

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2022/HP/0831

BETWEEN:

KENNETH KAIRA

(Suing in his capacity as acting Secretary General
of the United National Independence Party (UNIP))

**PLAINTIFF**

AND

**MULENGA MWICHE
MIKE KAIRA**

**1st DEFENDANT
2nd DEFENDANT**

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN CHAMBERS THIS 14th
DAY OF JUNE, 2024**

For the Plaintiff : Mr G. Hakainsi, Messrs L.M Chambers
For the Defendants : Mr A.D.M. Mumba, Messrs AD Mwansa Mumba &
Associates

R U L I N G

CASES REFERRED TO:

1. *Duke of Bedford v Ellis* 1901 AC 1
2. *Harry Mwaanga Nkumbula and Simon Mwansa Kapwepwe v United National Independence Party* 1978 ZR 388
3. *Major Richard Kachingwe (suing in his capacity as National Secretary of the Movement for Multi-Party Democracy v Nevers Mumba* 2013 Vol 3 ZR 17
4. *Jairos Chakulunta, Charles Lubasi and Mwansa Musunte v Kenneth Kaira (sued in his capacity as Secretary General of the United National Independence Party (UNIP), Tilyenji Chanda Kaunda and Njekwa Anamela* 2013/HP/0427
5. *China Henan International Cooperation Group Company Limited v G and G Nationwide (Z) Limited* SCZ No 8 of 2017
6. *Victor Nonde Chibangu v Zambia Railways Limited* 2014/HP/594 [2020] ZMHC (10 February 2020)

LEGISLATION REFERRED TO:

1. The Rules of the Supreme Court of England, 1999 Edition

OTHER WORKS REFERRED TO:

1. Halsbury's Laws of England 4th Edition Re-issue, Vol 6

1. INTRODUCTION

1.1 The application which is subject of this Ruling, was filed by the Defendants, Mulenga Mwiche and Mike Kaira, whose essence if successful, is to terminate these proceedings. The Notice of Motion was filed on 26th February, 2024, pursuant to **Order 14A and Order 33 Rules 3 and 7 of the Rules of the Supreme Court of England, 1999 Edition**. It was supported by an affidavit and a List of Authorities and Skeleton Arguments.

1.2 The issues raised in the Notice of Motion are:

- i. *Whether or not the unpreferred charges and unheard suspensions in respect of Mulenga Mwiche and Mike Kaira have elapsed and become nullities due to effluxion of time of a period of over 21 months from 4th May, 2022 and 17th May, 2022 respectively;*
- ii. *Whether or not the former Party President, Bishop Trevor Selwyn Musonda Mwamba who was suspended and subsequently expelled by the Party's Central Committee in his personal/individual capacity for some disciplinary offences preferred against him can validly maintain a joint action before Court in a representative capacity through Kenneth Kaira;*
- iii. *Whether or not, this Honourable Court can entertain and proceed to hear and determine this matter wherein the*

substance, practice and procedure are substantially flawed and arising from the purported disciplinary offences which have since lapsed due to effluxion of time or period of over 21 months and in contravention of the party constitution, rules and regulations;

- iv. Whether or not, Kenneth Kaira's action is an abuse of the Court process having been commenced prematurely by having unprocedurally preferred the purported disciplinary offences against Mulenga Mwiche and Mike Kaira and having not properly and duly exhausted the disciplinary process as provided by the party constitution rules and regulations.*

1.3 In opposing the application, the Plaintiff, Kenneth Kaira, filed an affidavit in opposition and a List of Authorities and Skeleton Arguments in opposition on 13th March, 2024.

2. BACKGROUND

2.1 These proceedings were commenced on 1st June, 2022, by way of Writ of Summons which was accompanied by a statement of claim and the other requisite documents, in which Kenneth Kaira as Acting Secretary General of the United National Independence Party (UNIP) claims:

- i. A declaration that Mulenga Mwiche and Mike Kaira have no authority or right to call for or convene meetings or preside over the affairs of the United National Independence Party (UNIP) following their suspension from the party.*

- ii. *A declaration that the purported suspensions of the UNIP Party President at the instance of Mulenga Mwiche and Mike Kaira is null and void for lack of authority or jurisdiction.*
- iii. *An Order of interim injunction restraining Mulenga Mwiche and Mike Kaira from masquerading or holding themselves out as Secretary General and Vice President respectively for UNIP and carrying out the functions of the said offices/positions.*
- iv. *Any other relief that the Court may deem fit.*
- v. *Costs.*

2.2 Also filed with the originating process, was an ex-parte application for an Order of interim Injunction, which I directed would be heard inter-partes. However, before that application could be heard, an application was made on 29th June, 2022, for the joinder of a number of persons as Defendants to these proceedings.

2.3 On 26th July, 2022, Mulenga Mwiche and Mike Kaira filed an application to dismiss the matter for lack of locus standi, and for being irregular and incompetent. A preliminary issue was raised to that application. I directed that the application to dismiss the action and the preliminary issue raised, be heard first. Those applications were determined in a Ruling dated 24th August, 2022, and thereafter I heard the application for an Order of interim injunction, which was determined in a Ruling dated 23rd September, 2022.

2.4 Prior to that, on 22nd September, 2022, another application for joinder was filed. The application for joinder was determined by virtue of the Ruling dated 17th January, 2023, and I issued Orders for directions. Subsequently, the application which is subject of this Ruling was filed.

3. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR MULENGA MWICHE AND MIKE KAIRA

- 3.1 Counsel for Mulenga Mwiche and Mike Kaira, in making the application, stated that reliance was placed on the affidavit which was filed in support of the application, especially paragraphs 3-24. He also stated that they relied on the affidavit in reply, which was filed on 21st March, 2024, particularly paragraphs 4-22 of that affidavit. The List of Authorities and Skeleton Arguments which were filed in support of the application were also relied on.
- 3.2 In augmenting, Counsel stated that the suspensions for Mulenga Mwiche and Mike Kaira had been pending for almost Twenty-Three (23) months without being exhausted. It was Counsel's submission that Rule F (3) of the party's rules, provides that a suspension is for a period not exceeding Twelve (12) months. Consequently, the Twelve (12) months having elapsed for Mulenga Mwiche on 13th May, 2023 and 17th May, 2023 for Mike Kaira, they had been overtaken due to effluxion of time.
- 3.3 It was added that there is no provision in the party rules, to extend time beyond Twelve (12) months for the suspensions.

Counsel stated that they had, in the List of Authorities and Skeleton Arguments, cited authorities that had held that the Court cannot interpose itself to hear a matter when the Rules of a club had been disobeyed.

3.4 With regard to the suspension and subsequent expulsion of Bishop Trevor Selwyn Musonda Mwamba by the Central Committee, Counsel stated that Bishop Trevor Selwyn Musonda Mwamba ought to have challenged the expulsion if he thought that it had been wrongly done. The case of **Francis Saviour Nkhoma** was said to be applicable, with Counsel submitting that in that matter, the Party President was suspended and expelled by the Central Committee as an individual.

3.5 Thus, in this matter, Bishop Trevor Selwyn Musonda Mwamba could not bring an action through Kenneth Kaira, as a representative action, who they believed was acting on behalf of the party. The further submission was that it was incomprehensible that a party that had disciplined a member, could act or represent it in challenging the disciplinary action against the person, through the party Secretary General.

3.6 The view taken, was that Kenneth Kaira lacked locus standi to represent Bishop Trevor Selwyn Musonda Mwamba in the disciplinary proceedings.

RESPONSE BY COUNSEL FOR KENNETH KAIRA

3.7 It was submitted in response, that in opposing the Notice of Motion, reliance was placed on the affidavit in opposition,

and the List of Authorities and Skeleton Arguments in opposition. Counsel's submission in augmenting, was that the issues which had been raised, were not suitable for determination as preliminary issues, but rather, were issues that could only be determined after a full trial.

- 3.8 Still in submission, Counsel stated that the issues which had been raised in the Notice of Motion had been pleaded in the counterclaim, which ought to be prosecuted at trial. As regards the duration of the suspensions, the position taken by Counsel, was that their understanding of *Rule F (3) of the Disciplinary Rules*, was that it only provides that a suspension shall not exceed Twelve (12) months.
- 3.9 Counsel's contention was that the Rules do not make provision for what happens where the disciplinary process is not concluded within the said Twelve (12) months. The submission was that the view that they took, was that it would be baseless to conclude that after Twelve (12) months, the rights of the suspended members were automatically restored.
- 3.10 In respect of the locus standi of Kenneth Kaira, as Secretary General, in relation to the claims pertaining to Bishop Trevor Selwyn Musonda Mwamba, the submission that Counsel made, was that the said argument was being made through the back door by Mulenga Mwicke and Mike Kaira. His assertion was that the matter was rightly before Court, and the parties had filed their respective pleadings. Thus, the issues could only be properly determined at trial.

3.11 I was urged to dismiss the preliminary issues which had been raised on that basis.

REPLY BY COUNSEL FOR MULENGA MWICHE AND MIKE KAIRA

3.12 Counsel in reply, submitted that the defence and counterclaim were filed before the Twelve (12) months period for the suspensions elapsed. The role of the Courts in dealing with clubs was reiterated, stating that in the authorities which had been cited, the constitutions, as well as the party rules and regulations were critical. Further reiteration was made, that the Disciplinary Rules did not extend the period of suspension beyond Twelve (12) months.

3.13 Counsel also stated that a member of the party could not be suspended indefinitely. Thus, there was nothing for the Court to hear with respect to the suspensions, as the body with power to deal with the same, sat on its' rights once the Court proceedings were instituted. It was therefore prayed that the issues raised in the Notice of Motion succeed.

4. DECISION OF THIS COURT

4.1 I have considered the Notice of Motion. ***Order 14A of the Rules of the Supreme Court of England, 1965, 1999 Edition*** provides that:

“(1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that –

(a) such question is suitable for determination without a full trial of the action, and

(b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just."

4.2 The provisions of **Order 33 Rules 3 and 7 of the said Rules of the Supreme Court of England** are:

"3. The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

7. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment therein as may be just."

4.3 The gist of the affidavit which was filed in support of the Notice of Motion, and which was deposed to by Lazarous

Mulenga Mwiche, the 1st Defendant herein, was that he was purportedly suspended from his position as Secretary General of UNIP on 4th May, 2022, by the then Party President Bishop Trevor Selwyn Musonda Mwamba, as shown by the letter of suspension, which was exhibited as 'LMM1'.

- 4.4 It was his further averment, that in addition to the suspension, the former Party President instantly and unilaterally passed Judgment, by purportedly transferring Mulenga Mwiche to an unspecified office and or functions, as seen from the letter exhibited as 'LMM1'.
- 4.5 Then on 14th May, 2022, the former Party President Bishop Trevor Selwyn Musonda Mwamba convened an extraordinary Central Committee meeting, again to suspend Mulenga Mwiche as Secretary General of the Party, with exhibit 'LMM2' being stated as the agenda for the meeting.
- 4.6 The averment was that as informed by Mike Kaira, the Vice President of the Party, which information Mulenga Mwiche verily believed to be true, the extraordinary meeting of 14th May, 2022 was firstly, irregularly and incompetently chaired by an extraordinary member of the Central Committee, being Kenneth Kaira, despite Mike Kaira being present at the meeting.
- 4.7 It was also deposed that as advised by Mike Kaira, which information Mulenga Mwiche verily believed to be true, Bishop Trevor Selwyn Musonda Mwamba having been the charging officer, prosecutor and Judge, by having passed

Judgment on 14th May, 2022, by transferring Mulenga Mwiche to an unspecified office and functions, also irregularly took over the meeting from Kenneth Kaira, who was Chairperson of the said extraordinary meeting.

- 4.8 It was stated that as advised by Mike Kaira, upon observation of the grave breaches of the UNIP Constitution, Rules and Regulations, the majority of the members of the Central Committee who were present, immediately resolved to sit in session, and they passed a vote of no confidence in Bishop Trevor Selwyn Musonda Mwamba, which was exhibited as 'LMM3'.
- 4.9 The further averment was that thereafter, on 17th May, 2022, Bishop Trevor Selwyn Musonda Mwamba who had been suspended on 14th May, 2022, purported to suspend Mike Kaira as Vice President of the Party, and the said letter of suspension was exhibited as 'LMM3'. It was stated that the charging officer, Bishop Trevor Selwyn Musonda Mwamba, or any other member of the Central Committee did not issue formal charges or written statements and notices to Mulenga Mwiche and Mike Kaira, asking them to exculpate themselves in writing.
- 4.10 Mulenga Mwiche deposed that Bishop Trevor Selwyn Musonda Mwamba against whom disciplinary charges were preferred in his personal capacity, or as an individual, had never exculpated himself or challenged his suspension and his subsequent expulsion from the party. The continued averment was that Kenneth Kaira commenced this action on

1st June, 2022, seeking a declaration that Mulenga Mwiche and Mike Kaira have no authority to call for or convene meetings or preside over the affairs of UNIP following their purported suspensions.

- 4.11 Also stated, was that Kenneth Kaira seeks a declaration that the purported suspension of Bishop Trevor Selwyn Musonda Mwamba at Mulenga Mwiche and Mike Kaira's instance, was null and void for lack of authority and jurisdiction. The averment was that when the action was commenced, conspicuously missing from the List of Documents were the formal charges, written statements, or notices that Mulenga Mwiche and Mike Kaira were supposed to submit in writing within the specified periods of not less than seven days.
- 4.12 It was also stated that on 10th March, 2023, Kenneth Kaira filed bundles of documents, which did not include the formal charges and notices to exculpate. Mulenga Mwiche deposed that filed in the bundle of documents, were Two (2) letters that summoned himself and Kenneth Kaira to appear for a disciplinary hearing on 15th June, 2023 at 10:00 hours at Freedom House.
- 4.13 The assertion was that the said letters were unprocedurally and irregularly written, and signed by the charging officer Bishop Trevor Selwyn Musonda Mwamba, and were exhibited as 'LMM5' and 'LMM6'. It was stated that Bishop Trevor Selwyn Musonda Mwamba ceased to be both a member and Party President of UNIP on 4th June, 2022, when he was expelled from the Party.

- 4.14 In respect of himself and Mike Kaira, Mulenga Mwiche deposed that they had been on suspension for a period of over Twenty-One (21) months, contrary to the mandatory requirement of Twelve (12) months.
- 4.15 In the List of Authorities and Skeleton Arguments filed in support of the Notice of Motion, *Article 20 of the UNIP Constitution* was stated as providing that all disciplinary proceedings shall commence with a formal charge. It was further argued that for a Central Committee meeting to be formed, a quorum of two-thirds of its' membership needed to be attained, as provided in *Articles 24 (1) and 96 (6) of the said UNIP Constitution*.
- 4.16 It was also stated that Mulenga Mwiche and Kenneth Kaira being members of the Central Committee, they were subject to disciplinary action, pursuant to *Article 22 (g) of the UNIP Constitution*.
- 4.17 Further reference was made to *Article 100 (3) of the UNIP Constitution*, as empowering the Party President to suspend a member of the Central Committee for gross misconduct. However, it was contended that the powers did not extend to removing a member of the Central Committee, but rather that the Party President had to recommend to the Central Committee pursuant to *Article 100 (2) and (4)*.
- 4.18 With reference to *Rule (f) (iii) of the UNIP Disciplinary Rules*, it was argued that the Central Committee is responsible for the discipline of members of the Central Committee and Members of Parliament. It was stated that the sanctions that

may be imposed are also stipulated under the Rule, which include suspension for a period not exceeding Twelve (12) months.

- 4.19 The argument was that the Rule uses the word “*shall*”, entailing that it is mandatory, and that being the position, the suspensions had lapsed due to effluxion of time. The case of ***Jairos Chakulunta, Charles Lubasi and Mwansa Musunte v Kenneth Kaira (sued in his capacity as Secretary General of the United National Independence Party (UNIP), Tilyenji Chanda Kaunda and Njekwa Anamela*** ⁽⁴⁾ was relied on, as where the Hon Judge stated that the issue of management of the internal affairs of the party, are not within the purview of the Court, but fall within the domain of the party structures.
- 4.20 That in other words, any dissatisfaction with the party is not a matter to be brought within the judicial arena, as there are mechanisms in the Constitution and the Regulations to govern the members. It was argued that the Hon Judge in so deciding, referred to the case of ***Major Richard Kachingwe (suing in his capacity as National Secretary of the Movement for Multi-Party Democracy v Nevers Mumba*** ⁽³⁾.
- 4.21 In opposition, Kenneth Kaira deposed that the purported agenda referred to in paragraph 5 of the affidavit filed in support of the Notice of Motion had not been exhibited. As such, he was unable to respond to the same, and he noted that what had been exhibited as ‘LMM2’ to the said affidavit, was a suspension letter for Mike Kaira.

- 4.22 Kenneth Kaira alleged that paragraphs 6 and 7 of the affidavit filed in support of the Notice of Motion, contained hearsay statements, as the deponent of the affidavit did not attend the extraordinary meeting of the Central Committee. Thus, Mike Kaira who attended that meeting, should have jointly deposed to the affidavit.
- 4.23 Kenneth Kaira contended that the extraordinary meeting of 14th May, 2022, was chaired by the Party President contrary to Mulenga Mwiche's assertion. It was denied that the Party President acted as charging officer, Prosecutor and Judge. Kenneth Kaira deposed that the extraordinary meeting of the Central Committee was called to deal with the disciplinary case against Mulenga Mwiche, at which meeting his suspension was confirmed, as shown by the minutes which were exhibited as 'KK1'.
- 4.24 He alleged that the purported Central Committee meeting in the session was illegal, as it was not done in line with the Party Constitution, which gives only power to the Party President to chair all Central Committee meetings.
- 4.25 Kenneth Kaira stated that Mulenga Mwiche and Mike Kaira had filed their defence and a counterclaim, in which all the issues had been pleaded. Thus, the said issues could not be determined by way of a preliminary issues, but rather at trial. The response as regards the reference to *Rule (F) of the UNIP Disciplinary Proceedings Rules*, was that it refers to suspension of a member of the party by the Central

Committee in its' appellate jurisdiction, and not the suspension of members of the Central Committee.

- 4.26 It was contended that even if assuming that the said rule is applicable to the suspension of a member of the Central Committee, it does not state that if the disciplinary proceedings are not concluded within Twelve (12) months, they fall away.
- 4.27 The arguments in the List of Authorities and Skeleton Arguments in opposition, citing the cases of **Victor Nonde Chibangu v Zambia Railways Limited** ⁽⁶⁾ was that in general, **Order 14A of the Rules of the Supreme Court of England, 1965, 1999 Edition**, is designed to deal with final disposal of cases on points of law, whereas the application in that matter dealt with a purely preliminary objection within the context of **Order 33 Rule 3 of RSC**.
- 4.28 Also relied on, was that case of **China Henan International Cooperation Group Company Limited v G and G Nationwide (Z) Limited** ⁽⁵⁾ where the Supreme Court stated that:

“The preliminary issue that was before the court below was made by way of a notice to raise preliminary issue pursuant to Order 33 rule 7 of the White Book. The said Order is preceded by Order 33 rule 3 which permits a court to determine a preliminary issue before, at or after the trial.... Whilst the former Order gives the court jurisdiction to entertain a preliminary issue, the

latter sets out what steps the court can take where there is merit in the preliminary issue raised and its determination substantially disposes of the matter.”

- 4.29 It was argued premised on the above, that the issues which had been raised in the Notice of Motion, did not go to the root of the matter. The argument was further that the issues raised, did not even constitute any issues. It was also stated that Mulenga Mwiche and Mike Kaira were asking this Court to determine that their suspensions had lapsed due to effluxion of time.
- 4.30 However, in their defence, they had argued that their suspensions were nullified by the Central Committee which comprised 44 members, entailing that they had never recognised their suspensions.
- 4.31 It was argued in the alternative, that *Rule F (iii) of the UNIP Disciplinary Rules* does not provide that after the expiration of Twelve (12) months, membership of a suspended party member is restored. The argument was that the matter is in Court over those issues, and therefore the matter should be concluded.
- 4.32 The other argument was that the Notice of Motion had not complied with ***Order 14A of the Rules of the Supreme Court of England***, as it did not state in clear and precise terms, what questions of law or the construction of documents, the Court was required to determine and what Judgment or Order was being claimed upon the

determination of the questions of law or the construction of documents.

4.33 On that basis, it was prayed that the preliminary issues raised be dismissed.

4.34 The issue that arises in this application, is whether these proceedings should be terminated as Mulenga Mwiche and Mike Kaira's suspensions have been in place for a period of over Twelve (12) months, and the appropriate body to deal with disciplinary proceedings of party members is the party itself, and not the Court.

4.35 The other issue for determination is whether Kenneth Kaira, as Acting Secretary General of UNIP, can maintain an action in relation to the suspension and subsequent expulsion of the UNIP President Bishop Trevor Selwyn Musonda Mwamba, when the charges were preferred against Bishop Trevor Selwyn Musonda Mwamba in his individual capacity?

WHETHER THE ACTION AGAINST MULENGA MWICHE AND MIKE KAIRA SHOULD BE MAINTAINED?

4.36 It has been seen from the arguments, that Mulenga Mwiche and Mike Kaira's argument, is that they contend that all disciplinary proceedings should commence with a formal charge pursuant to *Article 20 (2) of the UNIP Constitution*. Their argument was that as members of the Central Committee disciplinary action against them was subject to *Article 22 (g) of the said Constitution*.

4.37 It is also their argument, that pursuant to *Article 100 (3) of the UNIP Constitution*, the Party President only has power to

suspend a member of the Central Committee for gross misconduct, and not to remove such a member. They stated that the Party President's powers, merely extend to informing the Central Committee on suspending a member of the Central Committee for disciplinary action, pursuant to *Article 100 (2) and (4) of the UNIP Constitution*. *Rule (f) (iii) of the UNIP Disciplinary Rules* was also relied on, with regard to the period that a suspension lasts.

4.38 Indeed, *Article 20 (2) of the UNIP Constitution* provides that:

“All disciplinary charges shall commence with a formal charge”.

4.39 Further, *Article 100 (3) of the said Constitution* states that:

“The President may suspend a member of the Central Committee for gross misconduct and inform the Central Committee accordingly”.

4.40 Among the functions of the Central Committee as stipulated in *Article 98 (v) of the UNIP Constitution* is to take disciplinary action against a member of the Central Committee, and implement the same on behalf of the superior organs of the party, subject to ratification by higher organs of the party.

4.41 Then under *Rule 13 of the UNIP Regulations*, the Central Committee is responsible for the discipline of a member of the Central Committee and Members of Parliament, and to hear appeals from Provincial Disciplinary Committees. A similar provision is made in *Rule (e) of the Disciplinary Rules*.

- 4.42 According to *Rule (f) (iii) of the said Disciplinary Rules*, the Central Committee may suspend a member of the party for a period not exceeding Twelve (12) months.
- 4.43 Exhibit 'LMM3' to the affidavit filed in support of the Notice of Motion, shows that Mulenga Mwiche was informed, by the letter dated 21st May, 2022 that the Central Committee at the extraordinary meeting of 14th May, 2022 unanimously endorsed his suspension from the party. Exhibit 'LMM4' shows that Mike Kaira was informed by the letter dated 21st May, 2022, that following his suspension on 15th May, 2022 the Central Committee would be convened on 15th June, 2022 to hear the charges against him.
- 4.44 A perusal of the record shows that the disciplinary hearing against Mike Kaira were not heard on 12th June, 2022 as this matter was instituted on 1st June, 2022.
- 4.45 *Rule (f) (iii) of the UNIP Disciplinary Rules* is clear that suspension of a party member is for a period not exceeding Twelve (12) months. This provision requires no further elaboration.
- 4.46 In the case of ***Major Richard Kachingwe (suing in his capacity as National Secretary of the Movement for Multi-Party Democracy v Nevers Mumba*** ⁽³⁾, the Hon Judge elaborately explained the status of a political party. She noted that the legal status of a political party, is that it is a club, and that there are three categories of clubs, being:
- a) A members' club which is unincorporated;

- b) Incorporated clubs, which are registered under legislation relating to companies; and
- c) Proprietary clubs which may be incorporated or unincorporated.

4.47 Further, ***Halsbury's Laws of England 4th Edition Re-issue, Vol 6 in paragraph 201 at page 56*** defines a club as:

“A club, except a propriety club or an investment club, may be defined as a society of persons associated together, not for purposes of trade, but for social reasons, the promotion of politics, sport, art, science or literature, or for any other lawful purpose, but trading activities will not destroy the nature of a club, if there are merely incidental to the club's purposes.”

4.48 The Hon Judge in the case of ***Major Richard Kachingwe (suing in his capacity as National Secretary of the Movement for Multi-Party Democracy v Nevers Mumba*** ⁽³⁾ in considering the locus standi of the plaintiff in that matter, to commence the proceedings, noted that in the case of ***Harry Mwaanga Nkumbula and Simon Mwansa Kapwepwe v United National Independence Party*** ⁽²⁾ it was held that:

“An unincorporated body is not a legal entity and is therefore not capable of suing or being sued in its' name. It could only sue and be sued in a

representative capacity. Hence UNIP can only be sued in a representative capacity.”

4.49 The learned Judge in tracing the origins of representative actions, referred to the case of **Duke of Bedford v Ellis** ⁽¹⁾ stating that *Lord MacNaughten* in that matter observed that:

“The old rule in the Court of Chancery was very simple and perfectly well understood. Under the old practice, the Court required the presence of all parties interested in the matter in suit in order that a final end might be made on the controversy. But when the parties are so numerous that you would never come to justice.....if everybody interested was made a party, the rule was not allowed to stand in the way. It was originally a rule of convenience: for the sake of convenience it was relaxed. Given a common interest and a common grievance a representative suit was in Order, if the relief sought was in its’ nature beneficial to all whom the plaintiff proposed to represent.”

4.50 **Order 15/12 of the Rules of the Supreme Court of England, 1965, 1999 Edition** was stated as having now encompassed that Rule. It provides as follows:

“(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the Court

otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.”

4.51 The Court further noted that under ***Order 15/12/44 of the said Rules of the Supreme Court of England***, the Court is empowered to prevent continuation of proceedings when objection is raised against such representation by providing inter alia that:

“The Court will exercise its power under the rule whenever an action is not properly constituted under this rule, e.g. where the representative parties and those they seek to represent do not have the same interest, or where the parties seeking or selected to represent others are not suitable representatives or do not fairly represent the others having the same interest.

Even where the three-fold test of common interest, common grievance and a remedy beneficial to all is satisfied, the Court retains a discretion under r.12 (1) to refuse to allow proceedings to continue as a representative action.”

4.52 The affidavit deposed to by Mulenga Mwiche, shows that his suspension, and that for Mike Kaira have since lapsed, as a period of Twelve (12) months for the said suspensions, as provided in *Rule f (iii) of the UNIP Disciplinary Rules* came to an end. The further allegation that was made in the affidavit was that as shown by the letter exhibited as ‘LMM3’, a vote

of no confidence was passed in the Party President Bishop Trevor Selwyn Musonda Mwamba.

4.53 In do agree with Kenneth Kaira, that the said letter is in fact a letter which was addressed to Mulenga Mwiche informing him that following his suspension, the Disciplinary Committee would sit to hear his case on 14th May, 2022.

4.54 Be that as it may, the pleadings before me show that during the disciplinary hearing for Mulenga Mwiche on 14th May, 2022, a meeting was called within that meeting, at which Bishop Trevor Selwyn Musonda Mwamba was allegedly suspended and he was subsequently expelled from the party. During that said meeting within a meeting, the suspension of Mulenga Mwiche was allegedly lifted.

4.55 The explanatory notes in **Order 15/12/2 of the Rules of the Supreme Court of England** are:

“It is an essential condition of a representative action that the persons who are to be represented and the person or persons representing them should have the same interest in the same proceedings. In order that this rule should apply, the necessary qualifications to be satisfied are that all the members of the alleged class should have a common interest, that all should have a common grievance and that the relief is in its nature beneficial to all.”

4.56 The pleadings before me show that Kenneth Kaira does not appear to have a common interest with the persons that he

claims that he represents. The affidavit filed in support of the Notice of Motion, shows that Thirty-Three (33) members of the Central Committee have disputed that he is an Acting Secretary General. While no evidence has been adduced to support the assertion, the fact is the suspensions for Mulenga Mwiche and Mike Kaira has lapsed in line with *Rule f (iii) of the UNIP Disciplinary Rules*.

4.57 Based on that, it cannot be said that Kenneth Kaira has a common interest with the persons that he says he represents.

4.58 ***Paragraph 217 of Halsbury's Laws of England, 4th Edition Re-Issue at page 63*** states that:

“Every club is governed by rules, which generally specify the purposes for which it is constituted, and make provision as to the admission of members, the payment of entrance fees and subscription, the resignation and expulsion of members, the management of the affairs of the club, ordinary and extraordinary general meetings of the members, alteration of the rules and making of new rules....”

4.59 In the case of ***Major Richard Kachingwe (suing in his capacity as National Secretary of the Movement for Multi-Party Democracy v Nevers Mumba 2013 Vol 3 ZR 17*** the Court held that the role of the Court in relation to clubs, is restricted to inquiring into the legality of the decisions that are made in relation to a member's rights or

to ensure that the rules themselves comply with the tenets of natural justice, and that decisions are made without malice.

4.60 Therefore, in this matter, having found that the Disciplinary Rules of UNIP provide that suspension of a member shall not exceed Twelve (12) months, and such period having lapsed in respect of Mulenga Mwiche and Mike Kaira, it is not for this Court to extend that time, as the Rules of UNIP is what binds its' members. The suspensions having come to an end, it is for the appropriate structures within UNIP to take up any other necessary steps, that they feel may be appropriate to advance the objectives of the party.

4.61 The reliefs sought in this matter are clear, and include:

- i. *A declaration that the Defendants have no authority or right to call for or convene meetings or preside over the affairs of the United National Independence Party (UNIP) following their suspension from the party.*
- ii. *A declaration that the purported suspensions of the UNIP Party President at the instance of the Defendants is null and void for lack of authority or jurisdiction.*
- iii. *An Order of interim injunction restraining the Defendants from masquerading or holding themselves out as Secretary General and Vice President respectively for UNIP and carrying out the functions of the said offices/positions.*

4.62 Clearly, the reliefs sought were tied to Mulenga Mwiche and Mike Kaira's suspensions from the party, which

suspensions, according to the *UNIP Disciplinary Rules* have come to an end. Mulenga Mwiche and Mike Kaira have raised objection to the proceedings on the basis that their suspensions from UNIP have come to an end.

4.63 I have already noted that due to the suspensions having come to an end, and this Court having no power over whether they continue on suspension, entails that it is for UNIP itself, to decide on the way forward, as regards Mulenga Mwiche and Mike Kaira. Kenneth Kaira therefore lacks locus standi as he cannot be said to be pursuing a common interest on behalf of other UNIP members.

4.64 The first, third and fourth preliminary issues which were raised, therefore succeed.

**WHETHER KENNETH KAIRA CAN MAINTAIN AN ACTION
IN RELATION TO THE RIGHTS OF BISHOP TREVOR
SELWYN MUSONDA MWAMBA**

4.65 The reliefs that are being sought in this matter were based on the fact that Mulenga Mwiche and Mike Kaira were on suspension from UNIP, and as such, they had no power to suspend Bishop Trevor Selwyn Musonda Mwamba as Party President of UNIP.

4.66 Additionally, having found that Kenneth Kaira lacks locus standi in these proceedings, as objection has been raised to him being an Acting Secretary General of UNIP, and therefore he does have a common interest with the other members of UNIP that he contends that he represents, the

claims in relation to Bishop Selwyn Musonda Mwamba as Party President of UNIP cannot be sustained.

4.67 Moreover, any claims that Bishop Selwyn Musonda Mwamba may have as regards his capacity as Party President of UNIP can be pursued by him as an individual. The second preliminary issue raised, therefore succeeds.

5. CONCLUSION

5.1 In view of the fact that I have found that Kenneth Kaira does not have the requisite locus standi in these proceedings, and the preliminary issues raised having succeeded, I set aside the action. Looking at the facts as they are revealed, being that there are different factions at controversy in UNIP, I Order that each party shall bear their own costs of the proceedings. Leave to appeal is granted.

DATED AT LUSAKA THE 14th DAY OF JUNE, 2024

S. Kaunda
**S. KAUNDA NEWA
HIGH COURT JUDGE**

