**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MISCELLANEOUS CIVIL CAUSE NO. 57 OF 2005**

**BETWEEN:**

THE STATE

- and -

ATTORNEY GENERAL (INSPECTOR GENERAL OF MALAWI POLICE SERVICE……RESPONDENT

EX-PARTE DR BAKILI MULUZI……..…APPLICANT

**CORAM: CHIMASULA PHIRI J.**

R. Kasambara - Attorney General

D. Kanyenda of Counsel for the Applicant

Balakasi – official interpreter.

Mrs Sinalo - court reporter

**RULING**

*Chimasula Phiri J,*

This is an application to dissolve an injunction at the instance of the Attorney General, hereinafter referred to as the respondent. It is supported by an affidavit sworn by Mr Ralph Kasambara. The application is opposed by the applicant, Dr Bakili Muluzi

In his affidavit, the Attorney General has, among other things, stated as follows:-

1. *That I am the Respondent in this matter and the facts stated in this affidavit are derived from my own knowledge except where stated otherwise, and are true to the best of my knowledge and belief.*

2. *That the Respondent has a duty to provide staff to the Applicant under Section 4 (i) ( c) of the Presidents (Salaries and Benefits) Act.*

3. *That the Respondent has duly executed its duty by providing the Applicant with the security personnel.*

4. *That the Respondent in accordance with normal police procedure rotated and replaced the security personnel at the Applicants BCA residence.*

5. *That the action of the police was not unfair, arbitrary nor unreasonable and unlikely to cause any injustice as it was within its mandate of deploying and redeploying its personnel.*

6. *That there has not arisen a practice of affording Ex-Presidents an opportunity to select their own security personnel giving rise to legitimate expectations, procedurally fair administrative action and the right to be heard.*

7. *That the conduct of the police did not warrant the granting of the mandatory injunction as the action was within the reasonable discretion of the police.*

The Attorney General prays to this court to set aside the mandatory injunction granted to the applicant.

The applicant served an affidavit in opposition wherein he makes the following statements:-

1. ***THAT*** *I am the Applicant herein.*

2. ***THAT*** *I adopt my affidavit verifying facts relied on to support my application for leave to apply for Judicial Review sworn and filed herein in its entirety.*

3. ***THAT*** *on 11th February, 2005 the Honourable Court granted me an injunction order requiring the respondent to restore the Guard Commander, Deputy Guard Commander and a woman inspector in their respective positions and/or duties at my BCA Hill Residence. The said injunction further restrained the respondent from replacing, changing or transferring the said security officers at my BCA Hill Residence without affording me an opportunity to select their replacements.*

4. ***THAT*** *I am informed and I verily believe that the said injunction order was served on and/or brought to the knowledge of the respondents and/or their agents and/or servants on or by the 14th February, 2005.*

5. ***THAT*** *contrary to the said injunction order and despite full knowledge of the same on or about 3rd, 4th and 17th February, 2005 the respondents and/or their agents or servants purported to issue instructions for the transfer of the security officers from my BCA Hill Residence. There is now shown and produced to me a copy of a wireless message exhibited hereto and* ***"BM", "BM 1", "BM 2"*** *and* ***"BM 3",*** *respectively.*

6. ***THAT*** *I am informed and verily believe that the respondent's conduct amounts to contempt of court and therefore undermines the honourable court and the rule of law generally.*

7. ***THAT*** *I refused to allow the security officers to leave my BCA Hill residence and further refused any security officers to replace them because I did not want to be party to the flagrant violation of the injunction order.*

8. *I am informed and I verily believe that if the respondents were aggrieved with the injunction order herein, they ought to have made the present or similar application to discharge it without necessarily disobeying it.*

9. ***THAT*** *in the premises it is clear that the respondent would have proceeded to effect the changes in my security personnel contrary to the prevailing practice and my legitimate expectations but for the injunction order herein.*

The exhibit BM is a wireless message dated 3rd February 2005 whose subject matter is posting of 23 police officers whose names are listed therein. The exhibit BM1 is another wireless message dated 4th February 2005 directing posting of 3 women police officers from BCA Hill to various police stations in Blantyre. Exhibit BM 2 is another written communication in respect of transfer of police officers from former State President's and Vice President's residences. This is dated 17th February 2005 and reads as follows:-

> *"My wireless message of reference number C/1/2 dated 3/2/05 and 4/02/05 respectively. It is directed with immediate effect that all police officers who are on transfer from State President and Vice President residences must strictly comply with transfer directives. Those who fail to comply will face serious disciplinary action. Note that all police officers can be detailed at any time to work in any part of Malawi. Treat instructions "very" important and confirm instructions understood by return signal.*
>
> *M. D. Nangwale, PPM*
> *INSPECTOR GENERAL*
> *MALAWI POLICE SERVICE*

The applicant humbly prays to this court that the injunction order be maintained until or pending the determination of the judicial review proceedings. Since the applicant adopted his

affidavit verifying facts relied on in support of application for leave to apply for judicial review, the same is quoted hereunder as follows:-

I, **DR BAKILI MULUZI,** the former President of the Republic of Malawi, of BCA Residence, Limbe, in the said Republic **make oath** and **say** as follows:-

1. ***THAT*** *I am the Applicant herein.*

2. ***THAT*** *I am the former President of the Republic of Malawi having held that office for a period of 10 years from 1994 to 2004.*

3. ***THAT*** *as a retired President of the Republic of Malawi I am entitled to be provided with six security guards and one personal bodyguard in accordance with the privileges and benefits accruing to me under the* ***Presidents (Salaries and Benefits)Act No. 26 of 1994*** *("the Act").*

4. ***THAT*** *in terms of the practice the First President of Malawi Dr H. Kamuzu was provided with security guards of his choice at the expense of the State who worked for him until he died in 1997.*

5. ***THAT*** *prior to my vacating the office of the President in May 2004 the Chief of Staff consulted me inter-alia on who, among the members of staff who had worked for me would continue to serve me.*

6. ***THAT*** *in or about May 2004 the then Inspector General of Police Joseph Aironi furnished me with a list of security personnel and I was required to choose from those who were to continue providing me with security.*

7. ***THAT*** *I chose among other personnel, the following as my security personnel: Jamil Mwalabu, as the Guard Commander and Hassan Gavern, Martha Makunganya, Zainabu Beatrice Kawondo as security guards.*

8. ***THAT*** *the said personnel have been serving me until on or about 8th February, 2005 upon my return from Mozambique I learnt from my Guard Commander, Jamil Mwalabu and my other security personnel were being transferred from working with me and that the said Guard Commander was being transferred to Karonga as General Duties Officer.*

*9.* ***THAT*** *on or about 9th February, 2005 I learnt through the Daily Times newspaper that my Guard Commander, his Deputy and a woman inspector who provide security for me and my family had been replaced.*

*10.* ***THAT*** *on or about 9th February, 2005 I further learnt from my said Guard Commander that a lorry was at his house in readiness to transfer him to Karonga but had advised the officers who were to ferry him to Karonga that he had not completed all his arrangements for the transfer.*

*11.* ***THAT*** *on about 11th February 2005 an officer unknown to me came to my residence at 7.30 a.m. and insisted that she enter my residence to provide security services to me as she had been assigned to me which officer I refused entrance into my residence.*

*12.* ***THAT*** *I had written a letter to the President enquiring on the change on my security personnel but have not heard a response from him. There is now exhibited to my affidavit a copy of the said letter marked "BM".*

*13.* ***THAT*** *I legitimately expected the respondent to consult me prior to replacing and/or changing these security officers and in any event to afford me an opportunity to select replacements in accordance with the practice.*

*14.* ***THAT*** *however todate I have not been consulted on the change of my security personnel.*

15. ***THAT*** *I verily believe I have a right to choose people who should provide security for me and my family in accordance with the respondent's previous practice for to do otherwise poses a serious danger to my life.*

16. ***THAT*** *it is only fair and reasonable that the Inspector General of Police should furnish me with a list of security personnel from which I can choose the ones who are to provide me with security and protection if indeed the respondent believes that my security personnel need to be changed for security reasons.*

17. ***THAT*** *I have no confidence and sense of security on any security officers who are imposed on me without my consent.*

18. ***THAT*** *I verily believe that unless restrained by the honourable court the respondent will impose security personnel on me, without my consent or prior approval with the intention of harassing and embarrassing me.*

19. ***THAT*** *the facts and matters stated herein are true to the best of my knowledge and belief.*

The letter which was exhibited pursuant to paragraph 12 is dated 6th February 2005 from Dr Bakili Muluzi to His Excellency Dr Bingu wa Mutharika and reads as follows:

*Your Excellency,*

*It was a pleasure to see you in Maputo and hope you had a safe trip back home.*

*I wish to report that I returned to-day as I had to pass through Johannesburg for two nights.*

*I have taken note of the political development here at home, and whatever decision Your Excellency has decided to take will be respected, although noted with regret, particularly by me personally as somebody who vehemently championed your campaign.*

*Your Excellency should be assured that whatever is the case, our personal relationship will continue for the sake of political stability in this country which is the basis for economic development.*

*Let me take this opportunity to raise two very urgent issues. When I was in Johannesburg, I received information that the police have decided to replace my guard commander and his deputy. They have also decided to replace the woman constable who provided security to the former First Lady.*

*I find this action highly irregular. What is the problem with the police by not wanting to consult on matters like these? The police cannot just post people I do not know at my residence as my personal guards.*

*When the first President, the late Dr Banda retired, he chose the staff he wanted to serve him, and these officers remained with him until he died.*

*Such changes could take place if I complained of some poor performance by some guards, but I have not complained. Therefore, why take this action without even me being informed.*

*I therefore kindly, Your Excellency, request that for the sake of harmony, these guards should be left to work here, and I have every hope that Your Excellency will approve of my request.*

*The second issue is about the funding of the office of the former President. Your Excellency are aware that this office is a constitutional office. I had to leave*

*for Mozambique without funding. My officer stayed in Lilongwe for a week waiting for funding which was never provided. We had to borrow air tickets from Air Malawi.*

*I wish Your Excellency to recall my discussions with you in Zomba where you indicated that you would look into the issue of funding. As I write, the situation has become such that my officers do not know what to do when there is a budget provided for this office.*

*I request, Your Excellency that this matter be looked into as there is a full compliment of Government staff working for me.*

*I should be grateful if Your Excellency would look into these issues.*

*Yours sincerely,,*

*Dr Bakili Muluzi*

The order granting leave to apply for judicial review and giving directions was granted on 11th February 2005 and served on the Attorney General on 14th February 2005. The order is couched as follows:-

***UPON READING*** *the Statement lodged pursuant to Rule 3(2) of Order 53 of the Rules of the Supreme Court*

***AND UPON READING*** *the affidavit of* ***DR BAKILI MULUZI*** *dated the 11th day of February, 2005*

***AND UPON HEARING*** *Mr David Kanyenda, of counsel on behalf of the above mentioned applicant for leave to apply for judicial review for like Orders of Certiorari and costs in respect of the decision made by the respondent*

***IT IS ORDERED*** *that the application be allowed and that the said applicant do have leave to apply for judicial review as aforesaid*

***IT IS ORDERED*** *that an injunction be and is hereby issued requiring the respondent to restore the Guard Commander, Deputy Guard Commander and a Woman Inspector in their respective positions and/or duties at the applicant's BCA Hill residence*

***IT IS ORDERED*** *that an injunction be* ***AND IS HEREBY*** *issued restraining the respondent from replacing, changing or transferring the said security officers at the applicant's BCA Hill Residence without affording him an opportunity to select security personnel*

*The grant of the injunction is subject to the applicant's undertaking to pay damages in the event that the injunction is wrongly granted*

***IT IS ORDERED*** *that the application for judicial review be made by Originating Motion to the Judge in Open Court*

***IT IS FURTHER ORDERED*** *that the hearing of the said motion be expedited*

The Attorney General filed skeletal arguments as well as supplementary skeletal arguments. The applicant also filed skeletal arguments. From the respondent's point of view, the issues for determination are:-

(i) Whether the applicant was entitled to the injunction purported to have been granted.

(ii) Whether the court ought to vacate injunction that it granted on 11th February 2005.

In the first instance, the first issue to be determined should clearly reflect the fact that the applicant was granted both mandatory and prohibitive injunctions. The Attorney General has submitted on the law and I concur with him that a mandatory injunction ought not be granted except in very exceptional circumstances: **Fishenden v Higgs and Hill Ltd** [1935] ALL ER 435. An interlocutory application for mandatory injunction is one of the rarest that has occurred, for the court will not compel a man to do so serious a thing as to undo what he had done except at the hearing: **Gale v Abbot** (1862) 10 WR 748. A mandatory injunction is a jurisdiction to be exercised sparingly and with caution and should not be granted where the issues of facts are strongly contested: **Redland Bricks v Morris** [1969] 2 ALL ER 576. A mandatory injunction can only be granted where the plaintiff shows a very strong probability on the facts that great damage will accrue to him in future. The plaintiff's case has to be "unusually strong and clear" before a mandatory injunction will be granted and in a normal case the court must, inter alia, feel a "high degree of assurance" that at the trial it will appear that the injunction was rightfully granted: **Shepard Homes Ltd v Sandham** [1970] 3 ALL ER 402. The court has to consider whether the defendant has acted without regard to his neighbours, to sum it up, if he has acted wantonly and quite unreasonable in relation to his neighbour that he may be ordered to repair the same by doing some positive work to restore the status quo - **Redland Bricks v Morris** [1969] 2 ALL ER 576.

The overriding consideration is which course is likely to involve the least risk of injustice if it turns out to be wrong in the sense of granting an interlocutory injunction to a party who fails to establish his right at the trial or alternatively in failing to grant an injunction to a party who succeeds at the trial – **Nottingham Building Society vs Eurodynamics Systems** [1993] FSR 468. In considering whether to grant a mandatory injunction, the court must keep in mind that an order which requires a party to take some positive steps at an interlocutory stage, may well carry

a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits, thereby preserving the status quo - **Nottingham Building Society vs Eurodynamics Systems** (ante). It is legitimate where a mandatory injunction is sought to consider whether the court does feel a high degree of assurance that the plaintiff will ultimately establish his right at the trial. That is because the greater the assurance that the plaintiff will ultimately establish his right at the trial the less will be the risk of injustice if the injunction is granted. If the court is unable to feel any higher degree of assurance that the plaintiff will establish his right, there may still be circumstances in which it is appropriate to grant a mandatory injunction at an interlocutory stage. It is appears to the court that the case is one in which withholding a mandatory injunction would in fact carry a greater risk of injustice, even though the court does not feel a high degree of assurance about the plaintiff's chance of establishing his right, there cannot be any basis for withholding the injunction – **Films Rover International v Cannon Film Cell Ltd** [1988] Financial Times, June 10. Where a mandatory order is sought, the court must consider, inter alia, the benefit which the order will confer on the plaintiff and the detriment which it will cause to the defendant. A plaintiff should not be permitted to insist on a form of relief which will confer no appreciable benefit on himself and be materially detrimental to the defendant – **Charrington v Simons & Co Ltd** [1970] 2 ALL ER 257.

As it can be seen from this exposition of the law, granting of an interlocutory mandatory injunction is sparingly done. In this current application, I will consider whether the court was right in granting such a rare order.

The applicant also obtained an interlocutory injunction restraining the respondent from replacing, changing or transferring the said security officers at the applicant's BCA Hill Residence without affording him an opportunity to select security personnel.

The position of the law and practice was clearly stated by Justice Kapanda in the case of **Hon. Brown Mpinganjira and 6 others v The Speaker of the National Assembly and The Attorney General** – Miscellaneous Civil Cause No. 3140 of2001 (High Court – unreported). He stated as follows:-

***Interlocutory injunction: principle 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 the* ***American Cynamid Co vs Ethicon Ltd*** *[1975] A>C 396; [1975] 1 ALL ER 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.*

*( 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 arguments advanced during the hearing, the Attorney General submitted that it is heavily disputed as to whether or not there is a custom or practice to allow former presidents to pick and choose their own security officers. He further submitted that deployment of security officers is an operational task for the Police force. He argued that it is a matter of security and cannot be termed administrative action and would not be within the ambit of Section 43 of the Constitution. This section reads as follows:-

43. *Every person shall have the right to –*

(a) *lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and*

*(b)* *be furnished with reasons in writing for administrative action where his or her rights, freedoms, legitimate expectations or interests if those interests are known.*

The response to this argument by My Kanyenda has been that the applicant has through his affidavit for leave to apply for judicial review clearly demonstrated that from his personal knowledge and experience spanning from 1994 to 2004 a custom or practice existed giving a prerogative to former State President to express views and choice as to personnel to work with him. The applicant gave such details in paragraphs 4 – 7 of his affidavit sworn on 11th February 2005. Mr Kanyenda has submitted that this is a practice which is a decade old and as such

created a legitimate expectation in the applicant that the respondent would adhere and maintain it. Mr Kanyenda has vehemently argued that the applicant was not consulted or afforded an opportunity to select replacement of security guards.

The views of the court are simply that issues of security be it State security or personal security must be viewed seriously and not from a childish or academic point of view where life is full of experiments. It must be observed that the issues relating to security of the president, vice president, former president and former vice president are spelt in an Act of Parliament. This is not an ordinary private law issue as the Attorney General would wish this court to find. Contrary to the views of the Attorney General, this court is of the view that the right to security of former State President would be meaningless if it were to be regarded as an operational police force task. It is a statutory right to the former Head of State, which bestows a corresponding duty on the State to discharge. The logistics thereof may be operational but the principle to have that duty discharged goes beyond logistical considerations. I believe that security issues should not be compromised. I doubt that the Inspector General would just over night change security guards for the President or his vice without alerting them. According to the President's (Salaries and Benefits) Act, 1994 the President, Vice President, former President and former Vice President are in the same category. The argument by the Attorney General that the issue of existence of custom or practice is highly contested is a mere assertion and not backed by any factual evidence. I do not wish to pre-empt issues for judicial review except to add my observations that this issue has raised public interest and comments. Whatever merits or demerits may be there, it must be observed that dictatorial tendency excludes consultation. Obviously democratic values embrace consultation. It would be a pity if the growth of our democracy is impeded or choked.

The next argument of the Attorney General is that the matter before the court does not raise a triable issue. He submitted that this matter concerns a managerial decision thereby excluding it from judicial review. He has relied on the following cases – ***R v Deputy Governor of Camphill Prison*** *[1988] AC 533;* ***R(Tucker) v Director General of the National Crime Squad*** *[2003] I.C.R 599* for the proposition that matters classified purely as managerial decisions are not amenable to judicial review. He has further submitted that courts will not review

operational decisions of the police. Courts will not give orders to the police telling them how and when to exercise police powers in specific situations as courts are not in a position to determine what action a particular situation would require – **R v chief Constable of Devon and Cornwall – *ex parte* Central Electricity Generating Board** [1982] Q.B. 458. Nor will the courts review the dispositions of forces and the allocations of resources to particular crimes or areas – **R v Metropolitan Police Commissioner *ex parte* Blackburn** [1968] 22Q.B. 119. The Attorney General has argued that respecting the wishes of the applicant would derail police operations. The Attorney General alluded to a scenario where the former Head of State may indicate that he wants the Inspector General and/or Deputy Inspector General as his security guards or alternatively where he is given a list of security officers to choose his security guards therefrom but he refuses to choose anyone from that list, would that not interfere with police force operational duties.

The response of Mr Kanyenda is that although these may be matters raising pertinent issues, however, the same are misplaced because the application before this court is not one for setting aside or discharge of order for leave to proceed on judicial review. Mr Kanyenda submitted that the applicant has clearly demonstrated that from his knowledge and experience he had a legitimate expectation of a consultative process on matters pertaining to his security at his residence. He has further submitted that in terms of Sections 41(3), 43 and 46(3) of the Constitution the applicant demonstrated that he has arguable claim of right which he seeks to protect by interlocutory relief because it is threatened by the respondent's actions or proposed actions. Mr Kanyenda has submitted that the applicant has indeed already obtained dater of hearing for the judicial review, which is in less than three weeks ahead. Finally counsel for the applicant has stated that the respondent should not attempt to oust the jurisdiction of the court by terming its decision as management and not administrative.

This court would not wish to claim to be linguistic but suffice to say the distinction between managerial and administrative decision may be a thin razor line. It is the view of this court that overlaps exist between managerial and administrative decision hence each case must be looked at from its peculiar or specific facts in order to arrive at a decision as to whether a dispute would be amenable to judicial review. The decision of this court having considered the

submissions of both parties is that the claim of the applicant raises a triable issue. It is not necessary at this stage to go into detail of that triable issue or to determine its merits on mere affidavit evidence. The view of this court is that such matter would properly be disposed of in judicial review. Like my brother judge in the case of **Hon. Brown Mpinganjira**, I held similar view that regard being had to the fact that leave to apply for judicial review was granted to the applicant and has neither been discharged nor is there an intimation that the respondent intends to apply for discharge of the leave, it is also my view that the applicant had and still has an arguable case in respect of his right which he seeks to protect. It is the opinion of this court that there are triable issues to be considered by the court at the hearing of the substantive application for judicial review.

Finally, the Attorney General has argued that he is a wrong party to these proceedings. The citation of this case shows the Attorney General (Inspector General of the Malawi Police Service) as respondent. Obviously, these are two separate offices. The office of the Attorney General is created under Section 98(1) of the Constitution while that of Inspector General is created under Section 154(1) of the same Constitution. It is now settled position in this court that judicial review proceedings are not legal suits and are not caught by the provisions of the Civil Procedure (suits by or against Government or Public Officers) Act – Cap 6:01. In judicial review proceedings, an injunction order would be made against Government (Ministers) and its servants (employees acting in the course of duty) whether performing public functions or *quasi-judicial* functions. The applicant has argued that he had choice to sue the Inspector General of Police or Government as far as the Inspector General was acting as an agent or servant of Government. Further, the citation includes the Inspector General of Police. He further argued that notwithstanding that the Attorney General has featured prominently in this matter no prejudice has been occasioned to Inspector General of Police.

The views of this court are that it was not proper to make the Attorney General a prominent party to these proceedings. It may be a brilliant argument that the Inspector General was acting as an agent or servant of Government, hence the proceedings against the Attorney General. This court insists that the applicant should have sued the Inspector General of Police and not the Attorney General. However, there was no prejudice caused to the Attorney General.

Clearly from the Affidavit In Support of this Application, the Attorney General in paragraphs 1 – 7 was not misled about the nature of issues before this court. It will be seen that this issue only arose during the submissions and does not appear anywhere in the affidavit and written skeletal arguments. The view of this court is that such a surprise is untraditional characteristic of civil proceedings. I discharge the Attorney General as respondent. At the same time, I order that all documents in these proceedings should be served on the Inspector General since the documents clearly already endorsed that office. It will be up to the Inspector General of Police to appear and defend the proceedings or give instructions to the Attorney General to defend the judicial review proceedings.

**CONCLUSION**

The mandatory injunction order was properly granted by the judge in view of the seriousness of security rights for the former Head of State. Indeed such issues are very rarely brought into public contention.

Secondly, the prohibitive interlocutory injunction was properly granted because there is a triable issue and need to protect and preserve the rights of the parties before judicial review.

It is the humble view of this court that both the mandatory and prohibitive interlocutory injunction orders shall continue pending the determination of the judicial review proceedings or further order of the court.

The issue of costs is discretionary and my view is that this has been a balanced legal tussle and I order that each party shall meet its own costs for this application.

**MADE** in chambers this Friday 4th day of March, 2005 at Blantyre.

Chimasula Phiri

**JUDGE**