IN THE MALAWI SUPREME COURT OF APPEAL

AT BLANTYRE

M.S.C.A CIVIL APPEAL NO. 12 OF 1999

(Being High Court Civil Cause No. 55 of 1998)

BETWEEN:

CIVIL LIBERTIES COMMITTEE.......................................APPELLANT

-vs-

THE MINISTER OF JUSTICE...................................1st RESPONDENT

- and -

REGISTRAR GENERAL ....2nd RESPONDENT

BEFORE: THE HONOURABLE THE CHIEF JUSTICE

THE HONOURABLE JUSTICE TAMBALA, JA

THE HONOURABLE JUSTICE MSOSA, JA

Kasambala, of Counsel for the Appellant

Nyirenda, of Counsel for the Respondents

Ntaba (Miss), of Counsel for the Respondents

Beni, Official Court Interpreter

J U D G M E N T

Tambala, JA

The appellant is Civil Liberties Committee. It is a human rights non-governmental organization, duly registered according to the relevant laws of this country. The respondents are the Registrar General and the Minister of Justice. The appellant commenced proceedings in the High Court for judicial review of the decision of the Registrar General which -

1. Cancelled the registration certificate of an organization called Chikonzero Communications;

2. Banned the publication, printing and distribution of a newspaper know as **The National Agenda**, and;

3. Ordered that the printing, publication or distribution of **The National Agenda** would be a criminal offence**.**

Leave to apply for judicial review was granted ex-parte by Mwaungulu, J. During the hearing of the substantive application, the learned Solicitor General representing the respondents raised three preliminary issues one of which was that the appellant lacked sufficient interest in the matter and was therefore unable to establish locus standi. Tembo, J., who heard the application in the court below, isolated and considered separately the issue of locus standi. Ultimately, the learned Judge came to the conclusion that the appellant lacked locus standi and dismissed the application. The present appeal is against that decision.

The appellant submitted three grounds of appeal as follows -

"3.1 The trial judge erred in law in construing sections 15 and 46 of the Constitution holding the said section prescribes locus standi for application of violation of fundamental human rights contained in Chapter IV of the Constitution.

3.2 The trial judge erred in law in holding that CILIC had no locus standi in the matter as it had failed to prove that any of its rights or freedoms had been violated.

3.3 The trial judge erred in holding that sections 15 and 46 of the Constitution do not confer on the courts the power to exercise the room for public interest litigation at the instance of human rights NGOs in respect of violation of human rights enshrined in Chapter IV of the Constitution."

The respondents vigorously resist the appeal.

Counsel representing the parties in the present appeal submitted lengthy written as well as oral arguments before this court. In reaching our decision in the present appeal we considered fully counsel's arguments as they related to issues of both fact and law. However we do not intend to consider the appellant's grounds of appeal in the order in which they were presented before this court. We shall consider them together and in the

manner in which we consider to be suitable.

As a general rule, a person who commences an action in a court of law is required to have locus standi in the subject matter of the action. This requirement is so basic that we sometimes take it for granted that a person who has no legal right or interest to protect would not commence an action in a court of law. Courts exist to conduct serious business. They deal with real live issues affecting parties to an action. A person comes to court to commence an action because he believes that the defendant, through negligent driving, has caused personal injury to him or has damaged his vehicle. A person may bring an action alleging that the defendant has failed to deliver to him goods the subject of a contract of sale or that the defendant has trespassed on his land; or that effluent from the defendant's premises has invaded his house. Clearly, in the field of private law a plaintiff is required to establish locus standi which is usually defined by the defendant's conduct which affects adversely the plaintiff's legal right or interest.

In the field of public law the right to commence an action may similarly depend upon unlawful conduct or abuse of power on the part of a public authority which adversely affects the plaintiff's right, interest or legitimate expectation. Thus a plaintiff may allege that his house was pulled down or his farm was taken away to give way for the construction of a modern highway or airport. The plaintiff may, therefore, seek fair and adequate compensation. However, a breach of public duty or a failure to properly exercise statutory powers may adversely affect the general public. In that situation a plaintiff would have locus standing if he can show that he has suffered damage of a special kind or greater degree than that suffered by the rest of the members of the public. In public nuisance, for instance, a private plaintiff would successfully apply to the court for an injunction to stop the nuisance if he can prove special damage or greater damage than that suffered by the other members of the public. See Boyce v. Paddington Borough Council [1903] 1 Ch. 109.

Again in the field of public law, the statute which lays down the duties and powers of public officials and statutory authorities usually defines how such duties and powers may be exercised. The same statute would indicate who would be entitled to bring an action to enforce the proper carrying out and exercise of such duties and powers. The issue of locus standi may be resolved by the examination and interpretation of the relevant statute.

Judicial review proceedings are governed by Order 53 of the Rules of the Supreme Court. Rules 3-(1) and 3-(7) are relevant and they provide -

3-(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule

3-(7) The Court shall not grant leave unless it considers that the applicant has **a sufficient interest in the matter** to which the application relates.

There have been calls for the relaxation of the rule requiring that only those persons who can establish a personal stake in the outcome of an action are entitled to commence legal proceedings in a court of law. The calls have become loud with the appearance on the local community of non governmental organizations which focus their attention on human rights issues. Persons and institutions who advocate public interest litigation, actio popularis, have added their voice to calls for reformation of the law on locus standi to allow persons who cannot establish a legal right or interest in the subject matter of the legal proceedings to have a right to commence an action. Curiously it is the usually conservative English common law judges who have responded positively to such calls. In this judgment, we shall briefly examine how far the common law has gone in reforming the law relating to locus standi.

The most radical statement relating to the relaxation of the strict rule of locus standi was made by Lord Diplock in the case of **R.V. Inland Revenue Commissioners, ex-parte: National Federation of Self - Employed and Small Businesses Limited** [1982] A.C. 617. At page 654 the eminent Lord Justice said -

"It would, in my view, be a grave lacuna in our system of public law if a pressure group, like the Federation, or even a single public spirited tax payer, were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped."

The Inland Revenue Commissioners' case also established the proposition that except in a simple and straightforward case, locus standi should not be considered separately as a preliminary issue, but it must be considered in the factual and legal context of the whole case. The suggestion here is that the merits of the plaintiff's case must have a strong bearing on the question whether or not the plaintiff possesses locus standi.

How far the English Courts have, in practice, gone in lowering the threshold for establishing locus standi, is demonstrated by the case of **Regina v. Secretary of State for Foreign and Commonwealth Affairs Ex-parte World Development Movement Limited**. (1995) 1 W.L.R. 386. In that case, about July, 1991 the United Kingdom Government made a decision to grant aid to the Government of Malaysia. The aid was worth £316 million. It was for the purpose of construction by the recipient country a dam on Pergau river. The dam was intended to generate hydro-electric power. The decision to grant the aid was made against expert advice which was to the effect that the project to construct the Dam was uneconomic and that the people of Malaysia would not benefit much from the assistance. It appeared that in making the decision, political considerations, rather than economic factors, played a dominant role.

A pressure group called World Development Movement was able to challenge in Court the legality of the decision to grant the aid to Malaysia. The members and supporters of the pressure group had a direct interest in ensuring that funds earmarked for development aid by the Government of the United Kingdom were used for genuine purposes and that development went to where it was most needed. They sought to represent the interests of people in developing countries who might benefit from development funds which otherwise might go elsewhere. The World Development Movement succeeded in obtaining, by means of judicial review, a declaration that the British Government's decision to grant financial assistance to Malaysia was, in the circumstances, unlawful.

To bring an action in judicial review the World Development Movement had to establish that it had **sufficient interest** in the decision by the British Government to grant aid to Malaysia. The High Court in England, Queen's Bench Division, held that the question of standing went to the jurisdiction of the court and that it should not be treated as a preliminary issue, but that it should be considered in the legal and factual context of the whole case; it was also decided that the merits of the case are an important, if not dominant, factor when considering standing and that significant factors pointing to the conclusion that the applicants had **sufficient interest** within section 31(3) of the Supreme Court Act 1981 and R.S.C. Ord. 53, r. 3(7) were -

i. The importance of vindicating the rule of law;

ii. The importance of the issue raised;

iii. The likely absence of any other responsible challenger;

iv. The nature of the breach of duty against which relief was sought, and;

v. The prominent role of the applicants in giving advice, guidance and assistance regarding aid.

The court came to the conclusion that World Development Movement had locus standi, notwithstanding that none of its legal right or interest was violated by the British Government's decision to grant aid to Malaysia.

The American jurisprudence in relation to the law on standing is conservative and uncompromising. In the American case of **Sierra Club v. Morton** (1922) 405 U.S. 727, the applicant, a club whose objects were the conservation and protection of the

environment failed to establish standing since the club or any of its members could not show that any legal right or interest of any of the club members would be violated by the conduct of the respondent. The case of Fairchilds v. Hughes (1921) 258 US 126 is to the same effect.

The American legal position is therefore that in order for a plaintiff to have standing he must show that the defendant's conduct violates his legal right or interest. A right or interest which he possesses in common with the rest of the members of the general public will be insufficient to ground locus standi for a private plaintiff. In America, this legal position has its roots in the Constitution.

The legal position in Europe and according to the European Convention on Human Rights and Fundamental Freedoms, is that standing is only available to a plaintiff who can establish a violation of his or her legal right or interest. It is **the victim** of a wrong who is entitled to commence an action to redress the wrong. The learned authors WADE and FORSYTH OF ADMINISTRATIVE LAW, eighth edition, at page 688, state -

"The progressive relaxation of the rules about standing is not reflected in the law of European Human Rights.... They disallow actions by representative bodies on behalf of their members, so that the numerous English examples of successful claims by trade unions; environmental bodies and amenity societies have no European counterparts. Claims under the European Convention on Human Rights, incorporated in similar words by the Human Rights Act 1998, can be made only by **a victim who has himself suffered a wrong."** (emphasis supplied)

The African Commission on Human and People's Rights takes its queue behind the European Convention on Human Rights and uses the same standard for standing. It allows only a victim of a violation of a human right or freedom, protected by the African Charter on Human and Peoples' Rights, to submit a claim to the African Commission. Actios popularis are not entertained by the Commission.

The strict conservative rule governing standing exists in a number of other Commonwealth countries. In the case of **Richards and Another v. Governor General and Attorney General** Commonwealth Law Bulletin, vol. 16 No. 2, April, 1990 at p. 446-448 the two plaintiffs, in their capacity as taxpayers and voters brought an action against the Governor General and Attorney General of the State of St. Vincent and St. Grenadines for a declaration that the State's House of Assembly was not properly constituted; it did not have the required additional two senators appointed from among members of the opposition. The respondents successfully resisted the action on the ground that the plaintiffs lacked standing. The court said -

"........as I understand s.96(5) of the Constitution before I can hold that these two plaintiffs have a 'relevant interest' in order to invoke the jurisdiction of the Court under s.96(1), I have to be satisfied on the evidence admissible by law, not only that the plaintiffs are registered voters or taxpayers but also, that whatever contravention they allege is such as to affect their respective interests. I have done a fine toothcomb reading of the admissible evidence as disclosed in the affidavit of these plaintiffs and I can find no evidence to give them the crank start they need in order to put S.96(1) in motion. All their affidavits tell me is that as voters and taxpayers, the Court should answer the questions, because they want to be sure that they are taxed by an authority which is properly constituted. Nowhere in the evidence can it be said that these plaintiffs are saying that their interests have been affected. To my mind, in the context of the proceedings that are presently before the court, what the plaintiffs have done is to invite the court to give an advisory opinion on matters relating to certain provisions of the Constitution, or to give advice in hypothetical matter which this court, as a matter of law, is not permitted to do under these circumstances." See, Commonwealth Law Bulletin, Vol. 16, No. 2, April, 1990 at 446-448.

Then, in the case of Australian Conservation Foundation v. The Commonwealth (1980) 146 C.L.R. 493, the Court in Australia considered the question whether the plaintiff, a non-governmental organization concerned with matters relating to the conservation and protection of the environment, possessed the necessary locus standi to pursue a legal action. In order to possess locus standi a plaintiff was required to have a real interest or a substantial interest in the subject matter of the action. The court stated -

"A person is not interested within the meaning of the rules unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of some grievance or a debt for costs, if his action fails. A belief, however strongly felt, that the law generally, or a particular law should be observed, or that conduct of a particular kind should be prevented, does not suffice to give its possessor locus standi. If that were not so, the rule requiring special interest would be meaningless."

It was further stated, in the Court of Appeal -

"...the action was not brought by the Foundation to assert a private right. It is brought to prevent what is alleged to be a public wrong. The wrong is not one that causes or threatens to cause damage to the Foundation or affects or threatens to affect the interests of the Foundation in any material way. The Foundation seeks to enforce the public law as a matter of principle as part of an endeavour to achieve its objects and to uphold the values which it was formed to promote. The question is whether in these circumstances it has standing to sue. It is quite clear that an ordinary member of the public who has no interest other than that which any member of the public has in upholding the law, has no standing to sue to prevent the violation of a public right or to enforce the performance of

a public duty."

Clearly the two cases establish that, in the field of public law, a private plaintiff can establish standing to bring an action if he can show that the conduct or decision of the defendant adversely affects his legal right or interest. A strong belief or conviction that the law generally or a particular law should be observed, or that conduct of a particular kind should be prevented is not sufficient to ground standing. They also establish that an ordinary member of the public who has no interest other than that which any member of the public has in upholding the law, has no standing to sue to prevent the violation of a public right or to enforce the performance of a public duty. The two cases further express the view that a strong desire to enforce public law as a matter of principle or as part of an effort to achieve the objects of a particular organization and to uphold the values which it was formed to promote is not sufficient to establish locus standi to commence an action. Finally the two cases from countries of the Commonwealth support the view that, in public law, locus standi is a jurisdictional issue.

After conducting a survey of the current legal position and status of locus standi in the area of public law in the United States of America and some Commonwealth countries, it is now pertinent to examine the current status of the law relating to standing on the local scene. The starting point would be the Malawi Supreme Court of Appeal case of The Attorney General v. The Malawi Congress Party and Others M.S.C.A. Civil Appeal No. 22 of 1996. In a lucid and eloquent judgment Mtegha, J.A., stated at page 39 -

"The Constitution expressly provides tests of locus standi so as to identify those persons who can, and who cannot, institute proceedings for breaches of the Constitution. The relevant sections are ss. 15(2), 41 (3) and 46 (2). Locus Standi is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say, unless he stands in a sufficient close relation to it so as to give him a right which requires protection or infringement of which he brings the action."

Then at page 40, the learned Justice of Appeal continued -

"Dr. Ntaba and Mr. Chimango cannot rely on S.15(2) of the Constitution, as they have no sufficient or any interest in the alleged violation of human rights of which complaint is made. Nor can the respondents place reliance on S.46(2) of the Constitution. Although it is true that this provision refers to a person complaining that "a" fundamental right or freedom has been infringed, this cannot mean that any person can complain about an infringement affecting other person, otherwise it would conflict with the provisions of S.15(2) of the Constitution."

The next local authority on the issue of standing is **The President of Malawi and Another v. Kachere and Others** M.S.C.A. Civil Appeal No. 20 of 1995. Again, Mtegha, Justice of Appeal stated at page 10 of the judgment -

"A person who has no sufficient interest in the matter has no right to ask a court of law to give him a declaratory judgment. He must have a legal right or substantial interest in the matter in which he seeks a declaration. "Sufficient interest" is the one which is over and above the general interest."

The High Court case of **United Democratic Front v. The Attorney General** Civil Cause No. 11 of 1994 also supports the view expressed in the two cases of **The Attorney General v. The Malawi Congress Party and Others and The President v. Kachere and Others.**

It is clear that the principles which the Courts in Malawi follow in determining whether locus standi exists, as illustrated by the three cases which we have examined are very similar to those expressed in the case of Richards and Another v. Governor General and Another and also thecaseof Australian Conservation Foundation v. The Commonwealth**.** But the cases of Attorney General v. Malawi Congress Party and Others and The President of Malawi and Another v. Kachere and Others stress the constitutional requirement to show **sufficient interest** for the purpose of establishing standing.

It may be pertinent at this stage to comment on a recent High Court decision in which Chipeta, J., deliberately refused to follow local case authorities, discussed above, bearing on the issue of locus standi. The relevant case is the **Registered Trustees of The Public Affairs Committee v. The Attorney General and Another** Civil Cause No. 1861 of 2003**.** The learned Judge's reasons for rejecting the local authorities are stated at page 28 of the judgment. The honourable Judge states -

"Honestly, it seems to me that if it be the case that the Supreme Court has always held the above - quoted views on Constitutional interpretation, then I find it difficult to understand how in the **Kachere** and in the **Press Trust** cases it could have ended up with a narrow and legalistic, if not also pedantic, version of locus standiin its interpretation of Sections 15(2), 41(3), and 46(2), the said sections having been coached (sic) in very open and liberal terms. To begin with, as earlier seen, the Court in its interpretation appears not to have relaxed even one bit. Instead it clung so unduly hard to the strict old Common law position and did not have chance to note that even that position has somewhat changed.

Secondly, it appears to me that no real effort was employed by the Supreme Court to first try and understand the plain wording of the provisions for what they truly stood for. Thirdly it also appears to me that undue attention was given to foreign precedents which

were not after all directly interpreting this Constitution, to impose on the provisions under interpretation values it was deemed this Constitution ought to propound. It thus appears to me that warm as the embrace of the Supreme Court has appeared to be for the manner in which the Constitution ought to be interpreted so as to give full meaning to the intention of its framers and to reflect its unique character and Supreme status, from the interpretations that emerged from the Kachere and Press Trust cases it would not be far from the truth to say that the Supreme Court did not then practice what it had since then been preaching about avoiding narrow legalistic and pedantic ways of interpreting constitutional provisions."

The first observation we wish to make is that it is unclear what standard for locus standi was the learned Judge in Public Affairs Committee v. Attorney General advocating. We do not wish to believe that because of the wording of section 46(2) of the Constitution it can be said that the Malawi Constitution totally removed the requirement for a plaintiff to establish standing before commencing a suit. Does the learned Judge say that section 46(2) renders the concept of locus standi so irrelevant in Malawi, in the field of public law, that literally any person even those persons who have no legal right or interest of their own to protect can access the court and commence a legal action? Is it realistic or desirable that a person should be allowed to rush to court to commence a suit, while being carried on the wings of a claim belonging to another person?

We have pointed out that all that the Malawi Supreme Court did in the **Kachere and Press Trust** cases was to stress the standard of **sufficient interest** in determining the question whether a plaintiff has standing. In so doing the court was giving full meaning and effect to the provisions of sections 15(2) and 41(3) of the Constitution. It is the view of the court that s.41(3) requires that a person who seeks an effective remedy from a court must establish that his right or freedom has been violated. Section 41(3) provides -

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

We find it unacceptable that the wording of s.46(2) takes away the requirement for a plaintiff to demonstrate that the conduct of the defendant violates a right or freedom granted to him by the Constitution or some other law. We also find it unacceptable that section 46(2) has the effect of destroying the test of **sufficient interest** for determining locus standi. To so hold would be allowing one section to operate to destroy the provisions of another section of the Constitution and that cannot be, in our view, the intention of those eminent men and women who drafted our Constitution. The Malawi Supreme Court of Appeal was clearly aware that if section 46(2) is literally and casually interpreted it would have the effect of destroying the full meaning and impact of sections 15(2) and 41(3) of the Constitution. That is why that court said at page 40 of the Press Trust case -

“Although it is true that this provision refers to a person complaining that a fundamental right or freedom has been infringed, this cannot mean that any person can complain about an infringement affecting other persons, otherwise it would conflict with the provisions of s.15(2) of the Constitution.”

We take the view that Chipeta, J.,’s interpretation of s.46(2) of the Constitution in the **Public Affairs Committee’s** case was too simplistic and casual that it could not be correct. By destroying the concept of locus standi and rendering it totally irrelevant the learned Judge’s construction of the section produced a result which, we strongly believe, was not intended by the distinguished women and men who drafted our Constitution.

We wish to make it very clear that there is no reason to make apology for affirming the standard of **sufficient interest** for determining locus standi, in the field of public law. It is the standard which the eminent Lord Justices in England use: see Regina v. Secretary for Foreign and Commonwealth Affairs ex-parte World Development Movement (supra). It is true that the concept has undergone some reform and what constitutes sufficient interest is liberally interpreted. Nevertheless, according to the **World Development Movement** case a plaintiff is still required to establish locus standi by meeting the criteria laid down in that case; that criteria includes the absence of another responsible challenger and the role of the plaintiff in relation to the subject matter of the action. We take the view that that is fundamentally different from the total abandonment of the concept of locus standi, a result which has been achieved by Chipeta J.’s literal interpretation of the words **any person** contained in s.46(2).

The concept of locus standi, expressed in terms of **sufficient interest, special or substantial interest** or existenceof a**legal right or interest** in the outcome of a suit should not be misunderstood as failure to promote or respect human rights. Respectable democracies renowned for their respect of human rights such as United States of America, some Commonwealth countries including Australia and a number of countries which are parties to the European Convention on Human Rights and Fundamental Freedoms require locus standi expressed in the standard as earlier discussed. Would it be sensible to suggest as Chipeta, J., does that the judiciaries in these countries cling hard to a **narrow, legalistic and pedantic** version of locus standi? The Americans are so proud of their version of locus standi that they entrenched it in their Constitution. There is no justification for us to be too shy to express frankly the idea of **sufficient interest** as a standard for locus standi which our Constitution provides.

The appellants made application, in the court below, for judicial review of the decision of the Registrar General. Order 53 rule 3-(7) of Rules of Supreme Court requires that the applicant for judicial review must have sufficient interest in the subject matter of the application before leave to proceed with the application is granted. It is clear to us that a plaintiff who brings an action by means of judicial review procedure is required to

establish locus standi, by the same standard of sufficient interest: see**Regina v. Secretary for Foreign Affairs ex-parte World Development Movement**supra. It would, therefore, appear to us that even if section 46(2) of the Constitution is literally interpreted in the manner that Chipeta, J., did in the Public Affairs Committee's case, rule 3-(7) of Order 53 of the Rules of the Supreme Court would legitimately limit the effect of the provision by requiring that a plaintiff who wishes to access the court in reliance of section 46(2) must establish**sufficient interest** in the subject matter of the suit, before he or she can be assisted by the court. The appellant could not, therefore, avoid the need to show locus standi in the form of sufficient interest, whether section 46(2) is interpreted literally and in complete isolation from the rest of the provisions of the Constitution as Chipeta, J., did in the **Public Affairs Committee's case**, or it is liberally interpreted in the light of the other relevant provisions of the Constitution and after giving full effect and meaning to those other provisions, as it was recommended inthe case of Attorney General v. Fred Nseula and Another M.S.C.A. Civil Appeal No. 32 of 1997 (unreported).

There was insufficient evidence in the court below which could establish that the appellant possessed **sufficient interest** in the subject matter of the suit which they brought or in the outcome of such suit. The appellant had an erroneous view that section 46(2) makes proof of locus standi in the form of **sufficient interest** completely unnecessary and irrelevant. All that they told the court below was that theyare a registered body established to promote, protect and enforce human rights, democracy and the rule of law. In the **Australian Conservation Foundation** case there is dicta to the effect that a desire to enforce the public law as a matter of principle and as part of an endeavour to achieve the objects and uphold the values for which a pressure group was formed is insufficient for purposes of establishing locus standi. We, therefore, take the view that the interest of the appellant in the subject matter of the proceedings which they commenced or the outcome of such proceedings was too remote to enable them to possess the necessary locus standi.

It is the view of this court that the appellant is unable to establish locus standi even upon a liberal interpretation of the term **sufficient interest** recommended in the **World Development Movement** case. According to that case the court must consider inter alia the absence of another responsible person or organization that can bring an action to challenge the decision in question; the court must also consider the role of the applicant in relation to the subject matter of the action. We are not satisfied that the appellant has satisfied these two requirements. We agree with the respondents that there are available **the registered owners** of Chikonzero Communications who can rightly bring the action against the respondent. The appellant is unable to explain why the persons who are alleged to have suffered from the conduct of the respondenst are silent. The appellant is not bringing the action on behalf of the registered owners of Chikonzero Communications. It has not received instructions to act on behalf of the victim of the alleged unlawful conduct of the respondent.

There are other organizations which could, in our view, successfully show that they

possess the required sufficient interest in the subject matter or outcome of the present action. The proper organizations would include the Media Council of Malawi, the National Media Institute of Southern Africa (Namisa) and the Journalists Association of Malawi (Jama). These organizations, unlike the appellant, are specifically concerned with the rights and freedoms relating to the press, and we are of the view that such organizations could successfully claim **sufficient interest** in terms of section 15(2) of the Constitution.

Chipeta, J, fully appreciated that the decisions of Malawi Supreme Court of Appeal in the **Kachere's case** and the **Press Trust case** were binding upon him, but he nevertheless refused to follow them. He preferred a decision on the issue of locus standi which totally contradicted the two cases. That, professionally, is wrong and unacceptable. To those judicial officers who deliberately refuse to accept the binding authority of decisions of superior courts Banda, C.J., as he then was said -

"The question of whether the Office of the President was public office was considered in the case of the President of Malawi and the Speaker v. R.B. Kachere, M.S.C.A. Civil Appeal No. 20 of 1995. It was held in that case that the Office of the President and the Speaker is a Political Office and not a public office. We have been informed by Counsel for the first respondent that he cited that case in the court below. The learned Judge made no reference to that case in his judgment. It was binding on the learned Judge in the court below. It was a decision of the final court of Appeal in the country and he was bound to follow it. Although he would have been entitled to express any reservations he might have about it or could have distinguished it if he could from the case before him. It is important that the principle of stare decisis should be followed. Forit creates certainty and also provides orderly development of the law. See Attorney General v. Fred Nseula and Another supra."

It is our hope that the learned Judge in the Public Affairs Committee's case will listen and accept that message.

For the various reasons stated in this judgment, we are unable to find any fault with the decision of the learned Judge in the court below. We uphold the judgment of the court below. The present appeal is therefore dismissed with costs.

Delivered in Open Court this 8th day of April, 2004 at Blantyre.

Signed................................
L.E. Unyolo, CJ

Signed.................................
D.G. Tambala, JA

Signed..................................
A.S.E. Msosa, JA