairman he decided to request the Secretary General of MCP to make arrangements for Zomba. The evidence of Dr Chiwona and Hon. Kate Kainja is that threats endangering life of some delegates was made rendering Blantyre unsafe place for the convention hence the shift to MCP headquarters in Lilongwe. Dr Chiwona admitted that he never consulted the plaintiff or the Veep or NEC of the party before shifting the venue to Lilongwe. Again, by the same yardstick can it be said that Dr Chiwona had unfettered discretion or mandate to act in that manner? In an open and democratic society no one has absolute powers. There will always be the need to consult and liase with interested parties. These included the president, the veep and NEC just to mention a few. Consulting the Secretary General alone was not democratically sufficient. Furthermore, even where the President has delegated his powers to the convention chairman to appoint date and venue of convention, it does not mean that the President ceases to have powers to watch over the delegatee on the proper and due exercise of such powers. The President still remains constitutionally accountable for the exercise of such powers. I have no doubt in my mind that the intention or the purported holding of an MCP convention in Lilongwe by the defendants on 6th August 2000 was unlawful and unconstitutional. If

the defendants had genuine fears in respect of personal security based on the alleged threats from the plaintiff and/or his supporters, the defendants should have sought the blessings of NEC before shifting the venue. This Court would have no different answer to the declaration sought that the defendants violated the MCP Constitution in planning or threatening to hold a parallel convention. However, this does not in any way validate that other convention on which I have already made observations on some of its irregularities.

The plaintiff has prayed for an order of injunction to be granted against the defendants permanently restraining them from holding the purported parallel MCP convention in Lilongwe or any parallel MCP convention elsewhere at any time.

It is clear from the affidavit evidence as well as evidence from the cross examination of deponents from both parties that Dr Chiwona and his associates had not acted in good faith under the MCP Constitution in seeking to hold a parallel convention in Lilongwe. The holding of an MCP convention in Lilongwe was an act of **mala fides** and divisive to the unity of the MCP. This was unlawful, ill-motivated and injurious to the welfare and interest of the MCP. It was very sad in this Court to observe that apart from Hon. L.P. Chasowa, F.S. Shah and Dr Peter Chiwona's exemplary demonstration of maturity, it was very clear that the rest of the deponents who were cross examined were either emotionally charged, or

temperamental or ready to vent their anger or displeasure in a manner that was not compatible with good leadership qualities. There were times when it was clear that deponents like Hon. Chimera and Hon Kanjere blatantly refused to submit themselves to the rules of practice of this Court. In order to save the MCP from extinction it is imperative that the defendants be permanently restrained from holding any parallel MCP convention in Lilongwe or elsewhere at any time. This Court would urge both parties not to view each other as enemies. In any open democratic society, tolerance exists and holding of different views should not lead to enmity. There must be more openness and dialogue between the parties than the current attitude demonstrated in this Court.

The plaintiff has further prayed for an order that the purported holding of the convention in Lilongwe after service of an order of injunction stopping the holding of the same was unlawful and the same was null and void **ab initio**.

I already alluded to the issue of the interlocutory injunctions granted by my two learned brothers. The order restraining the defendants from holding an extra-ordinary convention in Lilongwe and further ordered that the MCP convention purported to be held in Lilongwe be enjoined and stopped. This was done after establishing that some delegates had started gathering in Lilongwe. Although the Court order was brought to the attention of Hon. Kate Kainja who told this court that she read and understood the contents of the order, both Hon. Dr Chiwona and Hon. Kate Kainja did not bring the contents of the

Court order to the people who had gathered to attend the Lilongwe convention. Hon. Kainja admitted in Court that the order extended to prohibit the holding of the convention in Lilongwe. She went ahead and inaccurately told those people who had gathered that the order merely affected Dr Chiwona. This position was confirmed by cross examination of Hon. Chakuchanya Nyirenda who chaired the Lilongwe Convention. It has been submitted by the plaintiff that Dr Chiwona and Hon. Kate Kainja deliberately choose to flout and ignore a Court decision by distorting the clear and plain meaning of the Court order. Thus, they had taken a deliberate decision to ensure that the Court order was disregarded and not

complied with. Mr Mhango had submitted that it is well established that an order made by a Court of unlimited jurisdiction such as the High Court of Malawi must be obeyed unless and until it has been set aside by the Court. He referred the Court to the dictum of Romer LJ in **Hadkinson v Hadkinson** [1952] P 285 at page 288:-

**“It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it... A party who knows of an order, whether null and void, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitor or their solicitors, could themselves judge whether an order was null and void... He should apply to the court that it might be discharged. As long as it existed, it must be discharged.”**

The plaintiff's submission is that anyone who disobeys an order of the Court is in contempt and may be punished by committal, attachment or otherwise. Further, the course of action will be struck out-**vide: Janov vs Morris** [1981] 3 All ER 780.

Mr Kasambara has urged that in terms of Order 45 Rule 7 of the Rules of the Supreme Court it is imperative that an order for injunction to be enforceable must have not only a penal notice but must have names of addressees. In the present case, only Dr Chiwona has been named as the defendant. Therefore, it would not be practicable to hold in contempt third parties that are not addressed. For example counsel for the plaintiff tried to cross examine Hon Kate Kainja with a view to show that she was in the lead in disobeying Court order. She has not been directly mentioned as a party in these proceedings. She cannot be committed for contempt of Court. Further, both interlocutory injunctions did not have penal notices. The issue of committal for contempt of Court order for Dr Chiona, Hon. Kate Kainja or Chakuchanya Nyirenda becomes remote. Of course I do not condone or encourage non-obedience of Court orders. I condemn such conduct unreservedly. However, this must be a lesson to counsel to ensure that Court orders are properly drawn and in full compliance with legal provisions.

Lastly, the plaintiff prays for an order that the holding of the Lilongwe Convention after service of Court order of injunction, was unlawful and null and void **ab initio**. The argument of the plaintiff is from two fronts. First, the dissolution of the presidency and

NEC was illegally and unconstitutionally done by the Hon. Chakuchanya Nyirenda. He had no powers to single-handedly remove the President or Vice President. That would be the duty of NEC by resolution of a majority of not less than two thirds of the delegates present and voting. Secondly, the plaintiff is challenging the delegation list for Lilongwe Convention. The affidavits of Hon. Jodder Kanjere and Hon. L.P. Chasowa are cited as raising this issue. It has to be recalled that when Hon. Chakuchanya Nyirenda was being cross-examined, he sent the whole Court into uncontrollable laughter because of his seemingly innocent responses which clearly underscored the irregularities of the Lilongwe Convention. I would fail in my duty if I did not find as a fact the illegality and unconstitutionality of what went on in relation to the purported convention in Lilongwe. I declare the Lilongwe Convention unlawful.

In conclusion, both conventions cannot be recognised and the party position prior to 6th August, 2000 still subsists.

The issue of costs is discretionary. Normally costs follow the cause. In this matter both parties have equally succeeded in destroying the other's convention. I would therefore order each party to pay its own costs for these proceedings. Parties are at liberty to appeal.

PRONOUNCED IN OPEN COURT this 27th day of October, 2000 at Blantyre.

**CHIMASULA PHIRI**  
**JUDGE**