

Annex O

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PUBLIC SERVICE

001

Telephone: Lilongwe 773 811/773 292/773 747
Fax: (265) 780 057



In reply please quote:

THE JUDICIAL SERVICE COMMISSION
P.O. BOX 30133
CAPITAL CITY
LILONGWE 3
MALAWI

Ref. No. JSC/15/01/11

6th December, 2001

Hon. Justice D.F. Mwaungulu

Through: The Registrar of the High Court
and Supreme Court of Appeal
P.O. Box 30244
Lilongwe 3

Dear Hon. Justice Mwaungulu

DISCIPLINARY PROCEEDINGS

I have the honour to inform you, your Lordship that the Judicial Service Commission will be sitting from 17th December, 2001 to start investigations and hear on the allegation of misconduct and incompetence against you.

The Commission will investigate these allegations in accordance with the provisions of Section 118 of the constitution.

You are therefore invited to appear before the Commission on 17th December, 2001 from 9:00 a.m. at the High Court, Blantyre.

The Commission will be sitting in the Judges Board Room.

Yours faithfully


W.L. Chingeni

ACTING SECRETARY
JUDICIAL SERVICE COMMISSION

Annex P

07/12/01 11:27 263750057 PUBLIC SERVICE 001

Lilongwe 773 811/773 292/773 747
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In reply please quote: _____
THE JUDICIAL SERVICE COMMISSION
P.O. BOX 30133
CAPITAL CITY
LILONGWE 3
MALAWI

15/01/11 6th December, 2001

Hon. Justice Chimasula Phiri
The Registrar of the High Court
and Supreme Court of Appeal
P.O. Box 30244
Lilongwe 3

Dear Hon. Justice Chimasula Phiri

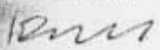
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W.L. Chingeni
ACTING SECRETARY
JUDICIAL SERVICE COMMISSION

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Annex Q

BBC News Online
Monday, 5 November, 2001, 21:08 GMT
Malawi's treason trial judge resigns

By Raphael Tenthani in Blantyre

A high-profile treason trial in Malawi, in which four people are being accused of plotting to overthrow the government of President Bakili Muluzi, will have to start again following the sudden withdrawal of presiding judge, Justice Anaclet Chipeta.

Mr Chipeta is himself facing court proceedings on charges of issuing judgements favourable to opposition parties.

With two other judges, Justices Dunstain Mwaungulu and George Chimasula Phiri, Mr Chipeta is scheduled to appear before parliament in Lilongwe on Tuesday at the start of their impeachment proceedings.

Justice Anaclet Chipeta The impeachment follows complaints by the ruling United Democratic Front, UDF, that the three senior judges were working in cahoots with the opposition.

New trial

There were emotional scenes and a near fracas in the High Court in Blantyre on Monday as the judge announced his withdrawal from the case.

He told the shocked courtroom that he could not continue with the treason case when he himself was on trial.

"I can't put everybody on hold as I am preparing my own defence before parliament," he said.

Mr Chipeta also said that however he directed the jury in the case, both parties would be suspicious.

He therefore said the safest way forward was to withdraw from the case and hand it over to another judge.

Everybody in the packed courtroom held their breath as the judge went on to explain that this means the case should start afresh with a new jury and a new judge and that the state should recall all the 15 witnesses.

Shocked indignation

Soon after the judge made his ruling, all the four suspected coup-plotters and their lawyers reacted with shocked indignation.

Alleged coup leader Sudi Adak Sulaimana told journalists he would rather rot in jail than come back to court after another judge is appointed.

The chief prosecutor was as shocked as the rest of the court

"We are being persecuted," he said. "How can we endure all that once more because parliament wants to interfere with the judiciary?"

Mr Sulaimana has said that the treason trial itself was a plot to discredit Malawi's opposition leader.

He claims the government had offered him money and his freedom if he promised to say National Democratic Alliance leader Brown Mpinganjira was behind the attempted coup.

Near tears

Mr Sulaimana's co-accused, soldier Moses Bwanali, in near tears, said his wife had given birth to his baby while he was in prison.

He said since the case was nearing its end, he thought he would be able to see his baby since he said he was convinced he was innocent.

How can we endure all that once more because parliament wants to interfere with the judiciary?

Sudi Adak Sulaimana

Alleged coup leader Defence lawyer Fabiano Mzumara told BBC News Online he would apply for bail because the latest developments were not his clients' fault.

"The court might take a long time to appoint a new judge so my clients, if they will be kept in prison, will suffer for no reason of their own making," he said.

Injunction

Director of Public Prosecution Fahad Assani said he was totally taken by surprise with Justice Chipeta's ruling.

"I need more time to find out the way forward," he told BBC News Online.

Meanwhile another High Court judge, Bathiel Chiudza Banda, slapped Parliament with an injunction, restraining MPs from summoning the three judges.

In a strongly-worded ruling, Justice Banda asked where Malawi's young democracy was going when even judges could be threatened in their job.

"I am granting the injunction in the national interest," he said.

In yet another twist, Speaker of Parliament Sam Mpasu told Monday's sitting of parliament that the three judges would no longer be summoned because the Judicial Service Commission

had appeal to him not to call the judges until the Commission investigates the three judges' alleged misconduct.

It is not clear what this means for Justice Chipeta's resignation.

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Annex R

13 NOV-11 7:28 CHIEF RESIDENT MAGISTRATE NZUZU 265 332563 PAGE: 1

FROM : THE PRESIDENT, MAGISTRATES AND JUDGES ASSOCIATION
OF MALAWI (MAJAM), C/O CHIEF RESIDENT MAGISTRATE,
P.O. BOX 12, NZUZU, MALAWI.

TELEFAX: (265) 330 563

CELL : (265) 030 987

TO : ALL INTERNATIONAL ORGANISATIONS CONCERNED WITH THE
WELFARE OF JUDGES IN THE WORLD

DATE : 13TH NOVEMBER, 2001

SUBJECT: ACTIONS CALCULATED TO HIJACK THE RULE OF LAW AND
JUDICIAL INDEPENDENCE IN MALAWI.

Dear Colleagues,

I hope by now you have heard that Parliament in Malawi is about to impeach Hon. Justices Chimesula Phiri, Anastase Mwaungulu, Anaclet Chipeta and Chiusa Banda for alleged misconduct.

Hon. Mr Justice Chimesula Phiri: for hearing a case from 4 P.M. to 7 P.M. thereby granting bail to Brown Mpinganjira former Cabinet Minister now leader of the opposition group the NDA. He is being charged with treason.

Hon. Mr Justice D. Mwaungulu: for writing an article while studying in the United Kingdom on the election case where the opposition were challenging the 1998 Presidential Election.

Hon. Mr Justice A. Chipeta: for making a ruling that the Speaker was not above the law thereby reinstating leader of the opposition Gwanda Chakwamba as member of the National Assembly.

Hon. Mr Justice C. Banda: for granting an injunction that Parliament should not debate or move motions to impeach the justices until there was a full hearing on the matter.

When Parliament first debated the issue it was resolved that the Judicial Service Commission should hold an inquiry into the matter and if need be discipline the Judges if misconduct was established. Before the Judicial Service Commission could hear the judges Parliament yesterday started moving motions to impeach the Justices.

We as an Association are very worried because the move is calculated to frighten the Judiciary, destroy the much cherished notion of Judicial Independence, the much respected doctrine of the rule of law and not rule by law. The motion to impeach the Judges is intended to remove the security of tenure for Judicial officers thereby creating a vacuum in the way Malawi will run as a country if the courts are afraid no judicial officer will rule against government for fear of being impeached.

2 /...

IMPEACHMENT OF JUDGES IN MALAWI

At 9 P.M. today the Speaker took his seat and informed the house that he is immune from all judicial process. That he can not wait for the Malawi Judicial Service Commission to hold an inquiry into the alleged misconduct. He then asked Hon chisale M.P. to move a motion for the impeachment of Hon. Mr Justice D. Nkhosangulu later he invited Hon. N. Sagus M.P. to move a motion for the impeachment of Hon. Justices Chikwanda Thiri and A. Chipeta.

At that moment the opposition Aforce Party walked out of the house and Parliament went ahead to debate the motions.

Those who are for the impeachment have signed a register.

We will fax more details as information is still coming in.

I am,

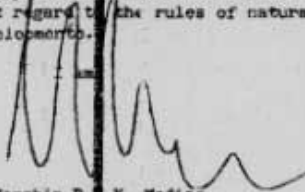
D.T.K. Nkhosangulu
PRESIDENT

MAGISTRATES AND JUDGES ASSOCIATION OF MALAWI.

- 2 -

We would want the world to know that the situation is very bad at the moment and I as President of the Association hereby seek your urgent intervention on the matter.

The Executive Committee of the Magistrates and Judges Association will be meeting this coming Saturday to decide what to do if Parliament goes ahead to impeach the Judges without regard to the rules of natural justice. You will be appraised of the developments.



His Worship D. K. Madina
Principal Resident Magistrate
PRESIDENT

MAGISTRATE AND JUDGES ASSOCIATION
OF MALAWI,
P.O. BOX 12,
NZUZU
MALAWI
AFRICA

Annex S

FROM: MAGISTRATES AND JUDGES ASSOCIATION (MAJAM)

**TO: HIS EXCELLENCY THE STATE PRESIDENT OF THE
REPUBLIC OF MALAWI, DR. BAKILI MULUZI.**

**CC: THE SPEAKER OF THE NATIONAL ASSEMBLY
: THE HEAD OF DIPLOMATIC MISSIONS
: THE JUDICIAL SERVICE COMMISSION
: THE ATTORNEY GENERAL**

RE: IMPEACHMENT OF JUDGES

It is with much concern and trepidation that we are compelled to write your Excellency sir.

The subject matter is much urgent and very familiar to yourself sir. There has been presented before your venerable office a petition for the removal of Justice Dunstain Mwaungulu, Justice George Chimasula – Phiri and Justice Anaclet Chipeta.

We believe that the whole process is unconstitutional initiated in total disregard for the rules of natural justice.

1. First and foremost the motion to remove the three judges was moved in total disregard for the court injunction which had been duly served on the Honourable Speaker, his servants and agents. The said injunction was not vacated by the Honourable speaker. It is our considered opinion that the Speaker was duty bound in law to prevent the debate on the proposed motions. His conduct raises much concern in light of the fact that the Honourable Speaker was able to obey a subsequent court order served on him while Parliament was sitting restraining him from removing seven Members on Parliament.
2. Secondly, Your Excellency sir, it is our considered view that the process adopted by Parliament in dealing with the three named judges infringed the rules of natural justice and cannot form a basis for moving for their removal from judicial office. They had no opportunity to be heard or even confront their accusers in a free and unbiased forum.

3. **Your Excellency sir, we do recognise your unwavering commitment to the rule of law and constitutional supremacy. These principles require that the independence of the judiciary be upheld by all organs of government at all costs. It is with much regret therefore that as judicial officers, we notice these worrisome developments in our legislature's conduct.**
4. **Now therefore, we, the executive members of Magistrates and Judges Association (Malawi) wish to implore and urge you, Your Excellency sir, to demonstrate in an unequivocal and resolute manner that you sir, will at all times maintain your oath to uphold and protect the constitution, by declining to assent to the aforesaid petition issued by the National Assembly for the removal of Justice Dunstain Mwaungulu, Justice Chimasula Phiri and Justice Anaclet Chipeta from judicial office.**
5. **It is our firm belief that your endorsement of the petition by the National Assembly aforesaid will greatly undermine the notion of judicial independence and security of tenure constitutionally guaranteed to all judicial officers. In consequence, that would threaten and impede the proper discharge of all judicial functions. It would be extremely difficult and considerably unrealistic to expect judicial officers to continue to administer justice without fear or favour, affection or ill-will should our colleagues be so removed from office.**

SIGNED

HIS WORSHIP D.T.K. MADISE

HER WORSHIP L.E. MWAMBENE

HIS WORSHIP G.H. MASANGANO

HIS HONOUR U. SIDIRA

HER HONOUR R.Z. BANDA

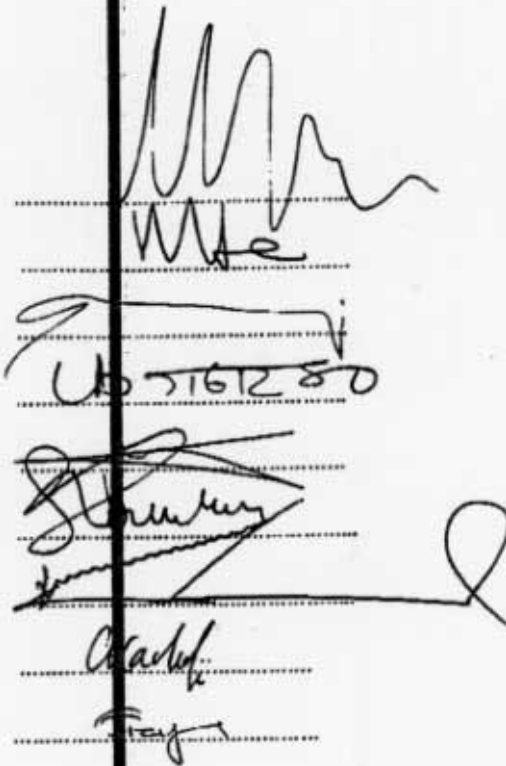
HIS WORSHIP S.A. KALEMBERA

HIS WORSHIP K.T. MANDA

HIS WORSHIP C. I. KACHALE

HER WORSHIP J. TIZIFA

This 17th day of November 2001



Annex T

PUBLIC AFFAIRS COMMITTEE

PAC SECRETARIAT,

Private Bag B348,

Capital City,

Lilongwe 3.

Tel: 782 692 / Fax: 782 696

Email: pac@malawi.net

To : Media Organisations
: Civil Society
: Head of Missions
: Members of Parliament

Date : 15 November, 2001

PRESS STATEMENT : IMPEACHMENT OF THE THREE JUDGES

The Public Affairs Committee is greatly disturbed and shocked at the way the three high court judges have been recommended for removal by the National Assembly. The move taken by the parliament is indicative of the one party rule retrogressive politics that characterised Malawi for thirty years.

It will be recalled from our previous statement dated 5 November, 2001 that we raised grave concerns over the way our political system is collapsing. We note this latest move with growing dismay. The Judiciary is a pillar of democracy and an integral arm of government. As such we question the value of this action for ordinary Malawians.

To begin with, PAC feels that principles of natural justice have not been respected. At a minimum the three Judges should have had adequate time to prepare a full detailed defence as suggested by the Judicial Service Commission. Given the nature of the matter, the cases should have been heard by a properly constituted independent tribunal. We are of the view that the Judicial Services Commission meets these

requirements and has the appropriate constitutional mandate. In this regard we note with concern that the original allegations against Justice Mwaungulu and Justice Chimasula were amended as late as Monday, November 12.

Secondly, the tone of the deliberations in parliament gives PAC concern that there is a deliberate disregard of the principle of separation of powers. Several observations made in parliament can only have been calculated to intimidate the Judiciary.

To this end PAC seeks to remind parliamentarians of their constitutional duty of furthering the values of the constitution (S8 & S 12(ii) of the Constitution of the Republic of Malawi). Politics is not supposed to serve only the elite in any democratic society.

PAC fully supports the concept of judicial officers being persons of exemplary behaviour and the highest professional integrity. Therefore none should be beyond scrutiny. However, the political context and the manner in which the matter has been dealt with seriously undermine the principles of natural justice.

The Public Affairs Committee wishes to appeal to the State President that principles of natural justice must be fully observed not only in form but also in substance.

PAC, therefore, wishes to assure all Malawians that the religious community will use its strength and work through all legal and constitutional means to uphold the rule of law and reverse the current undemocratic developments. PAC's conviction is that the National Assembly should be spending valuable resources on decisions that will reduce poverty in this country rather than on techniques that achieve political advantages.

By God's grace we shall succeed.

Very Rev Fr C A Kaswaya
PAC CHAIRPERSON