

Mudi House
P.O. Box 538
BLANTYRE

25th November 1994

Dr Donald A Brody
15918-20th Place West
Alderwood Manor
Washington 98038
United States of America

Dear Dr Brody

It has been some time now since I last wrote to you concerning the political developments in my country. Let me take this opportunity to brief you personally on what has been happening because some of the unfortunate events, that have happened lately concern me personally and my properties.

You will recall that after the referendum last year, the transition period went on smoothly until we were able to have free, fair and peaceful general elections as you know. The transition of power to the United Democratic Front government (UDF) was without any incident and I offered my congratulations and cooperation to the new President.

Soon after the new government took over, I received a letter from the new Minister of Lands, informing me that I had to sell to government two of my private properties within 14 days or else they would compulsorily acquire them. Ofcourse I could not agree to such a proposal. So the government went on to forcefully acquire the two properties.

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The UDF government have made many allegations against me to support their most unfortunate act. One such allegation is that I did not pay for the properties.

I have enclosed a brief report with some supporting documents on the matter. The report and documents clearly show that I paid for the properties in full, and set out the circumstances under which these properties were acquired.

The documents also cover a third property on the lake side otherwise known as Chikoko Bay which has also been at the heart of the controversies between me and the new government.

The report and documents are self explanatory and I hope that you can have time to look at them so that you can judge for yourself the facts of the case.

In addition to the facts that have been set out in the documents, I wish to inform you that what the UDF government have done in this case against me or anyone is blatantly against the new constitution of this country. In this regard I have instructed my lawyers to challenge the government's action in our courts. I believe that we will win this case.

I thought that it is important for you to know the facts on this story directly from me rather than leave you with a one sided and non-balanced picture which you may get from the newspaper reports or the government statements.

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I wish you all the best

Yours sincerely

A handwritten signature in dark ink, appearing to read 'H. Kamuzu Banda', with a stylized flourish at the end.

Dr. H. Kamuzu Banda

FORMER PRESIDENT OF THE REPUBLIC OF MALAWI

RESIDENTIAL PROPERTIES OF MALAWI'S FORMER HEAD OF STATE, HIS
EXCELLENCY DR H. KAMUZU BANDA

Upon assuming office in May 1994, the New Administration in Malawi has single mindedly launched and sustained a negative campaign within and outside Malawi, with the sole objective of vilifying the former head of state, Dr H. Kamuzu Banda on account of private residences he constructed in his personal capacity for his own use, and other institutions he established or created for the Nation, such as Kamuzu Academy. The tempo of this campaign was set at a cabinet meeting held on 17th June 1994 and the action plan outlined in an Action on Cabinet Minutes paper dated 27th June 1994, attached here as EXHIT GOM 1

The purpose of this article is twofold:-

1. To offer to the reader a factual record of Dr Banda's acquisition of his properties and an opportunity for those interested in truth to examine these facts, so that they can make independent judgement as to whether Dr Banda legitimately acquired the land and paid for the development of residences of his own desire.
2. To appeal to all those who uphold democratic ideals and the freedom of citizens to own property, in Malawi and the world over, to vindicate and rally in support of Dr Banda as the legitimate owner of his residences, in order to support and strengthen Malawi's fragile democracy.

BACKGROUND

Dr H. Kamuzu Banda returned back to his country Malawi (then called Nyasaland) in 1958 after staying overseas for over 30 years, to lead the fight for Independence. At that time, Nyasaland, now Malawi lagged behind in all economic sectors. Most critical were human resources and institutional infrastructure for human resources development. The Industrial and Commercial sector was almost non existent, as unlike her neighbours, Malawi has no exploitable deposits of mineral ores. Needless to say therefore, after independence, the country had no financial resources for putting in place Government Institutions commensurate to the needs of a newly established democracy.

In order to lay most of the basic infrastructure for development, the new Nation relied heavily on donor assistance, mostly bilateral, and soft loans from the International development agencies such as, the World Bank, the European Development Bank and the African Development Bank. As is normal with all aided development, strategies and priorities have to be mutually agreed upon in advance.

Since attaining Independence in 1964, the Former Head of State had accorded highest priority to developing

(a) the Agriculture Sector (both smallholder and estate)

(b) Education, Health and Physical infrastructure for easy transportation of goods and services, and finally the move of the capital from Zomba in the Southern Region to Lilongwe, the geographical centre of the country. Dr Banda made personal financial contributions towards the development of many sectors more significantly in Agriculture, Education, and Health. These contributions will be highlighted in subsequent paragraphs.

During the same period 1970-1985, the former head of state also built, using his own resources, several properties, both for commercial and his own personal use. Most notable of the private residences Dr Banda built for his personal use are (a) Nguru-ya-Nawambe in Kasungu, Dr Banda's home district, (b) Mtunthama Residence in Lilongwe, the New Capital and Chikoko Bay lake shore Residence near Monkey Bay in Mangochi district.

On 17th May 1994, Malawi conducted internationally supervised Presidential and Parliamentary General Elections which the Ruling Party, the Malawi Congress Party, lost, and Dr Banda, as leader of the Party conceded defeat and peacefully handed over power to the new Administration.

Since taking over power, the New Administration has embarked on a vicious campaign both locally and internationally, aimed at discrediting and tarnishing Dr Banda's image. In this campaign, the government has questioned the legitimacy of Dr Banda's titles to these private residences and have insinuated wrong doing on the part of the former Head of State.

On the basis of these alleged impropriety, the New Government has sought to forcibly acquire or expropriate Dr Bandas private residences. The disrespectful manner in which the New Administration has conducted this matter has caused concern on the part of many ordinary citizens in Malawi.

Documents attached here as exhibits GOM 1(a), GOM 1(b), GOM 1(c) and GOM 1(d) are the New Administrations letters to Dr Banda aimed at ceizing his private residences, while Exhibits SS 1(a), SS 1(b), and SS 1(c) are responses from Dr Banda's lawyers. Worth noting here is the contradiction between the title of Exhibit GOM 1(a) and its contents, especially the last paragraph. Exhibits GOM2, GOM 2(a) and GOM 2(b) are cabinet meeting action documents on the properties.

Subsequent to the above communications, the new government's Agents have forcibly entered two of the residences, Mtunthama in Lilongwe and Chikoko Bay at the lake and vandalised the private contents of these properties. This has been done despite that the Land Acquisition Act under which pretext they are purported to be acting, clearly proscribes such entry under section 4. A copy of the Act under which the new administration is relying for its actions is attached here as EXHIBIT GOM3.

The following is a factual account and status of Dr Bandas three Private Residences: Mtunthama in Lilongwe, Chikoko Bay in Mangochi and Mudi House in Blantyre, which are at the centre of the current dispute.

1 MTUNTHAMA RESIDENCE IN LILONGWE

The New Administration in Malawi has alleged that the former Head of State

- (a) Did not complete payment for the title to the land after paying the initial deposit of £3,295-0-0.
- (b) Does not own the property since Government contributed to the construction of the residence.
- (c) Since he did not pay for the residence, then the rents Government has paid to Dr Banda for the period he was using his property as head of state is illegal and should be refunded.
- (d) Because of the above three reasons, the New Administration is entitled to forcibly expropriate the property for only K5,000-00, which is equivalent to £200-00 or US\$330-00 at current exchange rates. A conservative value of his property is around K7.0 Million Kwacha.

A group of independent researchers have looked into this issue and have come up with the following facts.

1. In 1968, Dr H. Kamuzu Banda, acquired freehold interest on two plots, designated plot 3080 and 3081 in a Lilongwe suburb for a sum of £16,295-0-0 and registered this interest under Deed Registry No. 3413 dated First August 1968.

A copy of this title deed is attached as EXHIBIT HKB 1(a). Under the terms of the lease as recorded, Dr Banda paid an initial amount of £3,295-0-0 and the balance was to be paid over 8 years by 32 (thirty two) quarterly installments of £406-5-0d. It is on these two plots that in 1972, he started building the Mtunthama Residence, using Private Contractors and supervising Architects. It should be noted for record purpose that at that time, the Government had no accommodation for the Head of State in Lilongwe, and was not in a position to build one.

2. In the course of the same year 1968, Dr Banda through his lawyers negotiated to acquire freehold interest on adjoining plots Nos. 3078, 3079, 3280 and 3082, as shown on Deed Plan No 50/69, for the sum of £22,700-0-0 and registered this interest under Deed Registry No. 35080 dated first March 1969. A copy of this title deed is attached here as EXHIBIT HKB 1(b). Under the terms of the lease, Dr Banda paid an initial amount of £4,000-0-0 and the balance was to be paid over 5 years by 20 quarterly instalments of £935-0-0. Between 1969 and 1973, Dr Banda constructed 14 No, houses on these four plots. These houses were let to various organisations which were being encouraged to move to the New Capital City but had no capital to construct their own staff houses.

As regards the new government's query that Dr Banda did not complete the payments, two letters have been found which prove beyond reasonable doubt that the former Head of State completed the instalments.

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First, is a letter reference (L) 41813/189 dated 11th January 1973, from the Commissioner for Lands, responding to an enquiry from Dr Banda's lawyers as to the status of the quartely instalments. This letter is attached as EXHIBIT HKB 1(c). It should be noted this is half way position on the agreed payment period.

Secondly there is a memorandum from Dr Bandas lawyers dated 9th May 1977, responding to instructions from the former head of state. This memorandum states conclusively that Dr Banda completed the instalments for the two leases. This memorandum is attached as EXHIBIT HKB 1(d) and HKB 1(e).

One observes that it is not characteristic of a fraudulent person to regularly check if he is meeting his commitments. The memorandum clearly states that the lawyer's investigations are a result of instructions from Dr Banda. The issue of incomplete instalments affecting ownership as alleged by the new administration is therefore false. Dr Banda completed the instalments as agreed and he therefore does not owe government money arising from these two transactions, or title deeds.

THE RESIDENCE

Attached here as exhibit HKB 2(a) are copies of contractors certificates 1 to 17, and records of payments by Dr Banda with his personal cheques. These payments have been tabulated for ease of reference.

In the original contract of K239000-00, government only contributed K63,186-00 for an Audience Room, ADC's office and Public Waiting Room. At a later stage in the contract, Government added to the private freehold residence security facilities as it deemed appropriate for a Head of State. These additions included among other things security fence and Gates, Guards houses and public dancing arena.

The complete breakdown of these later additions to the property are itemised in the document marked EXHIBIT HKB 2(b). The question one must ask is whether government's addition of these security facilities to a private residence is sufficient justification for forcibly acquiring the private property.

HOUSING DEVELOPMENT AROUND MTUNTHAMA

As stated earlier, between 1969 and 1973, Dr Banda through private contractors built a total of 14 houses on plots 3078, 3280 and 3082 in two phases. The first phase contract for 8 houses on plot 3082 commenced in August 1969 for a contract sum of £70,060-0-0. The second phase contract for 6 houses, four on plot 3078, one each on plots 3280 and 3082 commenced in May 1972 (simultaneously with the Mtunthama Residence) for a contract sum of K113,000-00. Appended here as Exhibits HKB 3(a) and HKB 3(b) are contractors certificates and records of payments by Dr Banda through his personal cheques. It should be noted that there was not government contribution in the construction of these houses. Yet Exhibit GOM 1(d) is a letter from the new administration evicting tenants from the properties on plots 3078 and 3079.

2. CHIKOKO BAY LAKESHORE RESIDENCE

The original Chikoko Bay Cottage was a personal gift to Dr Banda in his personal capacity from lady Courtald, who held title to the property. The former Head of State initially made substantial improvements on the original cottage and later on in 1982 constructed an ANNEX.

The finalisation of title transfer to Dr Banda was done in 1994, under deed Registry No.72255 attached here as Exhibit HKB 4(a).

As was the case with Mtunthama, Government came in to add security facilities which it deemed appropriate for a Head of State on this property as well. Attached here as Exhibit HKB 4(b) are copies of contractors certificates and record of payments by Dr Banda using his personal cheques.

3. MUDI HOUSE IN BLANTYRE

Mudi House is the only property among the disputed residences, that the former Head of State acquired from Government as an existing house in 1984, for a sum of K300,000-00. By agreement payment for the property was effected by setting off in one lumpsum from rents due to Dr Banda on other properties rented from him by Government: viz Mtunthama, Chikoko Bay and Nguru-ya-Nawambe. Exhibit HKB 5(a) is the title deed for the property while Exhibit HKB 5(b) is records of the negotiations that preceded the acquisition. Dr Banda is currently resident in this house.

REFUND OF GOVERNMENT CONTRIBUTIONS ON PRIVATE RESIDENCES.

Between 1981 and 1982, Government carried out an exercise with the view to ascertain the extent of Government's financial contribution by way of security facilities to the three private residences owned by Dr Banda in his personal capacity.

Exhibit GOM 5(a), GOM 5(b) and GOM 5(c) are records of this exercise which culminated in a decision that the government be refunded with interest all its expenditure on the three properties; viz Nguru-ya-Nawambe, Chikoko Bay and Mtunthama, by setting off from rent due to Dr Banda on the same. Documents marked SS3 dated 12th November 1982, from Dr Banda's lawyers formally submits to Dr Banda, the agreed mode of refund to the Malawi Government. While Exhibit SS4 dated 6th April 1983 a letter from Dr Banda's lawyers to the secretary to the President and Cabinet, formalises the agreement.

From the above listed documents, it is noted that Dr Banda refunded to government all costs incurred by Government on his private properties, through one lumpsum deduction from rents due to him from government. It would appear therefore that the New Administration's ascertainment that they wish to compulsorily acquire Dr Banda's private residences in the National Interest on account that government spent money on these properties has no basis what so ever since those expenditures were refunded, with interest, according to government documents available.

RENTING OF RESIDENCES TO GOVERNMENT

As regards the issue of rent paid by Government to Dr Banda, it is a well known fact that the Malawi Government has a long standing policy of renting private properties to accommodate its functions and houses for staff when it is unable to construct its own properties.

Ministers, Civil Servants have ordinarily offered their properties to Government, and government has paid rent to the owners to stay as long as they are in government employment.

A fair mind would therefore not consider the renting of Dr Banda's private residences by government, for the public use of Dr Banda in his capacity as Head of State as a unique or peculiar arrangement. More especially when one takes into account the fact that the Malawi Government has had no alternative residence for a head of state in Lilongwe, until the New State House was completed in 1993, and still doesn't have an alternative retreat for the Head of State anywhere along the shores of lake Malawi.

DR BANDA'S PERSONAL CONTRIBUTION TO NATIONAL DEVELOPMENT ENDEVOUR.

Besides investing in his private residences, Dr Banda made various personal contributions to the social and economic endeavours of the Nation he was leading for the past 30 years. From records studied these few areas are highlighted as examples.

(a) GOVERNMENT STOCKS AND DEVELOPMENT BONDS

Since independence, Dr Banda has personally subscribed to all Government Development Bonds and stocks issued to raise development capital. Attached here as exhibit HKB 5 are photocopies of a random selection of Dr Banda's cheques subscribing to local issued Bonds and stocks.

(b) EDUCATION SECTOR

As earlier stated, at independence, Malawi as a Young Nation lacked not only skilled manpower but also the education institutions for human resources development. Dr Banda personally provided bursaries for primary and secondary education to promising students country wide.

After moving the University to Zomba, there was dire shortage of students accommodation at the campus. Dr Banda made substantial donations towards the construction of two female students hostels, KUKA 1 and KUKA 2. Later on in the early eighties, Dr Banda funded and donated to the University of Malawi, the Great Hall Complex, records of this project are available for inspection on request.

KAMUZU ACADEMY

Dr Banda's most notable donation to the Education of Malawi Children is the Kamuzu Academy, where the best of Education curriculum is offered to Malawi's promising sons and daughters, all paid by Dr Banda, the Founder. To many fair minded people the academic achievement of this unique institution in Malawi can only be admirable.

(c) HEALTH SECTOR

Dr Banda's concern for the well being of women in Malawi is beyond reproach. He has done many things for the welfare of mothers. Notable in the health sector are:-

- (i) The New Gogo Chatinkha Maternity unit at Queen Elizabeth Central Hospital in Blantyre, which he constructed with his personal funds as a gift to mothers in Malawi. The records of payments for this project are available for inspection by arrangement.
- (ii) At Kamuzu Central Hospital in Lilongwe, Dr Banda established and constructed with his personal funds, the Kamuzu College of Nursing as a constituent College of the University of Malawi, to advance Nursing Education for girls in Malawi. This college offers degree courses in Nursing.

Besides these high capital investments in the Health Sector, Dr Banda has made grants to a number of hospitals for the purpose of improving inpatients' diet.

(d) DEVELOPMENT OF RELIGIOUS INSTITUTIONS.

During the seventies and early eighties, when the churches in Malawi were also localising their administration, Dr Banda, without pomp or fanfare made regular grants to churches in Malawi annually. Principal churches which benefited a great deal from these regular grants are:- the Roman Catholic Church, the C C A P Church and the Anglican Church. EXHIBIT HKB 6 is a random selection of Dr Banda paid cheques to this cause.

(e) AGRICULTURE SECTOR

This is by far the one single sector in which Dr Banda exerted tremendous influence on Malawians through personal example.

He not only introduced commercial tobacco and maize estate farming but also invigorated the smallholder sector (household) to produce sufficient food not only for their use but also for sale. Hence Malawi had been for a long time self sufficient in food production. It was money earned from Dr Banda's tobacco estates that he re-invested in the above highlighted projects for the Nation.

CONCLUSION

Very few leaders in Africa have invested so much of their personal wealth in the cause of their Nations development endeavours. Dr Banda belongs to that small group of leaders who have given so much to their country.

It has been a painful experience for many fairminded citizens of this country to witness the ridicule and harrassment of a respected former Head of State, a respectable man, who has invested so much of his personal resources for the good of our nation, by a misguided administration that is intent to expropriate Dr Banda's private properties, simply because they want to show that they are in power.

The authors believe that the action taken by the New Administration constitutes a serious threat to Democracy and sets a very bad precedent for future peaceful changes of democratic government in our country.

Dr Banda has a right, as a citizen, to own his stately homes.

Those who support democracy in Malawi and the world must rally strongly in support of Dr Banda's right to own his private residences and do all that is necessary to stop the new administration in Malawi from breaching Dr Banda's rights.