



**JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 192 OF 2022**

BETWEEN

HON. WELANI CHILENGA MP 1ST CLAIMANT
HON. MARK BOTOMANI MP 2ND CLAIMANT
HON. NICHOLAS DAUSI MP 3RD CLAIMANT
HON. RALPH JOOMA MP 4TH CLAIMANT
HON. SAMEER SULEMAN MP 5TH CLAIMANT
HON. ISHMAEL GRANT MP 6TH CLAIMANT
HON. YUSUF NTHENDA MP 7TH CLAIMANT
HON. ESTHER MAJAZA MP 8TH CLAIMANT
HON. SANTIGO PHIRI MP 9TH CLAIMANT
HON. BESTER AWALI MP 10TH CLAIMANT
HON. GETRUDE NANKHUMWA MP 11TH CLAIMANT
HON. DR SUSUWELE BANDA MP 12TH CLAIMANT
HON. DR. MATHEWS NGWALE MP 13TH CLAIMANT
HON. GEORGE MILLION MP 14TH CLAIMANT
HON. RAYMOND NKHATA MP 15TH CLAIMANT
HON. CHIONE MWASE MP 16TH CLAIMANT
HON. JOYCE CHITSULO MP 17TH CLAIMANT
HON. REUBEN KANYAMA MP 18TH CLAIMANT
HON. FRANCIS PHISO MP 19TH CLAIMANT

HON. NOEL LIPIPA MP 20TH CLAIMANT
HON. DENIS NAMACHEKACHEKA MP 21ST CLAIMANT
HON. SANDRAM SCOTT MP 22ND CLAIMANT
HON. KONDWANI NANKHUMWA MP 23RD CLAIMANT

AND

HON. DR GEORGE CHAPONDA MP 1ST DEFENDANT
THE DEMOCRATIC PROGRESSIVE PARTY 2ND DEFENDANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Kita, Counsel for the 1st to 22nd Claimants

Messrs. Chidothe and Chipeta, Counsel for the 23rd Claimant

Mr. Sikwese, Counsel for the Defendants

Mr. Henry Kachingwe, Court Clerk

RULING

Kenyatta Nyirenda, J.

Introduction

1. This is this Court's Ruling on three applications. The first application was brought by the 1st to 22nd Claimants (the 1st Application). The second application was made by the Defendants (the 2nd Application). The 23rd Claimant made the third Application (the 3rd Application).

The 1st Application

2. On 28th June 2022, the 1st to 22nd Claimants filed with Court a without notice application for an order of interlocutory injunction restraining the 1st Defendant from acting as Leader of Opposition and the 2nd Defendant from implementing its decision of electing the 1st Defendant as Leader of Opposition until the final determination of this matter. The 1st Application is brought under Order 10, rule 27, of the Courts (High Court) (Civil Procedure) Rules, 2017 [Hereinafter referred to as the "CPR"].

3. The reason for seeking an urgent relief was stated as follows:

“... the order of Injunction being sought herein is extremely urgent as the Business Committee of Parliament, which includes the office of the Leader of Opposition is set to meet on Wednesday the 29th of June, 2022 to deliberate the business of the forthcoming session of parliament set to begin in July, 2022 and ending in August, 2022. Hence the order of injunction being sought herein to restrain the 1st Defendant from acting as new Leader of Opposition and the 2nd Defendant from implementing its impugned decision of electing the 1st Defendant as new Leader of Opposition is extremely urgent in order to maintain the status quo of the Leader of Opposition that was duly elected by the Claimants in the exercise of their constitutional political rights.”

4. The 1st Application was accompanied by a statement jointly sworn by the 1st Claimant and the 2nd Claimant. The sworn statement is reproduced in full:

- “1. **THAT** together with the rest of the Claimants, we are Democratic Progressive Party Members of Parliament of the National Assembly of the Republic of Malawi.
2. **THAT** Democratic Progressive Party is the largest opposition Party in Parliament and as such has the right to elect a Leader of Opposition in Parliament in accordance with Standing Order 35(1) of the Parliament of Malawi Standing Orders. We attach and exhibit a copy of the relevant page of the Standing Order in issue marked **RM 1**.
3. **THAT** in the year 2020 after the re-election which led to the Democratic Progressive Party (hereinafter referred to as **DPP**) being a Party not in Government and having the greatest numerical strength in Parliament, the Claimants did participate in the election of the Leader of Opposition, an election which took place in Room 251 of the Parliament Building.
4. **THAT** Hon. Kondwani Nankhumwa emerged the winner after beating other contestants, being Hon. Katsaila and Hon. Msaka. He was thus duly elected as Leader of Opposition in the exercise of our constitutional right to vote him into an elective office and was recognized by the Speaker as such in accordance with the Standing Order 35(1).
5. **THAT** from the above, it is clear that the as the Claimants we have a right to participate in the voting of Leader of Opposition at any time as long as the DPP remains the largest opposition Party in Parliament.
6. **THAT** on the 26th of June, 2026, we were shocked to learn through a Press Release issued by the Administrative Secretary of the 2nd Defendant, Mr Francis Mphepo that the 2nd Defendant held a meeting on the said 26th of June, 2022 whereby it removed Hon. Kondwani Nankhumwa as Leader of Opposition and was replaced with Hon. George Chaponda. We attach and exhibit a copy of the said Press Statement marked **RM 2**.
7. **THAT** as voters in such an election, we were never informed by the 2nd Defendant that there would be such process of removal and election of another Leader of Opposition within the Party.

8. **THAT** under Article 10(10)(a) of the DPP Constitution, it is the National Governing Council which has the powers to direct Party affairs between National Political Conferences. I attach and exhibit a copy of the DPP Constitution marked RM 3.
9. **THAT** granted that electing a Leader of Opposition is considered as a Party affair under Standing Order 35 of the Parliament of Malawi Standing Orders, it is the Secretary General of the DPP Party who under Article 10(13) of the DPP Constitution has the authority upon consultation with the President to call that would lead to a deliberation of party affairs such as the election or removal of Leader of Opposition.
10. **THAT** we have inquired from the Secretary General of the Party, Ms Greselder Jeffrey and she has told us that she never by herself or in consultation with the President of the Party called for such a meeting of the Party to discuss the Leader of Opposition position, leading to the removal of the incumbent and appointment of the 1st Defendant.
11. **THAT** in any event, going by the precedent that was created in the year 2020, such an election takes place within the precincts of Parliament and when Parliament is in session and not at a Party member's house elsewhere.
12. **THAT** we do not know of any cause that led to the removal of our elected Leader of Opposition and to the appointment of the 1st Defendant in his place as per the 2nd Defendant's Press Statement of 26th of June, 2022, Exhibit RM 2.
13. **THAT** conduct of the Defendants thus has de-enfranchised us of our right to participate in a political activity of our political party. The Defendants are guilty of violating our constitutional human right as enshrined in Section 40(1)(a) of the Constitution of the Republic of Malawi.
14. **THAT** the conduct of the Defendant has also de-enfranchised us of our right to vote for any person standing for an elective office of the Leader of Opposition. The Defendants have thus violated our right as enshrined in Section 40(3) of the Constitution of the Republic of Malawi.
15. **THAT** it is against this background, in the pursuit of protection of our constitutional rights that we seek an order of injunction restraining the 1st Defendant from acting as Leader of Opposition which he has assumed in violation of our political rights perpetrated by the 2nd Defendant.
16. **THAT** damages would not be an adequate remedy to compensate us for violation of constitutional political rights.
17. **THAT** we further undertake to pay damages should it turn out that the order of injunction being sought herein is wrong in law.
18. **THAT** we have in the within matter, commenced our main action, challenging the legality of the decision of the 2nd Defendant that favours the 1st Defendant and asking the Court to nullify the same.

AUTHORISING STATEMENT

THAT *we understand that this sworn statement shall be used in a proceeding and we shall be liable to a substantial penalty for perjury should we state in it anything we know to be false.*

WHEREFORE, *we humbly pray to the Honourable Court for the grant of an order of injunction, restraining the 1st Defendant from acting as Leader of Opposition and from the 2nd Defendant from recognizing or implementing its decision of electing/appointing the 1st Defendant as Leader of Opposition until a further order of this Court or until the final determination of the matter.”*

5. The 1st Application was also supported by skeleton arguments and the same will be discussed in due course

6. The 1st application came before me on 28th June 2022. Having considered the 1st Application, I was satisfied that a good case had been made out for the grant of an order of interlocutory injunction. Accordingly, I granted the order of interlocutory injunction subject to an inter-partes hearing on 7th July 2022.

7. I pause to observe that, contrary to wild assertions made by those people who are not well versed in matters of law but claim to know anything and everything under the sun about the law, courts are empowered to grant orders on a without notice basis in appropriate cases. I think there may be some truth, after all, in the saying that a majority of ignorant people have the propensity of unashamedly parading their ignorance.

8. Anyhow, the fact of the matter is that the principles to be applied in applications for interlocutory injunction have all along, starting from the English case of **American Cyanamide Co. v. Ethicon Limited [1975] AC 396**, been deliberately made to be not inflexible. The principles should be read in the context that the discretion of the Court in deciding whether to grant an order of interlocutory injunction should not be fettered by laying down any rules which would have the effect of limiting the flexibility of the remedy of an order of interlocutory injunction. As was aptly put by Lord Goff of Chieveley in **R v. Secretary of State for Transport, Ex-parte Factortame Ltd & Others (No.2) (1991) 1 A.C. 603** at 671:

*“Guidelines for the exercise of the court’s jurisdiction to grant interim injunctions were laid down in the **American Cyanamid Co. v. Ethicon Ltd [1975] A.C. 396** in the speech of Lord Diplock in that case, with which the remainder of their Lordships concurred. The words “guidelines” is used advisedly, because I do not read Lord Diplock’s speech as intending to fetter the broad discretion conferred on courts. On the contrary, a prime purpose of the guidelines established in the Cyanamid case was to remove a fetter which*

appeared to have been imposed in certain previous cases...” - Emphasis by underlining

9. As a matter of fact, Order 10, rule 30, of the CPR expressly allows parties seeking urgent relief to make applications to that effect. Rule 30 states:

“Where a party seeks an urgent relief, the party shall _

(a) state the urgent relief: and

(b) inform the Court, that the party is seeking an urgent relief.”

The 2nd Application

10. By this application which was filed with the Court on 15th July 2022, the Defendants seek to have the order of interlocutory injunction that was granted to the 1st to the 22nd Claimants discharged on the grounds that the said order was obtained based on perjury and on suppression of material facts.

11. The 2nd Application is supported by four statements sworn by four deponents, namely, the 1st Defendant, Hon. Chimwemwe Chipungu, Hon. Dennis Buscuit Namachekecha and Hon. Noel Lipipa respectively.

12. The Sworn Statement by the 1st Defendant will be quoted in full:

“2. That I am the above named 1st Defendant and a Member of Parliament elected on the ticket of the Democratic Progressive Party, the 2nd Defendant and by reason thereof I have authority to make this Sworn Statement on my own behalf and on behalf of the 2nd Defendant herein.

*3. That the matters of fact deponed to herein are from my personal knowledge and also from information received from **Hon. Chimwemwe Chipungu, MP, Hon. Noel Lipipa MP, Hon. Sandram Scott MP and Hon Denis Namachekecha MP**, and I verily believe the same to be true to the best of my knowledge.*

*4. That I have read the joint Sworn Statement of **Hon. Werani Chilenga and Hon Mark Botomani**, in support of the Application for an Interlocutory Injunction granted herein.*

5. That it is true that on 26th June 2022 His Excellency Professor Arthur Peter Mutharika, President of the 2nd Defendant convened a caucus with Members of Parliament for the 2nd Defendant held at Page House in Mangochi.

6. *That at the said caucus a total of 29 Members of Parliament who were voted on the 2nd Defendant's ticket attended the caucus while 8 sent their apologies.*
7. *That the 29 members present at the Caucus duly formed the quorum of 50% plus 1 out of the 54 the Members of Parliament who stood and got elected on the ticket of the 2nd Defendant.*
8. *That the Members of Parliament in attendance at the caucus asked the President of the 2nd Defendant to invoke Standing Order 36 of the Standing Orders of the National Assembly and unanimously voted to remove Hon Kondwani Nankhumwa from the position of Leader of Opposition as the general feeling of the people of Malawi is that the 2nd Defendant has grossly failed Malawians in its role as an opposition party under the leadership of Hon Kondwani Nankhumwa in the National Assembly.*
9. *That the Members of Parliament further unanimously voted for me to be the new Leader of Opposition. The 2nd Defendant's President duly communicated the decision to the Speaker and the Speaker accepted the decision and duly invited me to attend the Business Committee on 29th June, 2022. I exhibit hereto copies of the Letter dated 26th June 2022 from the 2nd Defendant President addressed to the Speaker, and the Letter from the Speaker inviting me to the Business Committee, attached hereto and marked "GTC 1" and "GTC 2".*
10. *That having read the Sworn Statement of Hon Werani Chilenga and Hon Mark Botomani, I am now informed by Hon Noel Lipipa MP (the purported 20th Claimant), Hon Denis Namachekecha Phiri MP, the purported 21st Claimant and Hon Sandram Scott MP, the purported 22nd Claimant, that these were not consulted and they did not consent to join the Claimants' case and the application for an injunction herein.*
11. *That I repeat paragraph 10 above and believe that the deponents of the Sworn Statement in support of the Application for Injunction herein lied under oath to this Honourable Court and therefore committed perjury and the material upon which this Honourable Court founded the Injunction herein are tainted with criminality.*
12. *That I am also aware that seven of the purported Claimants namely Hon Ishamel Grant MP, the purported 6th Claimant, Hon Getrude Nankhumwa MP, the purported 11th Claimant, Hon Dr Susuwele Banda MP, the purported 12th Claimant, Hon Dr Mathews Ngwale MP, the purported 13th Claimant, Hon George Million MP, the purported 14th Claimant, Hon Reuben Kanyama MP, the purported 18th Claimant and Hon Sandram Scott MP, the purported 22nd Claimant, were all elected as Independent Members of Parliament, and therefore have no right to complain about the election of Leader of Opposition for the 2nd Defendant.*
13. *That I believe that under and by virtue of Standing Orders 35 (1) and 36 of the Standing Orders of the national Assembly, the right and power to elect and remove a Leader of Opposition is vested in the Political Party not in Government but with the numerical strength in the opposition.*

14. *That I further believe that I was lawfully elected to the position of Leader of Opposition by the majority of more than 50% plus 1 of the Members of Parliament for the 2nd Defendant and even if the Claimants were to vote against me, I would still have been elected as Leader of Opposition.*
15. *In the foregoing premises the Claimants relied on perjury and grossly suppressed material facts and thereby misled this Honourable Court to grant the Claimants the Order of Interlocutory Injunction herein.*
16. *That by reason of the matters aforesaid I verily believe that the Order of Interlocutory Injunction granted to the Claimants has no legal basis as the said Order was granted upon the Claimants' reliance on criminality in form of perjury and also by suppressing the above material facts to mislead this Honourable Court."*

13. Hon. Chimwemwe Chipungu deposes that he is the National Organising Secretary of the 2nd Defendant and a Member of Parliament elected on the ticket of the 2nd Defendant. He gives his account of the meeting that the President of the 2nd Defendant convened on 26th June 2022 with Members of Parliament elected on the ticket of the 2nd Defendant as follows:

- "6. *That on 23rd June 2022, His Excellency Professor Arthur Mutharika tasked me as National Organising Secretary as Member of Parliament aforesaid to invite Members of Parliament for the 2nd Defendant to a caucus at Page House to be held on 26th June, 2022 and I made all efforts to make personal calls to Members of Parliament as directed, but some Members of Parliament were unreachable.*
7. *That by the evening of 25th June 2022, I managed to reach 36 Members of Parliament who were elected on the 2nd Defendant's ticket.*
8. *That on 26th June, 2022 29 Members of Parliament who were elected on the 2nd Defendant's ticket turned up for the caucus while 8 sent their apologies for various reasons.*
9. *That the 29 Members of Parliament who turned up duly formed a quorum of 50% plus 1 out of the total of 54 Members of Parliament who were elected on the 2nd Defendant's ticket. I hereby hereto the Attendance List marked as **Exhibit "CM"**.*
10. *That during the caucus the Members for Parliament in attendance asked the President of the 2nd Defendant to invoke Standing Order 36 of the Standing Orders of the National Assembly to remove Hon. Kondwani Nankhumwa MP from the position of Leader of Opposition as they felt that the 2nd Defendant has grossly failed Malawians in its role as the largest party in opposition under the leadership of Hon. Kondwani Nankhumwa MP. and the Members of Parliament thereby unanimously voted to remove Hon. Kondwani Nankhumwa MP as Leader of Opposition.*

11. *That the Members of Parliament further unanimously voted for Hon. Dr George Thapatula Chaponda MP to be the new Leader of opposition.*
12. *That having read the Sworn Statement of Hon Werani Chilenga MP and Hon Mark Botomani MP about the list of Claimants herein, I am now informed by Hon Noel Lipipa MP (the purported 20th Claimant), Hon Denis Namachekecha Phiri MP, the purported 21st Claimant and Hon Sandram Scott MP, the purported 22nd Claimant, that these were not consulted and they did not consent to join the Claimants' case and the application for an injunction herein.*
13. *That I repeat paragraph 12 above and believe that the deponents of the Sworn Statement in support of the Application for Injunction herein lied under oath to this Honourable Court and therefore committed perjury and the material upon which this Honourable Court founded the Injunction herein are tainted with criminality.*
14. *That I am also aware that seven of the purported Claimants namely Hon Ishamel Grant MP, the purported 6th Claimant, Hon Getrude Nankhumwa MP, the purported 11th Claimant, Hon Dr Susuwele Banda MP, the purported 12th Claimant, Hon Dr Mathews Ngwale MP, the purported 13th Claimant, Hon George Million MP, the purported 14th Claimant, Hon Reuben Kanyama MP, the purported 18th Claimant and Hon Sandram Scott MP, the purported 22nd Claimant, were all elected as Independent Members of Parliament, and therefore have no right to complain about the election of Leader of Opposition for the 2nd Defendant.*
15. *That I believe that under and by virtue of Standing Orders 35 (1) and 36 of the Standing Orders of the national Assembly, the right and power to elect and remove a Leader of Opposition is vested in the Political Party not in Government but with the numerical strength in the opposition.*
16. *That I further believe that Hon. George Chaponda was lawfully elected to the position of Leader of Opposition by the majority of more than 50% plus 1 of the Members of Parliament for the 2nd Defendant and even if the Claimants were to vote against Hon. George Chaponda MP, he would still have been elected as Leader of Opposition.*
17. *In the foregoing premises the Claimants relied on perjury and grossly suppressed material facts and thereby misled this Honourable Court to grant the Claimants the Order of Interlocutory Injunction herein.*
18. *That by reason of the matters aforesaid I verily believe that the Order of Interlocutory Injunction granted to the Claimants has no legal basis as the said Order was granted upon the Claimants' reliance on criminality in form of perjury and also by suppressing the above material facts to mislead this Honourable Court."*

14. The sworn statements by Hon. Dennis Buscuit Namachekecha and Hon. Noel Lipipa are to the effect that their names were included as Claimants in these proceedings without their respective knowledge, consent and authority.

15. The 2nd Application was also supported by skeleton arguments and the same will be discussed in due course.

16. The 2nd Application was placed before me on 1st July 2022 and I ordered it to come by way of Notice on 25th July 2022.

Sworn Statement in Reply

17. The 1st to the 19th Claimants filed a sworn statement in reply to the sworn statements in support of the 2nd Application. The sworn statement in reply will be quoted in extenso:

- “2. ***THAT the Statement of facts which we depone to herein are based on our personal knowledge as well as on information that we shared on Whatsapp groups known as DPP MPs 2019 – 2025 and KN DPP.***
3. ***THAT we have read the Sworn statements in support of the application for discharge of injunction which have also been adopted as in opposition to the application for continuation of the injunction and we would like to respond as follows:***

REPLY TO THE SWORN STATEMENT OF HON. CHIMWEMWE CHIPUNGU

4. ***THAT we refer to paragraph 5 of the Sworn Statement of Hon. Chimwemwe Chipungu and aver that the truth of the matter is that the so called caucus that was convened by His Excellency Professor Arthur Peter Mutharika at his Page House in Mangochi on the 26th of June, 2022 was with some and not all Members of Parliament of the 2nd Defendant.***
5. ***THAT we refer to paragraph 6 of the Sworn Statement of Hon. Chimwemwe Chipungu and aver that there is no such position as National Organising Secretary as Member of Parliament vested with any task of calling for a meeting of Members of Parliament.***
6. ***THAT we refer to paragraph 6 of the Sworn Statement of Hon. Chimwemwe Chipungu and dispute that he ever made any effort to make personal calls to any of us and that none of us was unreachable as he puts it.***
7. ***THAT we aver that other than the Leader of Opposition, the 2nd Defendant Party also has other Leaders such as the Party Whip and Leader of Backbenchers.***

8. *THAT all Parliamentary caucuses for the 2nd Defendant Party are called and/or convened by either the Leader of Opposition in consultation with the Office of the Party Whip and Leader of Backbenchers.*
9. *THAT we repeat the contents of the foregoing paragraphs and state that if indeed the Party President wanted to meet Members of Parliament, he would have consulted the Leadership of the Party in Parliament and not Hon. Chimwemwe Chipungu as was the case in the instant case.*
10. ***THAT*** *we repeat the contents of paragraph 6 hereof and state that all Members of Parliament who were elected on the 2nd Defendant's ticket and also independence in the May, 2019 General Elections, but affiliated to the 2nd Defendant Party are on one WhatsApp group called 'DPP MPs 2019-2025'.*
11. ***THAT*** *on or about the 25th day of June, 2022 the 10th Claimant wrote on the said DPP MPs 2019-2025 WhatsApp group that he heard some members had been called to attend a meeting at Page House (the Party President's private home in Mangochi) and he wondered if that meeting was for DPP MPs or a faction.*
12. ***THAT*** *we repeat the contents of paragraph 8 hereof and state that the first to respond to the 10th Claimant's question was Honourable Joseph Nomale, an independent Member of Parliament but affiliated to the 2nd Defendant Party, who also proposed the name of the 1st defendant as Leader of Opposition, and he said thus:*

'I think akuyitana in phases. Ine akuti ndipite Tuesday'.
13. ***THAT*** *later Honourable Victor Musowa, the Leader of Backbenchers in Parliament said that the 10th Claimant had asked a pertinent question and he promised that he would hunt an answer for him. We attach and exhibit a copy of the said Whatsapp Screenshot on the said group on the evening of the 25th day of June, 2022 marked 'MPs' 1.*
14. ***THAT*** *we refer to paragraph 7 of the Sworn Statement of Hon. Chimwemwe Chipungu and aver that the truth of the matter is that he chose who to call to attend the said meeting and it is only those whom he chose to call that attended the said meeting or gave apologies.*
15. ***THAT*** *if indeed Hon. Chimwemwe Chipungu had intentions of inviting all the 73 Members of Parliament to the said Caucus it would have been easier and cheaper for him to post the invitation on the said group where all the Members are participants.*
16. ***THAT*** *we refer to paragraphs 8 and 9 of Hon. Chimwemwe Chipungu Sworn Statement and state that according to the Attendance List exhibited in his sworn statement as CM, the Members of Parliament who responded to the call and actually attend the caucus were 28 Members who were elected on the 2nd*

Defendant's ticket and 5 Independent members and, therefore, a total of 33 and not 34 as alleged by the said Hon. Chimwemwe Chipungu. According to the Attendance List exhibited as Exhibit CM, such members are:

MEMBERS ELECTED ON 2ND DEFENDANT'S TICKET

- a. *Hon. Bright Msaka;*
- b. *Hon. Chimwemwe Chipungu;*
- c. *Hon. Vuwa Kaunda;*
- d. *Hon. Lonnie Chijere Chirwa;*
- e. *Hon. Victor Musowa;*
- f. *Hon. George Chaponda;*
- g. *Shadric Namalomba;*
- h. *Hon. Joseph Mwanamveka;*
- i. *Hon. Gladys Ganda;*
- j. *Hon. Ben Phiri;*
- k. *Hon. Thoko Tembo;*
- l. *Hon. Daud Chikwanje;*
- m. *Hon. Martha Ngwira;*
- n. *Hon. Charles Mchacha;*
- o. *Hon. Bertha Ndebere;*
- p. *Hon. Benedicto Chombo;*
- q. *Hon. Chifundo Makande;*
- r. *Hon. Kennedy Kachingwe;*
- s. *Hon. Malume Bokosi;*
- t. *Hon. Daud Chida;*
- u. *Hon. Francesca Masamba;*
- v. *Hon. Susan Ndalama;*
- w. *Hon. McTimes Malowa;*
- x. *Hon. Fyness Mwagonjwa;*

- y. *Hon. Chipiliro Mpinganjira;*
- z. *Hon. Naomi Kilekwa;*
- aa. *Hon. Mary Mpanga; and,*
- bb. *Hon. Damson Chimalira*

INDEPENDENT MEMBERS

- a. *Hon. Joseph Nomale;*
- b. *Hon. Robert Mwina;*
- c. *Hon. Patrick Matola;*
- d. *Hon. Mavuto Bokosi; and,*
- e. *Hon. Orphan Shaba*

- 17. ***THAT*** the 2nd Defendant Party is supported by 73 Members of Parliament and for reasons best known to him, Hon. Chimwemwe Chipungu decided to call only the ones whose names are written on exhibit CM in his sworn statement.
- 18. ***THAT*** in fact, even Hon. Joseph Nomale who moved a motion to have Hon. Kondwani Nankhumwa removed as a Leader of Opposition is not a DPP ticket elected MP.
- 19. ***THAT*** we refer to paragraph 9 of Hon. Chimwemwe Chipungu Sworn Statement and aver that there is no basis of holding that 50% plus 1 meant that a quorum was formed. This remains the deponent's own subjective view, not supported by any agreed rules as to formation of the quorum when it comes to transacting the business of the 2nd Defendant.
- 20. ***THAT*** in fact this is where the 2nd Defendant got it all constitutionally wrong, that just because he could invite slightly above half of the 2nd Defendant's Members of Parliament, then it formed a quorum that could de-enfranchise us of our right to take part in the activities of a political party.
- 21. ***THAT*** as Members of Parliament belonging to the Party not in Government having the greatest numerical strength, the Standing Orders of Parliament which have been promulgated under Section 56(1) of the Constitution of the Republic of Malawi have bestowed on us the right to vote for the Leader of Opposition.
- 22. ***THAT*** this right to vote and take part in the activities of a political party of our choice is our political birthright as enshrined in Section 40 of the Republic of Malawi.
- 23. ***THAT*** this right cannot be taken away from us by the machinations of Hon. Chimwemwe Chipungu by inviting only those he wanted to invite excluding us, to a

meeting which he ought to have known was going to transact parliamentary affairs of the Party.

24. **THAT** *if the said Hon. Chimwemwe Chipungu did not know the agenda of this meeting, then it makes the Defendant's case worse as to how they could call for a meeting with an unknown agenda item to its invitees.*
25. **THAT** *we refer to paragraph 10 of Hon. Chimwemwe Chipungu Sworn Statement and aver that it was very much out of order for the caucus to allow motion to remove Hon. Kondwani Nankhumwa as Leader of Opposition when they had deliberately excluded us who had taken part in his election.*
26. **THAT** *similarly, it was very much out of order for the 2nd Defendant's caucus to agree to elect a new Leader of Opposition without our say when we are the ones who have the right to elect for such a Leader of Opposition in Parliament where he is supposed to lead us.*
27. **THAT** *it was actually wrong for any member to ask the President of the Party, who is not a Member of Parliament to invoke Order 36 or any Order of the Parliamentary Standing Orders.*
28. **THAT** *I repeat the contents of paragraph 21 hereof and state that Hon. Chimwemwe Chipungu should have known or ought to have known that Parliamentary Standing Orders were put in place to regulate what happens in Parliament and not to the Party outside Parliament.*
29. **THAT** *it is against this background that we have sought in the main action to this matter:*
 - (a) *A declaration that the manner that the Defendant conducted themselves in the removal and election of a new Leader of Opposition, they have violated the Claimants constitutional political rights as contained in Section 40(1)(a) and Section 40(3) of the Constitution of the Republic of Malawi*
 - (b) *A declaration that the said election by the 2nd Defendant was null and void*
 - (c) *An order setting aside the appointment of the 1st Defendant as Leader of Opposition*
30. **THAT** *as voters for the office of the Leader of Opposition, neither do we share the 2nd Defendant's so called caucus reason for removal of Hon. Kondwani Nankhumwa as Leader of Opposition, to wit, that the 2nd Defendant has grossly failed Malawians in its role as the largest party in opposition under the leadership of Hon. Kondwani Nankhumwa.*
31. **THAT** *it is a notorious fact that it is not Hon. Kondwani Nankhumwa who is the leader of the 2nd Defendant. Thus if the argument by the 2nd Defendant is that it has failed Malawians as the largest party in opposition due to its leadership, then the person to be removed to that effect is the President of the Party if the solution lies in*

removing the leadership of the Party. The removal of the Leader of Opposition in Parliament on that score is therefore, misplaced.

32. **THAT** we refer to paragraph 11 of Hon. Chimwemwe Chipungu Sworn Statement and aver that there is no evidence that a vote was conducted and that the members present unanimously voted for the 1st Defendant as the new Leader of Opposition. For all we know is that the caucus may have simply appointed the 1st Defendant as such when the Standing Order 35(1) requires that there be an election convened.
33. **THAT** we refer to paragraphs 12 and 13 of the Sworn Statement of Hon. Chimwemwe Chipungu and aver that the issues of the named Members of Parliament having not consented to join the case shall be dealt with when dealing with the Sworn Statements of the said Members of Parliament since they remain hearsay to the Deponent.
34. **THAT** we refer to paragraph 14 of the Sworn Statement of Hon. Chimwemwe Chipungu and aver that whilst it is true that the 7 mentioned Members of Parliament were elected as Independents, it is also true that they affiliated themselves to the 2nd Defendant after their election and have to all intents and purposes taken part in the activities of the 2nd Defendant as its Members of Parliament.
35. **THAT** the said 7 mentioned Members of Parliament also took part in the election of Hon. Kondwani Nankhumwa together with rest of the Members of Parliament for the 2nd Defendant including those who attended the Page House caucus of the 26th of June, 2022.
36. **THAT** no objection was raised by the 2nd Defendant or any of its Members of Parliament to have the singled out 7 members participate in the voting of the Leader of Opposition then.
37. **THAT** what is good for the goose is good for the gander. It is paradoxical for the 2nd Defendant to need the Claimants' numbers only when its for its vested interest and throw us under the bus when our numbers will work against what their unconstitutional desires.
38. **THAT** the Defendants are also shooting themselves in the foot with this argument because even for those who attended the 26th of June, 2022 Page House meeting as per Exhibit CM, not all of them are Members of Parliament that were elected on the DPP ticket. These include:
 - a. Hon. Joseph Nomale;
 - b. Hon. Robert Mwina;
 - c. Hon. Patrick Matola;
 - d. Hon. Mavuto Bokosi; and,
 - e. Hon. Orphan Shaba

39. *THAT in any event, the basis of the injunction herein holds, even if it was just 1 Member of Parliament elected on DPP ticket applying for it because as long as he or she would be able to show that he or she was inequitably excluded from the 26th of June, 2022 Page house meeting, he or she has the right to challenge whatever transpired at the said meeting in so far as it had to do with the removal and alleged election of a new Leader of Opposition. In other words, the numbers do not really matter much to defeat the order of injunction herein since the right to vote for the Leader of Opposition is vested in the individual Member of Parliament belonging to the largest opposition party not in Government and not to the Members of Parliament as group.*
40. *THAT it was just convenient that the Claimants were able to come together under a common denominator of not having been invited to the 26th of June, 2022 Page House Meeting and agreed to pursue the application for the injunction and the action herein as a group with a common interest.*
41. *THAT to that end, we aver that there was no suppression of material facts and if any facts were suppressed, the same were not material to the grant or refusal of the injunction.*
42. *THAT we refer to paragraph 15 of the Sworn Statement of Hon. Chimwemwe Chipungu and agree with him on his belief of what Standing Order 35(1) and 36 of the Standing Orders say but disagree with him that what happened at Page House on the 26th of June, 2022 was in accordance with the said Standing Orders for the reason that we were wrongly d- enfranchised of our right to vote.*
43. *THAT we refer to paragraph 16 of Honourable Chimwemwe Chipungu's Sworn Statement and for the reasons stated above, disagree that the 1st Defendant was lawfully elected as Leader of Opposition. The Defendants are deliberately ignoring to answer the question whether Hon. Kondwani Nankhumwa whom we had voted for as Leader of Opposition was lawfully removed as such.*
44. *THAT we maintain that there was no valid reason for his removal in the first place. Thus it is not about whether if we had attended, our attendance would have overcome the result of the election. The violation of our right to vote is inherent in the mere fact that we were not invited to the meeting and not whether our presence would have had any impact on the result of the vote.*
45. *THAT the above exposes how the Defendants misconducted themselves in calculative manner to favour a particular camp of the 2nd Defendant which is now full of camps fighting for the 2nd Defendant Leadership.*
46. *THAT the Honourable Court should not be party to such underhand moves by the Defendants.*

REPLY TO THE SWORN STATEMENT OF HON. DR. GEORGE CHAPONDA

47. *THAT the Sworn Statement of Hon. Dr. George Chaponda is substantively, paragraph by paragraph a repetition of the Sworn Statement of Hon. Chimwemwe Chipungu and, therefore, all that has been said in respect of the Sworn Statement of Hon. Chimwemwe Chipungu is true in respect of the Sworn Statement of Hon. Dr. George Chaponda and we hereby adopt the same in reply hereto.*

REPLY TO THE SWORN STATEMENT OF HON. NOEL LIPIPA, HON DENNIS BISCUIT NAMACHEKECHA AND HON. SANDRAM SCOTT

48. *THAT we refer to paragraph 5 of Hon. Noel Lipipa, Paragraph 5 of Hon. Dennis Biscuit Namachekecha Phiri and also Paragraph 5 of Hon. Sandram Scott in which they have separately deponed that their inclusion as Claimants to this matter was without their knowledge.*
49. *THAT the above is not true. These three Deponents should not be allowed to feign ignorance or their lack of consent to be part of this case as Claimants.*
50. *THAT there is a Whatsapp Group in existence known as “KN DPP” to which all the Claimants including Hon. Lipipa, Namachekecha and Scott belong to.*
51. *THAT it was on this Whatsapp Group that the decision of commencing court proceedings to challenge the 26th of June, 2022 Page House meeting was made.*
52. *THAT however, the niceties of how that challenge would be framed was left in the hands of Hon Werani Chilenga, Hon. Mark Botomani and Hon. Ralph Jooma to work hand in hand with the lawyer we had chosen to represent us in the case.*
53. *THAT all the members of the group were asked to make contributions towards legal fees and all the three, i.e. Hon. Lipipa, Namachekecha and Scott made their representation on the contributions indicating how they intended to make the contributions.*
54. *THAT the representations made by the said three clearly show that there were part and parcel of the decision to challenge the Page House, 26th of June, 2022 decision. They even contributed to the legal fees for the case. We attach and exhibit copies of what the said trio had written supporting the case marked “MPs 2.”*
55. *THAT this trio cannot now turn around and disown a case which they funded, as doing so is nothing but betrayal of group decision.*
56. *THAT a look at the trio’s representations will clearly show that it is them who have committed perjury before this Court as they have lied that they never had knowledge of their name being included as part of the Claimants to this case when we have shown documentary electronic evidence showing that they funded the case knowing very well that all of us would be the Claimants to the case.*

57. *THAT none of the trio distanced himself at the time the decision was being made to commence the case with all of us being the Claimants and not just a selected few out of the Whatsapp group.*
58. *THAT we therefore pray that the Court should find the said trio to be the one to have committed the offence of perjury before this Court and not Hon. Werani Chilenga and Hon. Mark Botomani who had our full authority to sign for the Sworn Statement in support of the Injunction on our behalf as a group.*
59. *THAT this trio should just have been honest with the Court to tell it that they have been influenced by other parties to change their decision to be part of this case of which they are free to do, but not to go further and make unfounded perjury allegations.*
60. *THAT in any event, even if the trio is removed from this case, as they no longer seem to share the same conviction with the rest of the group members, that would not defeat the injunction since, even a single member of us would still be entitled and justified to apply for and obtain the injunction individually or as part of any number of members of a group.*
61. *THAT it is against this background that we submit that:*
- (a) *There was no suppression of material facts and if there was any suppression, the same was not material to the grant of the order of injunction.*
 - (b) *There was no perjury as the trio was fully aware of the decision to commence the case and actually funded it.”*

Preliminary Objections

18. On 22nd July 2022, the Defendants filed with the Court a “Notice of Preliminary Objection” to the hearing of the 3rd Application on the basis that a similar application by the 23rd Claimant had already been denied by my brother Judge, Justice Mambulasa.

19. The “preliminary objection” was argued before me on 25th July 2022 and it was dismissed for a variety of reasons.

The 3rd Application

20. On 28th June 2022, the 23rd Claimant commenced a civil action in the Principal Registry against the Democratic Progressive Party and Hon. Dr. George Chaponda, being Civil Cause No. 41 of 2022. He also made an application without notice for interlocutory orders which are more or less similar to those in the 1st Application.

21. Having considered the 3rd Application, my brother Judge, Justice Mambulasa, made the following Order (in very neat handwriting):

“The application for an injunction by the Claimant is declined. The reason being that the Claimant has already been reinstated in his position by an Order of Injunction in Civil Cause No. 192 of 2022; High Court; Lilongwe District Registry granted by Justice K. Nyirenda on 28th June, 2022; pending the with notice hearing of the same. I order that this matter be consolidated with Civil Cause No. 192 of 2022 of Lilongwe District Registry and be disposed of by Justice K. Nyirenda.”

22. On 21st July 2022, the 23rd Claimant filed with Court a without notice application for the following orders:

- “(a) An order of interlocutory injunction restraining the 2nd Defendants either by themselves, their servants, agents or howsoever otherwise from implementing or continuing to implement their decisions to remove the 23rd Claimant as Leader of Opposition in the National Assembly and elect the 1st Defendant in his place or recognizing the 1st Defendant as a Leader of Opposition in the National Assembly or stopping or preventing the 23rd Claimant from exercising his powers and functions as a Leader of Opposition in the National Assembly or doing anything with the like effect until the final determination of this matter or a further order of the Court.*
- “(b) An order of interlocutory injunction restraining the 1st Defendant from exercising the powers and functions of Leader of Opposition in the National Assembly or otherwise holding himself out as Leader of Opposition in the National Assembly or doing anything with the like effect until the final determination of this matter or further order of the Court.”*

23. The 3rd Application was supported by the following statement sworn by the 23rd Claimant:

- “3. **THAT** I am a Member of Parliament for Mulanje Central as well as Leader of Opposition in the National Assembly.*
- 4. **THAT** I am a Member of Democratic Progressive Party and its Vice President for the Southern Region.*
- 5. **THAT** by virtue of being the Vice President as stated in paragraph 4 hereof, I am also a member of both the National Governing Council and the Central Committee of the Party*
- 6. **THAT** around September, 2020 I was duly elected as Leader of Opposition in the National Assembly. I have been exercising the powers and functions of this position since then.*
- 7. **THAT** by the Judgment dated 5th May, 2022 the High Court determined that I am the valid Leader of Opposition in the National Assembly. I exhibit hereto a copy of the Judgment marked “KN1”.*

8. ***THAT** from the 24th to the 25th day of June, 2022 the Party's National Organizing Secretary Honourable Chimwemwe Chipungu invited a selected number of Members of Parliament belonging and affiliated to the Democratic Progressive Party to go to Mangochi at the Party President's residence to a meeting that was held on the 26th day of June, 2022.*
9. ***THAT** I repeat the contents of paragraph 8 hereof and state that the meeting was attended by 34 out of 72 Members of Parliament of and affiliated to the Party.*
10. ***THAT** in the National Assembly there are 54 Members of Parliament that were voted into Parliament under the ticket of the Democratic Progressive Party and 18 members of Parliament who were voted into Parliament as independent candidates but are members of and affiliated to the Democratic Progressive Party.*
11. ***THAT** the said 18 Members of Parliament affiliated to the Democratic Progressive Party work with and are treated as Members of Parliament of the Democratic Progressive Party in the National Assembly. They, inter alia, attend all meetings and caucuses of and participate in all decisions taken by members of Parliament by the 2nd Defendant.*
12. ***THAT** I repeat the contents of paragraphs 8 and 9 hereof and state that strangely and for no reason, I, together with 37 other Members of Parliament for and affiliated to the 2nd Defendant (Democratic Progressive Party) were not invited to the meeting and, therefore, did not attend as the invitations were by a phone call by the said Honourable Chimwemwe Chipungu MP who does not hold any position in Parliament.*
13. ***THAT** I am informed and verily believe the same to be true that the meeting was attended by 34 Members of Parliament which included members that were voted into Parliament under the ticket of the 2nd Defendant and those affiliated to the 2nd Defendant. Some of the Members of Parliament affiliated to the 2nd Defendant that attended the meeting are **Joseph Nomale, Robert Mwina, Patrick Matola, Mabvuto Bokosi and Orphan Shaba.***
14. ***THAT** soon after their said meeting Mr. Francis Mphepo, the Administrative Secretary for the 2nd Defendant issued a Press Statement titled: **Press statement on removal and change of Leader of Opposition and other leadership positions in the National Assembly.** There is now produced and shown to me a copy of the said Press Statement marked "KN 2."*
15. ***THAT** in the said press statement it was stated that at the said meeting the Party removed me from the Position of Leader of Opposition in the National Assembly with immediate effect and elected Dr. George Chaponda to be the new Leader of Opposition in the National Assembly. According to the Press Statement these actions or decisions were taken by the meeting pursuant to Orders 35 and 36 of the Standing Orders of the National Assembly.*

16. **THAT** *I am informed and verily believe the same to be true that communication of the above decisions has been effected to the Speaker of the National Assembly by the 2nd Defendant.*
17. **THAT** *Order 35 and 36 of the Standing Orders of the National Assembly provide for election and removal of Leader of Opposition respectively as follows;*

35(1)*"The Leader of Opposition shall be elected by the party not in Government having the greatest numerical strength in Parliament at any point in time and officially announced as such by the Speaker."*

36...*"The Leader of Opposition may only be removed by the party that elected him or her. Provided that where the Leader of Opposition was elected as in Rule 35(2), the Opposition side in the Assembly may remove the Leader of the Opposition through a caucus of all members of the Opposition side in the Assembly."*
18. **THAT** *at the said meeting which was not attended by the majority of the Members of Parliament of and affiliated to the Party they purportedly elected Honourable Dr. George Chaponda, MP as Leader of Opposition in the National Assembly.*
19. **THAT** *I am informed and verily believe the same to be true that it was **Honourable Joseph Nomale** who nominated **Dr. George Chaponda** to be elected as new Leader of Opposition in the National Assembly during the said meeting. The said Honourable Joseph Nomale is a Member of Parliament for Chiradzulu East and was elected into the National Assembly as an independent candidate but is a member of and affiliated to the 2nd Defendant.*
20. **THAT** *the election of Leader of Opposition in the National Assembly requires a majority vote of the Members of Parliament of the Opposition Party having numerical strength in Parliament in this case The Democratic Progress Party for it to be valid.*
21. **THAT** *again election and removal of Leader of Opposition is supposed to be done by all the Members of Parliament of a Party not in Government having the greatest numerical strength in Parliament at any point in time. All the members of the party entitled to elect the Leader of Opposition are thus entitled to be invited to a meeting where a Leader of Opposition in the National Assembly is to be elected and entitled to participate in such election. The same obtains with respect to removal of the Leader of Opposition in the National Assembly.*
22. **THAT** *in so far as the meeting that removed me from my position as Leader of Opposition in the National Assembly and elected Dr. George Chaponda as new Leader of Opposition was not attended by all members of Parliament of the Democratic Progressive Party on account of failure to invite all the members of Parliament of the Party it means that it was not properly constituted and its resolutions or decisions are not valid.*

23. **THAT** the 2nd Defendants have removed me from my within position without any reason. They have not even directly informed me in writing or otherwise of the within decisions.
24. **THAT** the 2nd Defendants have removed me from my position of Leader of Opposition in the National Assembly without according me a right to be heard which is a contravention of the principles of natural justice and **Section 43** of the Constitution of Malawi.
25. **THAT** my constitutional right to lawful and procedurally fair administrative action has been violated by the within decisions of the 2nd Defendants.
26. **THAT** further my personal right and the rights of the majority of the members of Parliament of the 2nd Defendant to participate in the decisions relating to the Leader of Opposition in the National Assembly namely removal of a person holding the office and election of a person to hold that office have been greatly undermined by the 2nd Defendants.
27. **THAT** consequently the political rights that accrue to myself and the other Members of Parliament of the Democratic Progressive Party that were not invited to the meeting that decided to remove me from the position of Leader of Opposition in the National Assembly as enshrined in Sections 40 (1) and (3) of the Constitution have been violated by the 2nd Defendants.
28. **THAT** I verily believe that there are serious questions to be tried in this matter which inter alia include the constitutionality and lawfulness of my within removal from my position as Leader of Opposition in the National Assembly and the appointment of Dr. George Chaponda as the new Leader of Opposition in the National Assembly.
29. **THAT** the effect of the within decisions and actions of the 2nd Defendants is to deprive me of my right to exercise the powers and functions as Leader of Opposition in the National Assembly and enjoy the rights and privileges associated with that position. The loss I will sustain thereby is incapable of pecuniary quantification or is difficult to quantify in monetary terms. Damages will consequently not be a sufficient remedy in this matter.
30. **THAT** on 28th June, 2022 this Court granted the injunction herein to the 1st to 22nd Claimants wherein it was ordered as follows;
 - a) The 1st Defendant, is hereby restrained from acting or holding out as Leader of Opposition in or outside Malawi Parliament.
 - b) The 2nd Defendant is hereby restrained from recognizing the 1st Defendant as a Leader of Opposition from its party.
 - c) The 2nd Defendant is hereby further restrained from implementing its decision of electing the 1st Defendant as Leader of Opposition for Malawi Parliament.

d) The status quo that existed before the said election is hereby maintained.

31. **THAT** before the grant of the injunction referred to in paragraph 30 hereof I had filed an application without notice before the High Court Principal Registry for an order of interlocutory injunction in the terms contained in the application herein. I was unaware at the time that the 1st and 22nd Claimant's had filed an application for interlocutory injunction that was granted on 28th June, 2022.
32. **THAT** at the time the Judge in the High Court, Principal Registry, considered my said application it was after the injunction herein been granted and he was aware of the same.
33. **THAT** Justice Mambulasa declined to grant the injunction I had applied for on the ground that I had been reinstated by the order of this Court granted on 28th June, 2022. The Court further consolidated my action with the action herein. There is now shown and produced to me a copy of the Order of the Court marked "KN3".
34. **THAT** since the Court did not consider my said application and decline to grant the injunction I had applied for on the merits I verily believe that I am entitled to make the within application with notice and the Court is entitled to consider my within application on the merits.
35. **THAT** unless restrained by an order of this court the 1st Defendants will implement it's within decisions and I will cease to hold the office of the Leader of Opposition in the National Assembly.
36. **THAT** I undertake to pay damages to the Defendants in the event that it turns out that the injunction herein was wrongly granted and the Defendants have suffered loss thereby."

24. The 3rd Application was also supported by skeleton arguments and the same will be discussed in due course.

25. The 3rd Application came before me on 21st July 2022 and I ordered it to come by way of Notice on 25th July 2022.

Issues for Determination

26. To my mind, there are three issues for determination in respect of the three applications before the Court. The three issues being whether or not:

- (a) the order of interlocutory injunction that was granted to the 1st to the 22nd was obtained based on suppression of material facts and on perjury?
- (b) the order of interlocutory injunction that was granted in the 1st Application should be continued?

- (c) the 2nd Application should be granted?

Suppression of material facts and Perjury

27. It is the case of the Defendants that the order of interlocutory injunction that was granted to the Claimants on 28th June 2022 in the 1st Application be discharged because the order was based on a sworn statement that contained lies. The following paragraphs in the Defendants' Skeleton Arguments are relevant:

- “ 6.3. *The Claimants did not disclose that some of them are independent members of parliament and not entitled to complain about the election of the Leader of opposition for the 2nd Defendant.*
7. *The sworn statement in support of the application for an interlocutory injunction contains falsehood and Hon. Welani Chilenga and Hon. Mark Botomani are liable to be prosecuted for perjury.*
- 7.1 *The deponents of the sworn statement in support of an application for an order of injunction lied that they are all members of the 2nd Defendant when in fact some are independent Members of Parliament and further lied that they had the authority of all the Claimants to take up the matter when in fact they were not.”*

28. The Claimants in the 1st Application hold a different view. They contend that there was neither suppression of material facts nor perjury on the part of the Claimants.

29. The position at law is that it is always open to an opposing party, where an order of interlocutory injunction has been granted ex parte, to apply to the court for its discharge on the ground that there had not been a frank and full disclosure of all material matters, whether of fact or law: **The State v. Malawi Communication s Regulatory Authority, ex-parte Capital Radio Malawi Limited and Joy Radio Limited, HC/PR Judicial Review Cause No. 29 of 2011, unreported.**

30. Further, an order obtained by way of failure to make full and frank disclosure may be set aside without regard to the merits: **Boyce v. Gill (1891) 64 L.T. 824.**

31. It has been held, in the case of **Brink's Mat Ltd v. Elcombe and Others [1988] 1 WLR 1350 at 1356F**, that the duty of an applicant to make a full and frank disclosure of material facts entails the following:

- (a) material facts are those which it is material for the judge to know in dealing with the application as made and which are necessary to enable him to exercise his discretion properly: see also **Third Chandris Corp. v. Unimarine SA [1979] Q.B. 645;**

- (b) materiality is to be decided by the court and not by assessment of the applicant or his legal advisors;
- (c) the applicant must make proper inquiries before making the application: see also **Bank Mellat v. Nikpour [1985] F.S.R. 87, CA.**;
- (d) the duty of disclosure applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such enquiries;
- (e) the extent of the enquiries which will be held to be proper and therefore necessary must depend on all the circumstances of the case;
- (f) if material non-disclosure is established, the court will be astute to ensure that the party seeking to obtain the relief is deprived of any advantage derived from a breach of the duty as to disclosure and any order obtained thereon will be discharged: see also **Bank Mellat v. Nikpour**, supra; and
- (g) whether the fact complained of is of sufficient materiality to justify or require immediate discharge of the order without examination of the merits depend on the importance of the fact to the issues and that non-disclosure was innocent is an important consideration but not decisive: **Brink's MAT Ltd v. Elcombe, [1988] 1 W.L.R. 1350**

32. The rationale for requiring an applicant to make the fullest and possible disclosure of material facts is not difficult to comprehend. The fact that the Court is asked to grant relief without the person against whom the relief is sought having the opportunity to be heard makes it imperative that the applicant should make full and frank disclosure of all material facts: see **Daglish v. Jarvie (1850) 2 Mac & G 231; 42 ER 89.**

33. In the present case, the issue concerning the alleged suppression of material facts can be easily be disposed of. As enunciated in **Brink's Mat Ltd v. Elcombe and Others**, supra, whether or not a fact complained of is of sufficient materiality depends on, among other matters, the importance of the fact to the issues in the case. In this case, the alleged non-disclosed facts are that:

- (a) the Claimants did not disclose that some of them are independent members of parliament and not entitled to complain about the election

of the Leader of Opposition for the 2nd Defendant: see paragraph 27; and

- (b) the 1st and 2nd Claimants lied in their sworn statement in support of the 1st Application that:
 - (i) the 1st to 22nd Claimants are all members of the 2nd Defendant when in fact some are independent Members of Parliament; and
 - (ii) they had the authority of all the Claimants to take up the matter when in fact they did not have such authority: see paragraph 27.

34. In this regard, the ground given by the Defendant on suppression of material facts stands or falls on whether the alleged non-disclosed facts are relevant to the issues for determination in the main cases, namely:

- (a) whether or not the dispute herein falls within a category of “purely political issues” which are non-justiciable or over which the judiciary has no jurisdiction?
- (b) whether or not the meeting held at Page House on 26th June 2022 at which the 23rd Claimant was purportedly removed as the Leader of the Opposition and purportedly replaced by the 1st Defendant was called or convened by the appropriate authority?
- (c) whether or not the meeting held at Page House on 26th June 2022 at which the 23rd Claimant was purportedly removed as the Leader of the Opposition and purportedly replaced by the 1st Defendant was held at the right place and time in terms of the applicable law and/or practice?
- (d) whether or not the notice that was given in respect of the meeting that was held at Page House on 26th June 2022 contained an agenda and whether or not the notice, if any, was adequate in the circumstances of the case?
- (e) whether or not all persons entitled to take part in making a decision to remove the Leader of the Opposition and have him replaced by another person were invited to attend the meeting, held at Page House on 26th of June, 2022, that purportedly removed the 23rd Claimant from his position as Leader of Opposition?

- (f) whether or not, if some of the persons so entitled to attend the meeting were not invited, the omission constitutes violation of their political rights as provided for under section 40 of the Constitution?
- (g) whether or not all the Claimants have the right to participate in the election of the Leader of the Opposition?
- (h) whether or not the 2nd Defendant's National Governing Council has the powers to direct affairs such as the election of the Leader of the Opposition?
- (i) whether or not the purported nomination of the 1st Defendant, at the meeting held at Page House on 26th June 2022, as the Leader of the Opposition was done by a Member of Parliament who was elected into the National Assembly as an independent candidate?
- (j) whether or not the purported appointment of the 1st Defendant as Leader of the Opposition is in line with the Standing Orders of Parliament?

35. In this regard, the question to ask is this: what is the relevancy of the alleged non-disclosed facts to the ten issues highlighted at paragraph 34? Much as I have tried, I have found no relevancy at all of the alleged non-disclosed facts. In any case, whether or not Members of Parliament elected on an independent ticket were entitled to take part in the meeting held at Page House on 26th June 2022 is one of the key issues for determination in the matter before this Court. I, therefore, have great difficulties in understanding why the Defendant seeks to present the question as a fact before the same is determined by this Court in these proceedings.

36. All in all, I am inclined to agree with the 1st to 22nd Claimants that they revealed all facts that were relevant and essential for the Court to make its decision on the 1st Application. Accordingly, it is my holding that the order of interlocutory injunction made on 28th June 2022 was granted on the basis of documents that candidly and fairly stated the facts in so far as the issues for determination in this case are concerned.

37. In the circumstances, I am very much persuaded and it is my decision that neither the 1st and 2nd Claimants (the deponents of the sworn statements being challenged), on one hand, nor the other Claimants, on the other hand, are guilty of suppression of any material facts.

38. In view of the conclusion that the Court has reached on the issue of suppression of material facts, the ground of perjury has also to fall away.

39. Further, and in any event, there is enough evidence before the Court to show that the alleged perjury has not been established. Actually, the Court is persuaded to agree with the Claimants in the 1st Application that it is the deponents on behalf of the Defendants (namely, Hon. Chimwemwe Chipungu, Hon. Dennis Buscuit Namachekecha and Hon. Noel Lipipa) who may have committed perjury by them stating that they had no knowledge of their names being included as part of the Claimants to this case when there is evidence showing that they had such knowledge and that they in fact helped in funding the case for the Claimants in the 1st Application.

40. Furthermore, there are serious questions as to whether the approach taken by the Defendants in raising the issue of perjury is the right one: see the case of **Dr. Saulos Klaus Chilima and Dr. Lazarus McCarthy Chakwera v. Professor Arthur Peter Mutharika, Constitutional Reference Reference No. 1 of 2019 – Ruling dated 25th July 2019.**

41. In view of the foregoing, the two grounds upon which the 2nd Application was premised (that is, suppression of material facts and perjury) lack merit. Accordingly, the 2nd Application is dismissed.

Whether or not the order of interlocutory injunction that was granted in the 1st Application should be continued?

42. An interlocutory injunction is a temporary and exceptional remedy which is available before the rights of the parties have been finally determined. Order 10, r. 27, of the CPR provides that the Court may grant an injunction by an interlocutory order when it appears to the Court that (a) there is a serious question to be tried, (b) damages may not be an adequate remedy and (c) it shall be just to do so.

43. While the 1st to 22nd Claimants submit that there are triable issues in the present case, the Defendants contend that there is no serious issue to be tried at all as none of the Claimants either in their personal capacity or as Members of Parliament of the Democratic Progressive Party have a right to elect a Leader of Opposition. The contention by the Defendants was elaborated on in their Skeleton Arguments as follows:

“5.1. *Order 35(1) of the Standing Orders of Parliament grants the right to elect a Leader of Opposition to a “the party not in Government having the greatest numerical*

*strength in Parliament... ” It is the party that has to determine how such a leader has to be elected according to its own procedures and practices which are heavily guided political considerations. It has been stated again and again by this Court that political disputes are for the political arena and Courts ought not allow to be used in political gimmicks – See **Wallace Chiume & Others v Aford, Chakufwa Chihana & Another Civil Cause Number 108 of 2005; Ajinga v United Democratic Front Civil Cause Number 2466 of 2008; and S(On application by Hon. Shadrack Namalomba M.P) v Leader of opposition (Hon. Kondwani Nakhumwa M.P), Speaker of the National Assembly and Democratic Progress Party Judicial Review Cause 5 of 2022) [2022] MWHC 72.***

- 5.2. *By the sworn statement of Hon. Mark Botomani and Hon. Welani Chilenga (paragraphs 7 through 11) it is clear that the Claimants are asking this Court to interpret and apply the constitution of the Democratic Progressive Party as to the procedure which the party ought to have followed in electing the Leader of Opposition. Yet the very same constitution under article 18 has a dispute resolution mechanism to which the Claimants ought to have availed themselves before involving the Court. In short, the Claimants want to involve the Court in dealing with a matter that is purely political in nature.*
- 5.3. *The Claimants’ contention that their rights under **Section 40(1) and (3) of the Constitution** by being sidelined from the election of a Leader of Opposition does not have any legal backing from the arguments of the Claimants. In any case, **Order 35(1) of the Standing Orders of Parliament** limits these rights by granting the right to elect a Leader of Opposition to a political party via its own protocols and procedures as it deems fit. If the Claimants are not satisfied with the provisions of **Order 35(1) of the Standing Orders of Parliament**, their remedy lies in challenging the constitutional validity of the Order and in that instance they have to sue and face the appropriate parties but not the Defendants herein. “*

44. I have considered the respective submissions and I think there is very little for the Court to say at this stage on the issue of whether or not there are serious triable issues in the present case. Firstly, the Court has already found and held that there are a host of such issues: see paragraph 34. These issues cannot simply be disposed of at this stage where the Court is confined to evidence in sworn statements without deponents thereof being subjected to cross-examination of their averments. Secondly, the Court bears in mind the following instructive guidance, given in the oft-cited case of **Patrick Bandawe v. Malawi Congress Party** Civil Cause No. 1010 of 2018, regarding the handling of matters of this nature:

“To my mind, the question whether or not a court should exercise its jurisdiction over a “political dispute” is not one that can be decided in abstract, without paying special attention to the facts of the particular case. In the premises, it seems to me, in my not-so-fanciful thinking, that the developing trend of the wholesome bracket categorization of “political disputes” as being non-justiciable is not only wrong in principle but might also unwittingly give the impression that the judiciary is ingeniously hiding behind “political

disputes” to shirk the duty imposed upon it by section 103(2) of the Constitution to determine issues of judicial nature, whether or not such issues touch upon politics: see also section 10(1) of the Constitution.” – Emphasis by underlining supplied

45. Section 103(2) of the Constitution was the subject of consideration in the case of **The State (On application of Lin Xiaoxiao & 9 Others v. The Director General - Immigration and Citizenship Services & The Attorney General, HC/Lilongwe District Registry Judicial Review Cause No. 19 of 2020** otherwise popularly known as “The law is the law” judgment and I find the following passage in the judgment particularly apposite:

“8.68 Section 103 of the Constitution is couched in the following terms:

“(1) All courts and all persons presiding over those courts shall exercise their functions, powers and duties independent of the influence and direction of any other person or authority.

(2) The judiciary shall have jurisdiction over all issues of judicial nature and shall have exclusive authority to decide whether an issue is within its competence.

(3) There shall be no courts established of superior or concurrent jurisdiction with the Supreme Court of Appeal or High Court.” – Emphasis by underlining supplied

8.69 Two important points emerge out of section 103 of the Constitution. Firstly, the section, as read with section 9 of the Constitution, makes it clear that in deciding cases the Court is enjoined to act independently and to take into account only legally relevant facts and prescriptions of the law. To my mind, a Judge who decides a case contrary to the requirements of sections 9 and 103 of the Constitution is not only unpatriotic but also a great threat to the rule of law.

8.70 Secondly, section 103(2) of the Constitution puts it in unmistakably plain terms that the judiciary has exclusive authority to decide whether or not an issue is within its competence. The framers of the Constitution, in their own wisdom, chose to vest this authority exclusively in the hands of the judiciary.

8.71 Let me break down the provision in plain English for those who purport to have more knowledge of the Constitution than Judges yet their statements demonstrate ignorance of the highest order. The provision means that the authority given to the judiciary to decide whether an issue is within its competence lies solely with the judiciary, it is not (repeat not) shared with any other authority or person outside the judiciary.”

46. What does the quoted passage mean in practical terms in relation to the case before the Court today? It is for the High Court to decide whether or not a case brought before it relating to an alleged “political dispute” is of judicial nature and

falls within its competence. Once the High Court has determined that a matter falls within its jurisdiction, it must not hesitate to deal with the matter to its logical conclusion in accordance, of course, with the applicable law and procedures. Needless to say, this is jurisdiction that must be guided jealously by the judiciary – not to be relinquished anyhow.

47. Section 10(1) of the Constitution referred to in the case of **Patrick Bandawe v. Malawi Congress Part**, supra, states that:

“In the interpretation of all laws and in the resolution of political disputes the provisions of this Constitution shall be regarded as the supreme arbiter and ultimate source of authority.” – Emphasis by underlining supplied

48. Regarding the topic of ignorance, it has been said that it is possible for a person to say or write something without the person who has said or written it fully understanding the meaning or import of what he or she has said or written (Kuyiponya kwakuya kwambiri). This can best be illustrated by reference to section 66(1) of the Constitution.

49. Section 66(1) of the Constitution was amended in 2021: see the **Constitution (Amendment) Act, 2021** – Act No. 18 of 2021. We will therefore look at the way the text of section 66(1) of the Constitution stood both pre and post the amendment in 2021.

50. Section 66 of the Act deals with functions and powers of the National Assembly. Before it was amended in 2021, section 66(1) of the Constitution provided as follows:

“(1) The National Assembly shall be a directly elected Chamber which shall have power, subject to this Constitution, to –

- (a) *receive, amend, accept or reject Government Bills and Private Bills;*
- (b) *initiate private Member’s Bills on the motion of any member and amend, accept or reject all Private Member’s Bills;*
- (c) *and vote motions in relation to any matter including motions to indict and convict the President or Vice-President by impeachment;*
- (d) *exercise such other functions and powers as are conferred on it by this Constitution or by an Act of Parliament; and*
- (e) *take all actions incidental to and necessary for the proper exercise of its functions.”*

Following the amendments in 2021, the text of section 66(1) of the Constitution is as reproduced below:

“(1) The National Assembly shall be a directly elected Chamber which shall have power, subject to this Constitution, to –

- (a) receive, amend, accept or reject Government Bills and Private Bills;*
- (b) initiate private Member’s Bills on the motion of any member and amend, accept or reject all Private Member’s Bills;*
- (c) and vote motions in relation to any matter including motions to indict and convict the President or Vice-President by impeachment;*
- (d) exercise such other functions and powers as are conferred on it by this Constitution or by an Act of Parliament; and*
- (e) take all actions incidental to and necessary for the proper exercise of its functions.*
- (f) exercise oversight over Government’s revenue and expenditure; and*
- (g) oversee the exercise of powers and functions of the Executive.”*- The underlining has been supplied to indicate the new paragraphs

55. To my mind, the provisions of paragraphs (f) and (g) of section 66(1) of the Constitution could not have been clearer than as presently worded. The oversight powers of the National Assembly over Government’s revenue and expenditure is without limitation or qualification [of course, subject to the Constitution providing otherwise, as expressly so stated in the chapeau (opening words) of section 66(1) of the Constitution]. This means that the oversight powers of the National Assembly over Government’s revenue and expenditure applies across “all executive, legislative and judicial organs of the State at all levels of Government” (the phrase used in section 4 of the Constitution). However, when it comes to other matters, the oversight powers of the National Assembly are limited to one organ of the State, that is, the “Executive”. The reasons why the framers of our Constitution took the decision to frame the oversight powers of the National Assembly, as worded in section 66(1) of the Constitution, is not difficult to fathom but I leave that for discussion on another occasion except to say this much at the moment: now that we know what section 66(1) of the Constitution provides, I will not be surprised to hear from certain quarters, as seems to be the norm these days, “that is not what we meant”. Fortunately or unfortunately, when it comes to the interpretation of the Constitution, specifically, and the law generally, the Court does not base its

interpretation on the basis of recollection of a particular person or persons of what they meant: see section 11 of the Constitution.

56. Time to revert back to the matter for determination in this case. I now turn to the question whether or not damages may or may not be an adequate remedy. The Claimants in the 1st Application strenuously argued that that damages would not be an adequate remedy.

57. For the record, neither the Defendants' skeleton arguments nor the oral submissions by Counsel Sikwese addressed the question regarding the adequacy of damages as a remedy. I don't know whether the omission was because the Defendants believed that, in their view, there is no serious issue to be tried and there is, therefore, no need to consider the other requirements of Order 10, rule 27, of the CPR.

58. It will be recalled that the case under consideration relates to election of Leader of Opposition. It is undisputable fact that the office of Leader of Opposition carries with it reverence that money cannot buy or compensate. Additionally, it is clear from the sworn statements of the Claimants that there are allegations of violations of human rights in the present case. It is trite that damages would be inadequate in such circumstances: see **The State v. The Attorney General (Inspector General of Police, Commissioner of Police (central), Misc. Civil case no. 49 of 2008, (unreported)** where Mzikamanda J, (as he was then) emphatically stated thus:

"As to whether damages can be adequate remedy for the alleged violation of human rights, I hasten to say that damages may not be an adequate remedy. Enjoyment of human rights cannot be quantified in monetary terms, and yet the enjoyment of those rights is a very fundamental aspect of our democracy"

59. There is also the decision of the Supreme Court of Appeal in the case of **Malawi Savings Bank v. Sabreta Enterprises Limited, MSCA Civil Appeal No. 44 of 2015 (unreported)** wherein the Court made the following pertinent observations:

"On the matter of adequacy of damages we think each case must be considered on its own facts. There is nothing like one principle fits all scenarios. We think it is a little simplistic not to grant an injunction against an appellant just because it has deeper pockets. Just because it can afford to pay damages in case the injunction was erroneously granted. There will be instances, and we have a feeling this could be one of them, where damages will never suffice the fact that they can be afforded notwithstanding. This case does not, in our judgment, seem to be about damages." – Emphasis by underlining supplied

60. In view of the foregoing, it is my finding, and I so hold, that the 1st Application lies outside the scope of pecuniary compensation and, in any case, damages would be difficult to assess. In short, the requirement in Order 10, rule 27(b), of the CPR regarding damages not being an adequate remedy has been satisfied.

61. Finally, there is the requirement in Order 10, rule 27(c), of the CPR. The Claimants in the 1st Application have submitted that justice would be best served by the Court ordering the continuation of the order of interlocutory injunction that was granted on the 28th June 2022. It might not be out of order to quote the relevant part of their Skeleton Arguments:

“4.4.3 In the present case, the Claimants constitutional rights are at stake A court of law cannot countenance acts of illegality let alone unconstitutionality, even if damages were an adequate remedy.

4.4.5 Therefore, the balance of convenience clearly lies in favour of granting the injunction sought, to prevent an injustice from being occasioned on the Claimants at the hands of the Defendants.”

62. I cannot agree more with the submissions made by the Claimants in the 1st Application. It is, therefore, just in the circumstances of this case that the order of interlocutory injunction sought in the 1st Application be granted, that is, an “*an order of injunction, restraining the 1st Defendant from acting as Leader of Opposition and from the 2nd Defendant from recognizing or implementing its decision of electing/appointing the 1st Defendant as Leader of Opposition until a further order of this Court or until the final determination of the matter*”. Accordingly, the validity of the order of interlocutory injunction granted herein on 28th June 2022 shall continue until the determination of the main case herein or until a further order of this Court. It is so ordered.

Whether or not the 3rd Application should be granted?

63. As already stated hereinbefore, the 3rd Application was filed with the Court on 21st July 2022. This is well after the 2nd Application had been filed with the Court. The Defendants did not file any specific documents in relation to the 3rd Application. I hasten to add that at the hearing of the three applications, Counsel Sikwese orally informed the Court that the Defendants would rely on the documents that they had filed in support of the 2nd Application.

64. As already alluded to in paragraph 42, the first issue for consideration in an application for an order of interlocutory injunction has to be “*Is there a serious question to be tried?*”: see Order 10, rule 25(a), of the CPR. Indeed, this must be so

because it would be quite wrong that a party should obtain relief on the basis of a claim which was groundless. It is, therefore, important that a party seeking an order of interlocutory injunction has to show that there is a serious case to be tried.

65. In deciding whether or not there is a serious question to be tried, the Court considers, to a limited extent, the evidence so far placed before it with a view to see if there is merit in the claim, that is, whether or not the cause of action has substance and reality. Once the Court has established that the claim has merit, it is of no legal consequence that the chances of the claimant succeeding in his or her case are 100%, 55%, 15%, etc.

66. In the present case, the 23rd Claimant contends that there are serious triable issues. The contention was framed as follows:

“Whether there are serious questions to be tried in this matter

The facts herein clearly show that no reason has been given for the removal of the 23rd Claimant by the 2nd Defendant from his position as Leader of Opposition in the National Assembly. We recognize that Order 36 of the Standing Orders of the National Assembly does not include the requirement that there should be a reason for removal of a person from his position as Leader of Opposition in the National Assembly and that he must be furnished with the reason of his removal. In terms of Section 56 (1) of Constitution the power of the National Assembly to regulate its procedure by Standing Orders or whatever way is subject to the Constitution. This entails that the Standing Orders the National Assembly formulates are subject to the Constitution. As is provided for under Section 199 of the Constitution the Constitution is the Supreme law of the land. The supremacy of the Constitution is further entrenched in Section 5 of the Constitution which provides that any law that is inconsistent with the Constitution is invalid. What this entails is that although Order 36 of the Standing Orders is silent on the aspect of availability and furnishing of valid reasons for removal of a person from the position of Leader of Opposition in the National Assembly the 2nd Defendants are bound to provide reasons to the Claimant for removing him from his within position and such reasons must be valid. This is so due to section 43 of the Constitution. The 23rd Claimant has not even been directly communicated of his removal by the 2nd Defendants. Furthermore he has not been accorded an opportunity to be heard before the removal herein on whatever grounds, if any, that form the basis of the within decision to remove him from his position as Leader of Opposition of the National Assembly. This constitutes a clear violation of Section 43 of the Constitution and the principles of natural justice.

The meeting that purportedly removed the 23rd Claimant from his position as Leader of Opposition in the National Assembly and appointed Dr. George Chaponda as the new Leader of Opposition in the National Assembly was attended by 34 members of Parliament of the 2nd Defendant and those affiliated to it. These were the only members that were invited to the meeting. The 2nd Defendant has 72 members of Parliament who were voted into Parliament under its ticket and those affiliated to it. The rest of the members of

Parliament including the 23rd Claimant were not invited to the meeting hence did not attend it. There are no reasons why these people were not invited to the meeting. In line with the Constitutional political rights herein Honourable Dr. Kondwani Nankhumwa and all the members of Parliament that were excluded from the meeting have a right to be invited and attend a meeting where a Leader of Opposition in the National Assembly is to be removed or elected. The Claimants in this matter including the 23rd Claimant have rights under Section 40 (1) of the Constitution to participate in the activities of a political party and freely to make political choices. Further under Section 40 (3) of the Constitution they have the right to vote and to stand for election for any elective office. They consequently have a right to participate in the removal and election of Leader of Opposition in the National Assembly. These are rights that cannot arbitrarily be taken away from the 23rd Claimant and the other said members of Parliament of the 2nd Defendant. The exclusion of the 23rd Claimant and these members of Parliament from attending this meeting let alone participating in the removal of 23rd Claimant as Leader of Opposition in the National Assembly and appointment of Dr. George Chaponda in his place violates their political rights herein. The meeting that took the within decisions was not properly constituted and it's within decisions cannot be valid in law. We consequently submit that the within conduct of the 2nd Defendant is unconstitutional and unlawful.

The above demonstrates that there are serious questions to be tried in this matter."

67. On the other hand, the Defendants, as already stated at paragraph 43, take the position that there is no serious issue to go for trial.

68. The issue whether or not there are serious questions to be tried in this case has already been determined: see paragraph 34. Needless to say, the Court is satisfied that there are indeed numerous serious questions to be tried in this case.

69. In the result, we have to proceed to the second stage to consider compensability, that is, whether or not damages may not be an adequate remedy within the context of Order 10, rule 27(b), of the CPR.

70. Counsel for the 23rd Claimant submitted that damages would not be an adequate remedy because, to quote the relevant part of the Skeleton Arguments by the 23rd Claimant:

"The effect of the 2nd Defendants' decisions herein is to deprive the 23rd Claimant of his right to exercise his powers and functions as Leader of Opposition in the National Assembly and to enjoy the privileges and rights attached to the position. The loss the 23rd Claimant will sustain thereby is incapable of pecuniary quantification or is difficult to quantify in monetary terms. Consequently damages will not be a sufficient remedy in this matter.."

71. As already pointed out herein at paragraph 57, the Defendant did not make any submissions on the question whether or not damages may be an adequate remedy.

72. I have considered the matter herein regarding the adequacy or inadequacy of damages as a remedy and I agree with Counsel representing the 23rd Claimant that that the potential injustice and damages to be suffered by the 23rd Claimant cannot be calculated in monetary terms. What is at stake here is a contest for election to the office of Leader of Opposition. The said office carries with it reverence that money cannot buy or compensate. It is, therefore, my finding, and I so hold, that the 3rd Application lies outside the scope of pecuniary compensation and, in any case, damages would be difficult to assess.

73. In view of the foregoing and by reason thereof, the justice of the case weighs heavily in favour of granting the order of interlocutory injunction being sought by the 23rd Claimant. Accordingly, the 3rd Application is granted and its validity will last until the determination of the main action herein or a further order by the Court.

Way Forward

74. As already remarked herein, the case before the Court relates to the high office of the Leader of the Opposition. Needless to say, it is important that such disputes should be tried and determined as soon as possible. Of course, the trial and determination has to be done in accordance with the applicable rules.

75. The Court notes that the Defendants filed with the Court their Defence on 25th July 2022. The Defence was served on the 23rd Claimant on 26th July 2022 and on the 1st to 22nd Claimants on 27th July 2022. No other statements of case have been filed with the Court in the intervening period. This means that, in terms of Order 9, rule 1, of the CPR, the statement of case in these proceedings will close today, that is, on 8th August 2022. In this regard, parties have to file with the Court, not later than 15th August 2022, their respective statements of issues, witness statements and any other relevant documents or information in readiness of mediation session: see Order 13, rule 3(1), of the CPR. It is so ordered.

76. Finally, for the sake of completeness and in the interest of transparency, the Court wishes to mention that there is a new development in this case. Counsel made their respective oral submissions before the Court on 25th July 2022. I reserved my Ruling. Hardly had I more or less finished drafting my Ruling when the Defendants filed with Court on 5th August 2022 an “Application in a Proceeding to set aside

proceedings by the 23rd Claimant”. Having regard to the nature of the application and the fact that it was brought well after the 1st, 2nd and 3rd Applications had been already argued, it is my decision that the best course of action in these circumstances is for the application to be heard separately. In this regard, the hearing of the application is scheduled for the 18th day of August 2022 at 9 o’clock in the forenoon.

Costs

77. For avoidance of doubt, costs will be in cause.

Made in Chambers this 8th day of August 2022 at Lilongwe in the Republic of Malawi.

A handwritten signature in black ink, appearing to be 'K. Nyirenda', is written over a horizontal line.

Kenyatta Nyirenda
JUDGE