Order

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MISCELLANIOUS CIVIL CAUSE NO. 116 OF 2002

BETWEEN:

The State……. Applicant

-vs-

The Attorney General…….Respondent

-and-

Ex-parte Applicant: Ian Kanyuka

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

M/S Ngwira, Makiyi and Chalamanda of Counsel for the Ex-parte Applicant

Hon. Phoya of Counsel for the Respondent

Mr. Machila Official Interpreter/ Recording Officer

Date of hearing : 13th September 2002

Date of order : 13th September 2002

Kapanda, J

ORDER

As I understand it, judicial review process is intended to allow the courts to review the acts or decisions or omissions of public bodies or public officers. I have had the occasion to read the affidavits both in support of, and opposition to, the application for permission to apply for judicial review. In them I do not see any act or decision made as yet regarding, or adverse to, the National Democratic Alliance pressure group. I hasten to add that the affidavits contain issues that are at the moment of academic interest. The sworn statements do not raise issues for determination by a court of law.

If anything the Attorney General has only given his intention. The intimation of the Attorney General, as put in his letter of 26th August 2002, has not been put into effect. Supposing the Attorney General does not decide to put his intimation into effect. What will be there for the court to review? An intention alone cannot be a basis for granting permission to an applicant to apply for judicial review. Were that to be the case it would be like, to use criminal

law principles, charging a person with an offence where there is only *mens rea.*

Turning to the instant case, this court holds the view that in the absence of a positive decision to ban the National Democratic Alliance pressure group the court cannot set in motion process the of judicial review. If the threat to ban the NDA is put into effect that is when this court can properly look into propriety, or otherwise, of the ban**.**

The short of it is that the application for permission to apply for judicial review is premature for there is no decision of Respondent that requires review or is capable of being reviewed. As of now, and in view of the findings made above, the permission to apply for judicial review is refused. It is so refused with costs to the Respondent.

Notwithstanding the refusal let me make a small observation. I wish to put it to the Attorney General that, should he decide to carry out his threat as put in his letter of 26th August 2002, he is well advised to consider the High Court of Tanzania decision in **Rev. Christopher Mtikila vs. Attorney General** [1995] T.L.R. 31. The dictum and analogy of Justice Lugakingira, at page 65 paragraphs A-B, is pertinent in this regard. The above quoted case authority, including the statement of Lugakingira, was cited with approval by this court in the cases of **Malawi Electoral Commission vs. Nthara [and Sawerengera]** Miscellaneous

Civil Cause Nos. 52 and 53 of 2002 respectively. I wish to point out that this observation is in no way intended to prevent the Attorney General from taking any course of action he might deem fit and within the law.

This disposes of this matter unless the parties want further clarification of the order made above.

Made in Chambers this 13th day of September 2002 at the Principal Registry, Blantyre.

F.E. Kapanda

JUDGE

Miscellaneous Civil Cause No. 116 of 2002