IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MISCELLANEOUS CIVIL CAUSE NO. 3140 OF 2001

BETWEEN:

HON. BROWN MPINGANJIRA.....1ST PLAINTIFF
HON. LIZZIE MPINGANJIRA.....2ND PLAINTIFF
HON. PETER CHUPA.....3RD PLAINTIFF
HON. GRESHAM NAURA.....4TH PLAINTIFF
HON. JAMES MAKHUMULA.....5TH PLAINTIFF
HON. GWANDA CHAKUAMBA.....6TH PLAINTIFF
HON. HETHERWICK NTABA.....7TH PLAINTIFF

-and-

THE SPEAKER OF THE NATIONAL ASSEMBLY.....1ST DEFENDANT
THE ATTORNEY GENERAL.....2ND DEFENDANT

CORAM: THE HON. MR JUSTICE F.E. KAPANDA

M/s Kasambara, Nyimba and Chalamanda,
of Counsel for the Plaintiffs (Applicants)
M/s Matenje and Chisanga, of Counsel for
the Defendants (Respondents)
M/s Kaundama and Balakasi, Official Interpreters
/Recording Officers

Dates of hearing : 12th and 13th November 2001
Date of ruling : 27th November 2001

Kapanda, J

RULING

Introduction

On the 6th of November 2001 the Speaker of the National Assembly declared the Parliamentary seats of the Plaintiffs vacant. Two days later, i.e. on 8th November 2001, during an ex-parte application, this court made an order of an interlocutory injunction against the Defendants (Respondents), and it was in the following terms:-

"Until the hearing of the inter partes application for injunction slated for Sunday November 11th, 2001 at 14.00 hours the Defendants must not either by themselves, their servants, followers or agents, or however otherwise:-

0.1 Implement the decision of dismissing the Plaintiffs from the National Assembly or declaring their seats vacant.

0.2 Bar the Plaintiffs from enjoying the privileges and exercising powers given to them by the positions they hold as members of the National Assembly until a further order of this court or until a trial."

It was further ordered by this court that the service of the order would be effected on the office of the Attorney General. The order in respect of service was made in view of the privileges and immunities that the office of Speaker is said to enjoy when the National Assembly is sitting.

Further, it has to be observed that this order was made pursuant to the Plaintiff's (Applicant) prayer contained in the ex-parte summons filed with the court on the said 8th of November 2001. In the ex-parte summons, the Applicants were praying for an interlocutory order of injunction to restrain the Defendants (Respondents), their agents or servants, from enforcing the decision of the Speaker declaring the seats of the Applicants, in the National Assembly, vacant and expelling the Applicants from the National Assembly pending the determination of the Plaintiffs' (Applicants') application for Judicial Review.

Perhaps it is also important to note that on the 9th of November 2001 the Applicants were actually granted leave to apply for Judicial Review. I shall revert this order of 9th November 2001 later in this Ruling. Suffice it to say, at this stage, that on the grant of leave this court observed that the Applicant's complaint merits a hearing under Judicial Review (see the order of my learned brother Judge Hon. Mr Justice Hanjahanja made on 9th November 2001).

Moreover, I wish to point out that the title of both the Summons herein and the Notice of Application for Judicial Review belie the real intention behind the applications. The title of these proceedings, and the Notice of application for leave to apply for Judicial Review, ought to have been as follows:-

"The State

-vs-

The Speaker

-and-

The Attorney General

Ex-parte (The names of the Applicants viz

Hon. Brown Mpinganjira etc."

It is no wonder that the title of the heading of these proceedings has caused a lot of confusion as regards whether these proceedings are a suit or not. It is hoped that learned Counsel for the Applicants will, at the appropriate time, regularise this position.

The fact that Counsel for the Applicants did not properly draft the papers he filed with this court should not make us lose sight of the fact that this application has been made in Judicial Review proceedings. This poor drafting of documents, which for all intents and purposes is a technicality, should not make the Applicants fail to get a temporary protection, from this court, if it is found that same would be necessary and appropriate.

The Inter-partes Application for an Interlocutory Injunction

On the same day the Applicants were granted an ex-parte order of injunction they took out an inter-partes summons for an interlocutory injunction returnable on Sunday the 11th day of November 2001. The order that was being sought in this inter-partes summons was the same as the one in the ex parte - summons and I quote the relevant parts of the Applicant's prayer:-

"--An interlocutory order of injunction (sought) to restrain the Defendants their agents or servants from enforcing the decision of the First Defendant to declare the seats of the Plaintiffs in the National Assembly vacant and expel the Plaintiffs from the National Assembly pending the determination of the Plaintiff's application for Judicial Review herein on grounds appearing in the affidavit of Viva Nyimba--"

It must be noted that if there are any grammatical, or typographical, errors in the relevant parts of the summons quoted herein then same have not been corrected.

The Factual Background

The factual background to this matter, in my judgment, can be discerned from the affidavits both in support and in opposition to this

application for an interlocutory injunction. The said affidavits have been sworn by Mr Viva Nyimba and Hon. Paul Jonas Maulidi, M.P. respectively.

The affidavit of Mr Viva Nyimba, sworn on 8th November 2001, contains, the following matters of fact, which are deponed to in support of the application for an interlocutory injunction:

2. THAT-----

"(i) the 1st to 4th Plaintiffs were elected on the ticket of the United Democratic Front (UDF) a political party registered in accordance with the laws of Malawi, but the said Plaintiffs were involuntarily expelled from the UDF party in January 2001 well before

the amendment of Section 65(1) of the Constitution of Malawi which amendment was assented to on 22nd June 2001.

(ii) The 5th Plaintiff was elected on the ticket of the United Democratic Front (UDF) a political party registered in accordance with the laws of Malawi, but the said Plaintiff was involuntarily expelled as Treasurer General of UDF sometime in the year 2000 and subsequently resigned from the UDF party in February 2000, well before the amendment of Section 65(1) of the Constitution.

(iii) The 6th and 7th Plaintiffs were elected on the ticket of the Malawi Congress Party, a political party registered in accordance with the laws of Malawi.

3. That the first to fourth Plaintiffs have since January 2001 in exercise of their Constitutional rights and freedoms formed the National Democratic Alliance (NDA) pressure group which the fifth Plaintiff later in February 2001 joined, in order to participate in peaceful political activity intended to influence policies of the government, and freely to make political choices but they still remained MPS representing their respective Constituencies.

4. Following the said expulsions from the UDF party, the first Plaintiff is still representing Mulanje Central Constituency in the National Assembly; the second Plaintiff is still representing Mulanje South - West Constituency in the National Assembly; the third Plaintiff is still representing Blantyre City Constituency in the National Assembly; the fourth Plaintiff is still representing Phalombe East Constituency in the National Assembly; and the

fifth Plaintiff is still representing Zomba - Nsondole Constituency in the National Assembly.

5. THAT first Plaintiff is the President of the NDA; the second Plaintiff is an executive member of the NDA; the third Plaintiff is an executive member of NDA; the fourth Plaintiff is an executive member of NDA; and the fifth Plaintiff is the National Chairman of NDA. They are no longer members of UDF.

6. THAT the sixth Plaintiff is the President of the said Malawi Congress Party and representing Nsanje North Constituency in

the National Assembly while the seventh Plaintiff is the Treasurer General of the said Malawi Congress Party and representing Lilongwe South - East Constituency in the National Assembly.

7. THAT I am further informed by the Plaintiffs that the first Defendant has declared the Plaintiffs' seats in the National Assembly vacant on grounds that:-

(i) The first to fifth Plaintiffs have joined the National Democratic Alliance (NDA) a pressure group whose objectives are clearly political in nature, and thus the Plaintiffs have crossed the floor in the National Assembly.

(ii) The sixth and seventh Plaintiffs as President and Political Secretary for the MCP/AFORD Alliance respectively, have joined the MCP/AFORD Alliance an organisation whose objective are political in nature.

8. THAT the Plaintiffs wish to challenge the said decision of the first Defendant on grounds that the rules of natural justice have not been followed and on the unconstitutionality of the said decision by the first Defendant as the Plaintiffs have not received a fair and lawful interpretation of Constitution or at all. The Plaintiffs shall further contend that they have not crossed the floor in the National Assembly as:-

(i) The first to fourth Plaintiffs, having been expelled from the UDF party, and after the amendment to Section 65(1) of the Constitution, the said Plaintiffs were not members of the UDF Party anymore.

(ii) The fourth Plaintiff having resigned from the UDF Party, and after amendment to Section 65(1) of the Constitution, the said Plaintiff was not a member of the UDF Party anymore.

(iii) The sixth and seventh Plaintiff as individuals have not joined any organisation with political in nature, but their Malawi Congress Party as an organisation has formed an alliance with AFORD political party.

9. THAT the Plaintiffs' Constituencies shall remain unrepresented in the National Assembly should the firs Defendant's decision to declare the Plaintiffs' seats vacant be implemented.

As regards the Defendants (Respondents), in opposition to this application, Hon. Mr Paul Jonas Maulidi, on 11th November 2001,

made the following pertinent sworn statement of facts on behalf of the Respondents:-

"2. THAT I am the author of the letters that were written on 24th October 2001 addressed to the Speaker of the National Assembly concerning Hon. Brown Mpinganjira Member of Parliament for Mulanje Central, Hon. Lizzie Mpinganjira Member of Parliament for Mulanje South East Constituency, Hon. James Makhumula Member of Parliament for Zomba Zondole Constituency, Hon. Gresham Naura Member of Parliament for Phalombe North East Constituency and Hon. Peter Chupa Member of Parliament for Blantyre City Central Constituency.

3. THAT the said letters were personally delivered by me to the Speaker of the National Assembly on 25th October 2001 and the said letters were personally circulated to all Members of Parliament including the said five Members of Parliament namely Hon. Brown Mpinganjira, Hon. Lizzie Mpinganjira, Hon. James Makhumula, Hon. Gresham Naura and Hon. Peter Chupa on 5th November 2001.

4. THAT I was present in the House when these letters were being distributed to Members of Parliament and I saw the National Assembly messenger handing over the copies of the said letters to the five Members of Parliament.

5. THAT I was present in the House when the letters written by Members of Parliament for Lilongwe Mpenu dated 23rd October

2001 concerning Hon. Gwanda Chakuamba and Hon. Hetherwick Ntaba were being distributed to Members of Parliament including Hon. Gwanda Chakuamba and Hon. Hetherwick Ntaba on 5th November 2001.

6. THAT I personally talked to Hon. Peter Chupa who acknowledged to me that he and his colleagues had received copies of the said letters.

7. THAT I verily believe that the seven Members of Parliament were duly served with the said letters on 5th November 2001.

8. THAT when the Speaker made his ruling on 6th November 2001 declaring the seats vacant the Speaker stated that he had not heard anything from the seven Members of Parliament as to whether they disputed or challenged the allegations in the said letters or not and I verily believe that the said seven Members of Parliament have not responded to the allegations contained in the said letter to date.

9. THAT I verily believe that the five Members namely Hon. Brown Mpinganjira, Hon. Lizzie Mpinganjira, Hon. James Makhumula, Hon. Peter Chupa and Hon. Gresham Naura have no valid grounds to challenge or dispute the facts alleged in the said letters namely that they have joined an association known as National Democratic Alliance whose objects are political in nature and that they entered Parliament through UDF tickets; and that the two Members namely Hon. Gwanda Chakuamba and Hon. Hetherwick Ntaba are serving as President and Secretary for Political Affairs of MCP Aford Alliance respectively - an association whose objects are political in nature and that they entered Parliament through MCP tickets.

10. THAT I understand and verily believe that no injunction can be issued against government and it

was wrong for the applicants to obtain an injunction against the government."

It would be appear to me that both affidavits, in some respects, contain matters of fact mixed with opinion and law. It is my understanding that, at law, an affidavit must contain only matters of fact - see Order 41/5 of the Rules of the Supreme Court. I have decided not to take issue with these observations because as earlier remarked there is a mixture of matters of fact, law and opinion. It is trusted that members of the bar will be better advised to take note of these comments for it is not only in this matter at hand that there has been this mixture.

So much for the background to this application. Let me now proceed to deal with the issue(s) in this matter.

Issues For Determination

The substantive question that I have to decide is whether or not the order of an interlocutory injunction which this court made on 8th November 2001 should be discharged. Further, I wish to observe that there are some auxilliary issues that have arisen which will require this court's determination as well when answering the main question before me. I propose to deal with the other issues as well. Before proceeding to

consider the issues let me observe that both Counsel addressed me at length during their viva voce submissions. I must acknowledge that I found their arguments lucid and instructive. It will not, however, be possible to put it down in writing, in this Ruling, every argument advanced by either Counsel. This will not be out of any disrespect to both Counsel but because I found out that some of the arguments would better be advanced at the substantive hearing of the Judicial Review proceedings. Be that it may be it will be inescapable to bear them in mind when deciding on the issues for determination in this matter. I will now, without delay proceed to consider the questions for determination in this matter.

Law and Findings: Consideration of The Issues

The Speaker of the National Assembly as a party to these Proceedings

At the commencement of the hearing of this application, on 11th November 2001, this court asked learned Counsel for both parties to address it on the question of the propriety of having the Speaker as

a party. The court wanted to be addressed on this point in view of the apparent confusion that has arisen as regards the position of the Speaker as a party to proceedings.

It is the main point taken by Mr Chisanga, of Counsel for the Defendants, that the answer to the question of the Speaker being a party to proceedings is to be found in The President of Malawi and Speaker of Nation Assembly -vs- R.B. Kachere and Others MSCA Civil Appeal No. 20 of 1995, (unreported)[MSCA] where Mtegha, J.A., on delivering the judgment of the court made the following statements from which I quote the relevant parts at pages 8 and 9:-

"---It appears to me, therefore, that if one wants to sue the President in his official capacity as Head of Government, he should commence one's proceedings against the Attorney General--- it is quite clear to me that the Government can be sued in the civil suits other than contract and tort--- There is no reason why we should interpret the words "civil suits" as limited to tort and contract only. There may be other situations, other than those involving contract and tort where the Government can be sued, for example cases of Judicial Reviews. These are civil in nature. We must interpret the words of an Act in such a way that they convey their ordinary and natural meaning unless there are some inconsistency. In the present case, 'civil proceedings means civil proceedings other than criminal proceedings.' The present proceedings are clearly 'civil proceedings.'" (emphasis supplied by me)

Mr Chisanga also referred to me the statement of Kalaile, J.A., at page 16 of the judgment in Kachere's case to buttress his argument that the Speaker is not a right party to these proceedings. This is what Kalaile, JA., said at page 16:-

"---Consequently, I hold that the State President or the Speaker can not be sued as a public officer but may be sued for anything they perform in their official capacities through the office of the Attorney General. This is particularly so since S. 98(1) of the Constitution lays down that there shall be the office of the Attorney General who shall be the principal advisor to the Government."

Mr Kasambara, of learned Counsel for the Plaintiffs, in essence submitted that Kachere's case (supra) is distinguishable from the present case. It is the contention of Mr Kasambara that the present proceedings are not a suit against the Government or a public officer

but rather they are Judicial Review proceedings. To this end, Mr Kasambara continued to argue, the case of Kachere does not apply because in that case the Plaintiffs had commenced a legal suit.

As a starting point in making a determination on this question let me put it here that I am bound by the decision of the Malawi Supreme Court of Appeal on its holding that where one wants to sue the Speaker for anything he does in the performance of his duties then the legal suit must be in the name of the Attorney General. At the same time it must be pointed out that I am at liberty, if it is possible, to distinguish the decision in Kachere's case from the one before me (Fred Nseula -vs- Attorney General and Malawi Congress Party MSCA Civil Appeal No. 32 of 1997 [unreported]. In this regard, it is my considered view that, if this court comes to the conclusion that the matter before it is a legal suit them surely Kachere's case, supra, will apply. If this court, on the other hand, finds that the case before it is not a legal suit the case of Kachere will not be of any assistance to the Defendants (the Respondents).

It is my finding that the present case is distinguishable from the case of The President and Speaker of National Assembly -vs- R.B. Kachere and Others (supra) because in the instant case there is no suit against the Speaker as was the case in the matter that was being dealt with by the Malawi Supreme Court of Appeal in the Kachere case. Further, it would appear to me that the Malawi Supreme Court of Appeal had no full legal arguments from Counsel on the question of whether Judicial Review proceedings are legal suits and therefore caught by the provisions of Civil Procedure (Suits by or Against Government or Public Officers)Act (Cap. 6:01).

As I understand it a civil proceeding would be a suit, and therefore caught by the provisions of Cap. 6:01, if the proceedings are adversarial and the outcome would coercively affect the legal position of the Government. Judicial Review proceedings, although civil in nature, principally will not, and do not, as an outcome coercively affect the legal position of the State or Government. Further, it must be appreciated that Cap. 6:01 of the Laws of Malawi was enacted with a view to enabling private individuals to sue government or public officers, a thing which was not possible prior to the enactment of the said Cap. 6:01 of the Laws of Malawi, for it was assumed then that a government could do no wrong. This assumption is not in keeping with modern legal thinking. Indeed, it is the view of this court that Cap. 6:01 of the Laws of Malawi is intended to cover private law proceedings and not Judicial Review proceedings which, in essence, are proceedings where a person seeks to protect his right under public law or in public law proceedings.

Another issue which it would appear was not fully canvassed, by Counsel, before the Malawi Supreme Court of Appeal, in the Kachere case, is the effect of a prayer for a

declaration in civil proceedings in so far as parties to proceedings are concerned. I have visited some case authorities in the Commonwealth which are instructive on this point. These cases show that where there is a prayer for a declaration the complexion of parties to civil proceedings changes. In a case from Kiribati, a Commonwealth country like Malawi, viz Speaker -vs- Attorney General (1988) LRC1 Maxwell, C.J., at page 7b-f, singled out general principles which the courts have evolved to guide them in exercising their discretion to grant a declaration. I adopt these principles and one of them, which is relevant to this case, was expressed as follows:-

" (a)---

(b) [that] the court will not make a declaratory judgment, unless all the parties interested are before it even if a competent Defendant (Respondent) is before the court, as in this case, the court will decline to make a declaration affecting the interests of persons who are not before it. In Myer Queenstown Garden Plaza Pty Ltd -vs- Port Adelaide Corporation [1975] 175 ABR 504, an Australian case, a declaration challenging the validity of regulations on the ground, inter alia, that a ministerial certificate of consent was improperly given, was held not challengeable in a proceeding to which the minister was not a party---

(c)-----" (emphasis supplied by me)

The above mentioned principle was noted with approval in Zambia, another Commonwealth country, in the case of Mwamba -vs- The Attorney General of Zambia (1993)3 LRC 166 at 173 where Ngulube, C.J. had this to say which is also illuminating:-

"No court of Justice can be called upon to make a declaration, which is always a discretionary remedy, when obvious injustice would be visited upon persons who have not been heard but who would be directly affected by a declaratory order in proceedings to which they have not been made parties---"

In the instant case it is to be observed that in the substantive review proceedings the Applicants are seeking, or will be seeking, inter alia, three separate declarations in respect of the decision of the Speaker of the National Assembly. The Speaker, in my view, will be directly affected in the event the Applicants are successful. Thus it will not make sense, and indeed it will be against settled principles of law, to have the Speaker struck off as a party to these proceedings when it is his decision that is in issue in the Judicial Review proceedings commenced by the Applicant. As a matter of law the court that will deal with the substantive application for Judicial Review would not make any declaratory orders if the Speaker is not made a party to these Judicial Review proceedings in the light of the fact that there are declaratory orders that are being sought in connection with his decision. Moreover, as I understand it, under Order 53 of the Rules of the Supreme Court, the person whose decision is being impugned must be a Respondent in Judicial Review proceedings. Even though the Attorney General is a competent Defendant, and would have been the right person to be sued under Cap. 6:01 if this matter were a suit, the Speaker should still be a party to these proceedings since the Applicants want, inter alia, declaratory orders, in respect of the Speaker, in the Judicial Review proceedings which this court has allowed the Applicants to commence. In the premises the inclusion of the

Speaker as a party in this application, which is essentially brought under Judicial Review inspite of the title of these proceedings, does not offend the decision in Kachere's case. I ought to pause here to add a word so as to avoid confusion. By saying that the Speaker should be made a party to these Judicial Review proceedings it does not mean that he can be sued directly for anything he does in the performance of his duties if the matter before the court is a legal suit or an action.

Can an injunction be granted against the Speaker and the Attorney General in these Proceedings?

It is the contention of learned Counsel for the Applicants that since this application has been made in, or under, Judicial Review proceedings an order of injunction can be issued against the Speaker and the Attorney General. Mr Kasambara further contends that in view of the decisions in the cases of Kachere and Nseula (supra), to the effect that the office of Speaker is not a public office, it therefore follows that he can not benefit from the provisions of Section 10 of the Civil Procedure (suits by or Against Government or Public officers)Act which is intended to protect the Government and Public officers. It is the further contention of Mr Kasambara that the injunction in this case was not against Government because the prime mover of these proceedings, which are Judicial Review proceedings, is the State itself against the Speaker and the Attorney General ex parte (done for, on behalf of) the seven Applicants. Mr Kasambara continued to submit that if Judicial Review proceedings are not suits, which this court has found not to be, therefore the stipulations in Section 10 of the Civil Procedure (suits by or Against Government or Public Officers)Act are not applicable to Judicial Review proceedings. I was referred to the South African decision of Ndamase and Others -vs- Minister of Local Government and Land Tenure [1995](3) S.A. 235 in respect of this latter submission regarding the applicability, or otherwise, of Section 10 of the said Civil Procedure (suits by or Against Government or Public Officers)Act to Judicial Review proceedings. Pausing here, let me observe that I found the case of Ndamise (supra) to be so informative on the need to differentiate between review proceedings and actions or suits when one is construing a provision that has the effect of hindering the ordinary rights of an aggrieved person who is seeking the assistance of the court. At pages 237 F-G and 238 A-F, white J. had this to say which is very instructive:-

"The first principle of construction to be applied is that the Section hampers the ordinary rights of an aggrieved person to seek the assistance of courts and must therefore be restrictively construed and

not extended beyond its expressed limits - Administrators, Transvaal, and others Traub and Others 1989 (4) SA 731 (A) at 764E.

The ordinary grammatical meaning of the word 'claim' - '(a) demand for something as due: an assertion of a right to something', The Shorter Oxford English Dictionary - is so wide as to be of no assistance in interpreting the meaning of the word in this Section. So, too, is the interpretation of the words 'claim' 'action' or 'proceedings' in numerous decided cases of no assistance in this case as those interpretations have been based on the

context in which the word has been used in particular Sections of other statutes - see, for instance, In re Pennington Health Committee 1980 (4) SA 243 (N).

Reference to the Section as a whole, however, brings greater clarity to the legislator's intention when enacting the section. The 'claim against the Government' must arise from 'any contract' or 'out of any wrong committed by any servant of the Government---' Review proceedings are clearly not included under the former category and it is extremely doubtful whether they fall under or are included in the latter. Any doubt whether review proceedings are included in the phrase 'claim against the Government, is, in my opinion, finally dispelled by the wording of SS(4), which provides that 'no execution, attachment or like process shall be issued---' These words clearly indicate that the legislator intended that the 'claim' should be for something which can be the subject of a warrant of execution, attachment or similar process. The word 'claim', read with SS(4), in my opinion indicates that the legislature intended that the section apply only to proceedings in which the Government may be called upon to commit an overt act, be it the payment of money or something else, or to desist from doing something, which will result in the issuing of a warrant of execution, attachment, or like process, but not to review proceedings in which no warrants are issued and a court simply confirms or dismisses quasi-judicial decisions of the Government, or its officials. As was stated in Hira and Another -vs- Booysen and Another 1992 (4) SA 69 (A) at 93 -4, the function and purpose of review is to correct erroneous decision-making.

Support for the above finding is found in Kampton Park Bombay (Pty) Ltd -vs- Campton Park Municipality 1956 (1) SA 643 (T). In that case the applicant brought on review the refusal of an application for a trading licence by the municipality. The latter took the point in limine that the application must fail because it had not been given a month's notice of the intended proceedings in terms of S. 172(2) of the Local Government ordinance 17 of 1939 (T), which requires that 30 days' prior notice must be given of any 'action' against a local authority. The court held, at 648B, that an 'action' does not included review proceedings, and dismissed the point in limine on those grounds."

The above quoted pronouncement of White, J. in my considered judgment, confirms what I said earlier on that Judicial Review proceedings are not legal suits and are therefore not caught by the provisions of the Civil Procedure (suits by or Against Government or Public Officers)Act. Moreover, it will be noted that the court in Ndamise's case (supra) was construing a statutory provision similar to our Cap. 6:01 of the Laws of Malawi. I see no reason why I should not adopt it in construing the meaning of the words suit or claim used in our Cap. 6:01 of the Laws of Malawi.

Turning to the arguments of learned Counsel for the Applicants, it is observed that he cited to me the local cases of Dr. Hastings Kamuzu Banda -vs- The Attorney General C.C. No. 1839 of 1997, (unreported) (High Court) and Von Knips -vs- The Attorney General MISC Civil Cause No. 11 of 1998 (unreported) (High Court) in which orders of injunction were granted against the Attorney General. I was also referred to the local cases of Mhango -vs- The Attorney General and Others C.C. No. 338 of 1998 (unreported)(High Court) and D.R.D. Alufandika and Another -vs- The Minister of Local Government and The Attorney General (unreported)(High Court Civil Cause No. 154 of

1995 where this court refused to grant an order of injunction against a Government Minister and the Attorney General. I shall comment upon these cases later in this Ruling. It will suffice, for the moment, to put it here that the four cases cited above show that this court has two views regarding the question whether an injunction can issue against the Government or public officers. In the meantime let me continue with the submissions of Mr Kasambara. It was the further argument of Mr Kasambara that in England a provision similar to our Section 10 has been held not to be applicable to Judicial Review proceedings. The following cases were cited to this court in support of this argument:-

1. Reg. -vs- Kensington and Chelsea Royal London Borugh Council ex.p. Hammell[1989]QB 518; [1989]1 All. ER. 1202.

2. Reg. -vs- Secretary of State of the Home Department ex-parte Herbage [1987]QB 872 [1986]3 All ER 209.

3. In Re M (M. -vs- Home Office) [1993]3 WLR 433; [1993]3 All E.R. 577 (House of Lords).

4. Reg. -vs- Secretary of State For Transport ex-parte Factorfame Ltd [1990]3 W.L.R. 818.

Of the four cases cited I found the case of In re M {M -vs- Home Office} (supra) very instructive and enlightening on the question of whether an order of injunction can be made against the Government or its servants. I will come back to this case later in this ruling but it will suffice to put here that the House of Lords was interpreting a statutory provision similar to our Section 10 of the Civil procedure (suits by or Against Government or Public Officers)Act. The case is for the proposition that there is a difference between private law proceedings and public law litigation; and that in Judicial Review proceedings, like in the instant case, an injunction order would be made against Government (Ministers) and its servants (Government Servants). As mentioned earlier, in the case of In Re M (supra) the House of Lords of the Laws of Malawi was interpreting, among others, a provision that is similar to our Section 10 of Cap. 6:01 of the Laws of Malawi. Now, pursuant to the holding, by the Malawi Supreme Court of Appeal, in Commercial Union (Plc) -vs- Alfred Waters MSCA Civil Appeal No. 46 of 1995 [unreported], infra, I will be adopting the reasoning In Re M's case in the interpretation of our said Section 10 of Cap. 6:01 of the Laws of Malawi. At this juncture let me now proceed to consider the arguments that have been advanced on behalf of the Speaker and the Attorney General regarding the propriety or otherwise of granting an order of injunction against the Government or Public officers.

Mr Chisanga, learned Counsel for the Respondents, has submitted that Section 10 of the Civil Procedure (suits by or Against Government or Public Officers)Act entreats the courts not to grant injunctions against the Government. It is his further contention that if this court upholds the interim order of injunction herein then that would infringe the provisions of the said Section 10 and it will further mean that basically this court has made a determination on the substantive issue in the Judicial Review proceedings. Mr Chisanga has further contended that this court should discharge this injunction by taking

the approach of this court in the cases of D.R.D. Alufandika and Another -vs- Minister of Local Government and The Attorney General (ante) and Mhango and Others -vs- The Attorney General, Inspector General and Lilongwe City Assembly (supra). It was also the argument of Mr Chisanga that should this court lift the interim order of injunction herein the Applicants should not be allowed to go back to Parliament until the Judicial Review proceedings are determined. Learned Counsel for the Respondents also took issue with the provisions of O. 53 r.3 (10) of the Rules of the Supreme Court and the cases cited thereunder which are for the proposition that in Judicial Review proceedings an injunction can be granted against the the Government (crown) and its servants. It is Mr Chisanga's contention that Order 53 r. 3 (10) of the said Rules of the Supreme Court is not part of our law and therefore all the cases that are cited under this order are not applicable to Malawi. The reasons advanced for this argument are that the statutory law on which the decisions were made are not part of our law since the said statute being interprated is not a statute of general application and/or that the statute was passed well after 1902. In this regard Section 29(b) of the Courts Act was referred to this court. On first impression Mr Chisanga's argument would appear to be correct if one reads the said Section 29 (b) of the Courts Act without reference to any case authority. But when one refers to the statement of Mtegha J.A. in the case of Commercial Union Assurance (Plc) -vs- Alfred Waters MSCA Civil Appeal No. 46 of 1995 [unreported](MSCA) it becomes clear that the courts in Malawi, this court inclusive, are entitled and allowed, when construing our legislation, to look at the construction of similar provisions in foreign jurisdiction, and if the reasoning is correct, there would be no reason why a court should depart from that construction. It is my respectful view, therefore, that if the cases referred to under Order 53 rule 3 (10) are construing a provision similar to our Section 10 of the Civil Procedure (Suits by or Against Government or Public Officers)Act, and if the reasoning is correct, this court might fall for that interpretation.

It is now necessary that I should move on to consider the question that has been raised above viz whether the order of interim injunction that was granted against the Respondents was erroneously made. The answer to this question, in my considered view, hinges on the interpretation of Section 10 of the Civil Procedure (Suits by or Against Government or Public Officers)Act (Cap. 6:01) of the Laws of Malawi which has featured highly in the submissions of both Counsel for the Applicants and Respondents. The relevant parts of the said Section 10 of (Cap. 6:01) of the Laws of Malawi provides as follows:-

"(1) Nothing in this Act contained shall be construed as authorising the grant of relief by way of injunction--- against the Government, but in lieu thereof the court may make an order declaratory of the rights of the parties.

(2) The court shall not in any suit grant any injunction or make any order against a public officer if the effect would be to give anyrelief against the Government which could not have been obtained in a suit against the Government."

As earlier found, this statute is not intended to regulate Judicial Review proceedings. That is the reason why one need not give notice to the Attorney General or a Public officer in

terms of Sections 4 and 5 of the said Cap. 6:01 of the Laws of Malawi before commencing Judicial Review proceedings - Ndamise's case (supra). If the courts were to insist on the need to giving notice in Judicial Review proceedings then that would defeat the whole purpose of protecting people's rights and freedoms, enshrined in our constitution, if those rights or freedoms are threatened. This court does not accept that Cap. 6:01 of the Laws of Malawi, passed on 28th December 1946 was intended to cover Judicial Review proceedings which are a new phenomenon. In my judgment, and as already found, the expression "suit" or "claim" which features highly in this statute excludes what are now called applications for Judicial Review. But even if it be accepted that the Plaintiff's application falls within the expression "suit" or "claim", as shall be seen later, it must be recognised that the constitution has given power to the courts to give an effective remedy where there is a complaint that a right or freedom has been infringed or is being threatened. This power, in my most considered opinion, includes power to give an interim remedy of injunction pending the hearing of a substantive application. A court charged under the constitution with securing an effective remedy, albeit a temporary one, can not be denied such power as is necessary for the task it has in its hands. The job of this court, at this juncture, is to determine whether or not there is need to preserve the status quo ante pending the determination of the substantive Judicial Review proceedings where the decision of the Speaker will be reviewed. I will come back to this observation later in this Ruling. For now let me go back to Section 10 of Cap. 6:01 and make my observations regarding this Section and the question that it raises.

It is the judgment of this court that this provision raises the issue regarding the power, or the duty, of the court to grant an effective remedy against the State for violations or the purported violations of the rights or freedoms, or both, of an individual which are protected by the constitution, where such rights or freedoms are infringed or threatened. In this regard it is pertinent to visit some constitutional provisions so as to understand why I make this observation. In Section 41(3) of the Constitution of the Republic of Malawi it is provided as follows:-

"Every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him by this constitution or any other law."

And Subsection(2) of Section 46 of the said Constitution of the Republic of Malawi stipulates that:-

"Any person who claims that a fundamental right or freedom guaranteed by this constitution has been infringed or threatened shall be entitled -

(a) to make (an) application to a competent court to enforce or protect such right and freedom; and

(b) ------"

Further, the relevant parts of Section 46(3) of the said Constitution of the Republic of Malawi provides that:-

"Where a court referred to in Subsection(2)(a) finds that rights or freedoms conferred by this constitution have been unlawfully denied or violated, it shall have power to make any

orders that are necessary and appropriate to secure the enjoyment of these rights and freedoms and where a court finds that a threat exists to such rights or freedoms, it shall have power to make any orders necessary and appropriate to prevent those rights and freedoms, from being unlawfully denied or violated---"

It will be seen that the above mentioned Sections demonstrate that if Section 10 of the Civil Procedure (Suits by or Against Government or Public Officers)Act is taken literally then the courts would be rendered impotent in so far as what the Constitution of the Republic of Malawi enjoins them to do where there is a complaint that rights or freedoms of an individual have been infringed or threatened. Indeed, Cap. 6:01 of the Laws of Malawi which was promulgated before the current Constitution of the Republic of Malawi, in particular the provisions in Sections 41(3), 46(2) and 46(3) cited above, should not and/or can not stop this court from giving an effective, and appropriate, remedy if that effective remedy would mean making an injunctive order for the purpose of securing the Applicant's rights and freedoms which they claim have been infringed. If the effective remedy which is found necessary and appropriate is an injunction order then surely this court will so order, notwithstanding the provisions of Section 10 of the Civil Procedure (Suits by or Against Government or Public Officers)Act. That would be the case if it is assumed that this Act is intended to cover Judicial Review proceedings as well. But as will be recalled this court has formed the opinion, and has found as a fact, that Judicial Review proceedings are not legal suits or claims and are therefore not caught by the provisions of Cap. 6:01 of the Laws of Malawi.

Moreover, the provisions of Section 46(2) and (3), as read with Section 108(1), of the Constitution of Malawi confer unlimited Jurisdiction on this court to fashion remedies to secure the enjoyment of the fundamental rights and freedoms, provided for in the Constitution of Malawi, and to grant protection against the contravention of those rights and freedoms and other provisions of

the Constitution. For this reason an Act of Parliament, in particular Section 10 of Cap. 6:01, can not override the provisions of the Constitution and stop the court from giving an effective remedy, albeit a temporary one, like the interim injunction that is being prayed for in this matter. In point of fact Section 5 of the Constitution of Malawi provides, inter alia, that any law that is inconsistent with the provisions of the Republic of Malawi Constitution shall, to the extent of such inconsistency, be invalid. In the premises, in so far as Section 10 of Cap. 6:01 purports to be inconsistent with the provisions of the of the Republic of Malawi Constitution, which calls upon this court to give an effective remedy, then same may, in an appropriate application, rightly be declared invalid (Nelson Jasi -vs- The Republic Crim. Appeal No. 64 of 1997 [unreported](HC). Further, if I may be allowed to put it here, the famed immunities of the Government or Public Officers should not be allowed to constrain the power of the courts to grant an effective temporary relief until the hearing of the substantive application for Judicial Review. By the provisions of Chapter 1 and Sections 4 and 5 of their Constitution the people of Malawi established a new Constitutional order. The Constitution has supremacy (subject to its provisions) over all law which, so far as they are not inconsistent with its provisions, must yield to it. Thus

to read down the provisions of the constitution so that they accord with the provisions of Cap. 6:01 of the Laws of Malawi or historic principles or rules will amount to subverting the purpose of the Republic of Malawi Constitution. Historic common law doctrines, adopted and codified in Cap. 6:01 of the Laws of Malawi, restricting the liability of Government or its public officers, as regards the availability of injunctions, should not be allowed to stand in the way of effective protection of fundamental rights and freedoms guaranteed by the said Republic of Malawi Constitution. To this end in interpreting the provisions of Section 10 of Cap. 6:01 today, as read with the Republic of Malawi Constitution, the traditional rules of the common law, one must yield to the Constitution. This court, although respecting its previous decisions in the Alufandika and Mhango's case (supra), where it was held that an injunction can not be issued against the Government, cannot regard those previous decisions as representing an accurate statement of the modern constitutional law principles applicable in Malawi in so far as the said Section 10 of Cap. 6:01 of Laws of Malawi, and the said previous decisions, want to limit the power of the court to make an order, albeit temporary, to secure the enjoyment of rights and freedoms where a court finds that a threat exists to such rights or freedoms. Further, I wish to note that as I understand it Section 10 of Cap. 6:01 of the Laws of Malawi is in effect saying that you can not obtain an injunction (injuctive relief) against Government or Public Officers only in those situations where prior to the enactment of Cap. 6:01 no injunctive relief would be obtained against the government. Judicial Review proceedings came after Cap. 6:01 was enacted and therefore, in my opinion, the restriction as to the grant of injunctions does not apply. It must also be appreciated, as said earlier, that Cap. 6:01 of the Laws of Malawi was passed by the legislature with a view to enabling individuals to sue Government or Public Officers which was not possible prior to the enactment of Cap. 6:01 of the Laws of Malawi for it was assumed then that a Government could do no wrong. This assumption is dead and burried in the grave.

Thus where, as stated above, a question regarding the rights and freedoms of individuals has arisen and fall to be decided in a substantive application, the court can grant an interim injunctive relief if that would be the only way of preserving the status quo ante of the Applicants who are alleging that their rights and freedoms have been threatened, until the trial of the issues in the substantive Judicial Review proceedings. It is clear from the record of these proceedings that the Applicants shall be relying on the provisions of the Republic of Malawi Constitution, and will be arguing that their Constitutional Rights have been infringed or threatened, at the hearing of the substantive application for Judicial Review. It will therefore not be fair and just to hold that they are bound by the provisions of Section 10 of Cap. 6:01 of the Laws of Malawi for to hold so will amount to saying that they can not get a temporary effective remedy whilst awaiting the outcome of those proceedings. This court has, and must be ready to exercise, power to grant an effective interim relief where it is being alleged that there has been a contravention of a protected Constitutional Right or freedom. Whilst it could be said that in private law litigation an injunction can not be issued against the Government, I am unable to accept the argument that an injunction can not be issued, against the Government or its servants or any person performing public functions or quasi-judicial functions, in Judicial Review proceedings. As a matter of fact in Judicial Review proceedings the one applying for the

injunction is the State itself, on behalf of the ex-parte Applicants, against the Respondents. In this matter the Respondents are not even public officers (Nseula and Kachere cases) so the said Section 10 of Cap. 6:01 does not apply. Having concluded that in Judicial Review proceedings a court can, by an order, grant an injunction or an injunctive relief, it must surely have the power to grant an interim (interlocutory) injunction and the principles governing the grant or refusal or discharge of an injunction must, or will, apply. I will now proceed to deal with the principles upon which an interlocutory injunction may be granted.

Interlocutory injunction: principles on which they are granted.

In litigation, be it private or public, where (the Plaintiff) an Applicant seeks a permanent injunction against (the Defendant) a Respondent, this court has a discretion to grant (the Plaintiff) the Applicant an interlocutory injunction - a temporary restriction pending the determination of the dispute at the substantive trial) - which is designed to protect the position of the Applicant (Plaintiff) in the interim. In that event the Applicant will normally be required to give an undertaking to pay damages to the Respondent should the latter succeed at the trial.

The principles on which such injunctions will be granted - to which reference was made in these proceedings and are trite knowledge - were set out in American Cynamid Co -vs- Ethicon Ltd [1975] A.C. 396; [1975]1 All E.R. 504 (House of Lords) and a synopsis of these principles is as follows:-

(a) The Applicant must establish that he has a good arguable claim to the right he seeks to protect.

(b) It is not for the court, at the interlocutory stage, to seek to determine disputed issues of fact on the affidavits before it or to decide difficult questions of

law which call for detailed argument and mature consideration; it is enough if the Applicant shows that there is a serious question to be tried at the substantive trial.

(c) Unless the material before the court, at the interlocutory stage, fails to disclose that there is a serious question to be tried, the court should consider, in the light of the particular circumstances of the case, whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

(d) If damages would be an adequate remedy for the Applicant, if he were to succeed at trial, no interlocutory injunction should normally be granted. If, on the other hand, damages would not provide an adequate remedy for the Applicant but would adequately compensate the Respondent under the Applicant’s undertaking, if the Respondent were to succeed at the trial, there would be no reason to refuse an interlocutory injunction on this ground.

(e) It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or both that the question of balance of convenience arises.

(f) Where other factors appear evenly balanced, it is a counsel of prudence to take such measures as are calculated to preserve the status quo ante.

Now turning to the instant case, having heard the arguments of Counsel, and due regard being had to the fact that the leave to apply for Judicial Review was granted to the Applicants, and has neither been discharged nor is there an intimation that the Respondents intend to apply for discharge of the leave, it is my view that the Applicants had and still have, an arguable case in respect of their rights which they seek to protect. In point of fact it is the opinion of this court that there are a triable issues to be considered by the court at the hearing of the substantive application for Judicial Review. Some of the said issues, inter alia, as seen from the record of these proceeds, are:-

(1) Whether or not the Applicants have crossed the floor in terms of Section 65 of the Republic of Malawi Constitution.

(2) Whether or not the Applicants were given an opportunity to be heard before the decision to declare their seats vacant was made.

(3) Whether or not the decision of the Speaker is unconstitutional.

In the light of the observations which have been made above the ordinary principles enumerated in the American Cynamid case have to apply to the instant case.

I have carefully looked at the reliefs that will be sought by the Applicants at the hearing of the substantive application for Judicial Review. The view that this court takes is that damages, if the Applicants succeed in their application, would not be an effective remedy. Indeed, it should be noted that the Applicants will be seeking, inter alia, declaratory orders. The orders they want can not be quantified in monetory terms thus damages would not be an effective remedy in the event of their success at the substantive trial. Since damages would be an ineffective remedy for the Applicants, and

would be no compensation to them, if they succeed at trial, then it has to be determined where the balance of convenience, or what others have called balance of justice, lies.

It is the view of this court that, upon weighing all the factors, the balance of convenience has fallen in favour of an interim injunction and its continuation. The factors in favour of an interim injunction and the continuation thereof are: Firstly, the injunction, and indeed these proceedings, are only interlocutory and designed to hold the ring until the hearing of the substantive application for Judicial Review. Its continuation, contrary to what the Respondents were contending, does not prejudge the decision to be made at the hearing of the substantive application for Judicial Review on the reliefs sought and indeed on the relief for a final injunction. Secondly, to discharge the injunction would mean that the courts are powerless to preserve the status quo whilst awaiting the outcome of the Judicial Review proceedings. The status quo that this court should be looking at is the status quo which had been in place prior to the decision of the Speaker on 6th November 2001. If this interim injunction were not to be granted, and maintained, the forthcoming

Judicial Review proceedings might be rendered nugatory or useless in the event the Applicants succeed in their application for Judicial Review. Indeed, to refuse to grant an interim injunction, or to discontinue the interim injunction that was granted herein, would be like this court is giving the Applicants something with one hand (leave to apply for Judicial Review) and then immediately thereafter taking it with the other hand. In the light of the leave to apply for Judicial Review, granted to the Applicants, it will not make a lot of sense to refuse to grant an interim injunction or to discontinue the interim injunction herein. That will in essence mean that the impugned decision will stand and may very well be effected whilst the parties are awaiting a determination of the substantive Judicial Review proceedings. A refusal to grant an interim injunction, or a decision to discharge this injunction, might completely destroy the Applicant's arguable case, at this interlocutory stage, without their having had the opportunity of having it tried on evidence. I make this remark in view of the observation by this court that the Applicant's case merit Review. Further, it is the view of this court that the granting of an interim injunction, and/or continuing the interim injunction, until the substantive hearing would, if the Applicants failed, will merely delay but not prevent the Speaker to effect his decision to declare the seats vacant. In overall interests of justice, a course which would only result in temporary, and in no way irrevocable, damage to the Speaker's case or the Attorney General's case should be preferred to one which might result in permanent irrevocable damage to the purported freedoms or rights of the Applicants. A discharge of the interim injunction of 8th November 2001 and/or refusal of an interim injunction would or might prematurely and permanently deny the Applicants any protection from the courts thus a denial of justice which these courts are constitutionally mandated to dispense.

Indeed, a refusal or discharge of this temporary injunctive relief might, if they succeed at the substantive hearing, cause irreparable harm and effectively deprive the Applicants their rights and/or freedoms which they are seeking to protect in the forthcoming application for Judicial Review.

Was there non-disclosure of a material fact which would entitle this court to discharge the Interim Injunction Order of 8th November 2001?

Mr Chisanga, learned Counsel for the Respondents, submitted that the Applicants did not disclose to this court, at the hearing of the ex parte application for an interlocutory injunction, that letters of complaint against them had been circulated to all Members of Parliament. It is learned Counsel's argument, in this regard, that the Applicants suppressed facts which would have, if disclosed, swayed this court at the time it made its decision to make an interim order of injunction. Mr Chisanga continued to argue that they are taking this as a very crucial point because the Applicants are arguing that they were not heard. Pausing here let me observe that this court has had the occasion to see and read the letters in question. I will not make any comment on these letters. I believe that any remarks on these letters should be left to the court that will be seised with the substantive application for Judicial Review. Turning again to the submissions of learned Counsel for the Respondents, on this question of non-disclosure, it was further argued by him that this court should exercise its discretion and discharge the interim injunction.

On his part Mr Kasambara contended that what is being alleged as not having been disclosed is not a material fact. There were also some arguments which he advanced which this court thinks should be better reserved for consideration by the court that will deal with the substantive application for Judicial Review.

It is trite law, and I need not cite an authority for it, that a court can discharge an injunction obtained ex-parte if there was non-disclosure of a material fact when the ex-parte application was made. As I understand it, the position at law is that the failure to disclose a material fact must be deliberate if the injunction obtained ex-parte is to be discharged. Actually, this court takes the view that, on balance, the non-disclosure, or the non- exhibiting of the letter in the affidavit of Mr Viva Nyimba, just like by Hon. Mr P.J. Maulidi, was not deliberate. For sure there is nothing in the affidavit of Hon. Mr P.J. Maulidi to show that Mr Viva Nyimba deliberately withheld this information from the court. Further, it is settled law that an Applicant for an ex-parte interim injunction must proceed with the highest good faith and make a full and frank disclosure of all material facts, including those against his application. But it must be noted that materiality of non-disclosure or the point at which it should have been disclosed is decided by the court and the test is whether the court should have those matters in the weighing scale. Thus, even if this court were to find that there was material non-disclosure and discharged the interim injunction herein on that basis, then this very same court would be perfectly entitled to listen to the arguments again, inter partes, in which case it will have to consider the same affidavit evidence, with the contents of the letters in mind and, more probable than not, come to the same conclusion in view of the observations that I have made regarding the propriety and logic of this court giving the Applicants something with one hand and taking it with the other hand at the same time. Further, in view of the fact that this court has now read the contents of the letters I do not think that my judgment will change. Moreover, I wish to observe that even assuming that there was such non-disclosure this court has discretion to maintain the interim injunction (or make a new order if the ex-parte interim injunction, has expired) where the court is satisfied that no injustice has been caused to a Respondent. An instructive dictum on this point can be found in the case of Brink's Mat Limited -vs- Elcome and Others [1988]1 W.L.R. 1350 at 1357 E-F where Ralph Gibson L.J. has this to say:

"---Finally, it is not every omission that the injunction will be automatically discharged. A locus, poenitentiae may some times be afforded per Lord Denning M.R. in Bank Meliat -vs- Nikpour [1985]F.S.R. 87,90. The court has discretion, notwithstanding proof of material non-disclosure which justifies or requires the immediate discharge of the ex-parte order, nevertheless continue the order, or to make a new order on terms:

'When the whole of the facts, including that of the original non-disclosure, are before [the court, it] may well grant --- a second injunction if the original non disclosure was innocent and if an injunction could properly be granted even had the facts been disclosed' - per Ghdewell L.J. in Lloyds Bowmaker Ltd -vs- Britania Arrow Holdings Plc., ante, pp 1343H - 1344A."

It comes out clearly, from this statement, that the withholding of information is, therefore, not sufficient ground of itself for setting aside an order of interlocutory injunction made

ex-parte. Much depends on the circumstances, and the effect on the fairness in the proceedings, of the withholding of the information. As Stuart- Guilby in Ex-parte Salinger[1993]2 All E.R. 310 at 320 recognised, the withheld information may well be decisive, but the fact that it is not disclosed will not, without more, cause the injunction to be discharged.

I would therefore have exercised my discretion in favour of continuing with the injunction for I do not see any injustice caused to the Respondents. Indeed, there is no material before me to show that the order of this court of 8th November 2001 has caused, or caused any, injustice on the part of the Respondents in view of the fact that the said order was for a limited period and the Respondents were allowed to present their case at the inter-partes hearing of application for an interlocutory injunction.

Order

I therefore hold, on the facts before me and for the reasons that I have given above, that the interim order of injunction granted herein on the 8th of November 2001 is to continue until the hearing of the substantive application for Judicial Review or until a further order is made.

This court granted leave to the Applicants to apply for Judicial Review but it did not make any order as to how the parties were to proceed after the grant of leave viz in respect of the mode of applying for Judicial Review, timetable for service and the period within which the substantive application must be entered for hearing. Actually, in the Notice of Application for Judicial Review, the Applicants wanted to have an expedited hearing and that the other time limits should be abridged. There was no order made on either this abridgement of the time limits or the expeditious hearing of the Application. The parties might wish to apply for the necessary orders, or agree on the way forward, in view of what Counsel for both parties said, during submissions, concerning the importance of this matter. Both parties will be at liberty to apply for the necessary orders in this regard.

The costs of, and occasion by, this application shall be costs in the cause.

Made in Chambers this 27th day of November 2001 at the Principal Registry, Blantyre.

F.E. Kapanda

JUDGE