

19 July 1995

Date

78/P0231.1/hca

Our ref

Your ref

MEMERY CRYSTAL
Solicitors

Dear Sir/Madam

The Republic of Malawi v Dr Hastings Kamuzu Banda and Others

We respectfully place before you this letter and enclosures.

You may be aware that we advise Dr Hastings Kamuzu Banda, John Zenus Ungapake Tembo and Miss Cecilia Tamanda Kadzamira who are currently on trial in Malawi on charges of, inter alia, conspiracy to murder. We instruct Mr Clive Stanbrook QC who has been admitted to the Malawian Bar for the purpose of these proceedings.

Further to the question put by Baroness Macleod of Borve, DL to The Rt. Hon. The Baroness Chalker of Wallasey in the House of Lords on Thursday, 6 July 1995 (copy Hansard enclosed), we write to inform you of recent developments in the trial.

The Defendants were arraigned on Monday, 10 July 1995 and not guilty pleas were entered. Dr Banda's plea was entered in his absence at the request of the DPP. We believe that this is an indication of the difficulties caused by the Judge's Ruling that Dr Banda should be tried in his absence.

The Defence made representations to the Court that the DPP had still not complied with the Judge's Ruling that the DPP should disclose documents to the Defence, in particular, Witness Statements taken by the Police. The DPP maintained that he had no such Witness Statements, but that the Defence could copy those documents in his possession. The Defence attended at the offices of the DPP and copied various documents, including Police Witness Statements that had not previously been disclosed.

On Wednesday, 12 July 1995 an attempt was made to impanel a jury of 7 people from a panel of 12. The Criminal Procedure and Evidence Code of Malawi requires that jurors should be chosen from among those summoned for the area in which the Defendants usually reside. Of the 7 jurors initially selected, 6 came from areas outside of the Defendants' usual areas of residence with only one meeting the required qualification. The procedure of impanelling a jury was therefore adjourned to Monday, 24 July 1995.

On Thursday, 13 July 1995, The Daily Times newspaper published a letter from the Co-Ordinator of the Poverty Alleviation Programme to the British Council confirming that a payment had been made from the Poverty Alleviation Fund at the personal direction of President Muluzi for the private school fees of the son of an important Prosecution Witness. The newspaper also published a receipt from the British Council in respect of the funds. I enclose copies of the article,

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Page 2
19 July 1995

the letter and the receipt. We have been advised that it is difficult to see any possible justification for such a payment being made from the Poverty Alleviation Fund.

The matter of a payment for the benefit of a Prosecution Witness having come into the public domain, the Defence lawyers expressed their concerns about the possibility of an inducement having been given to a Prosecution Witness. I enclose a copy of an article which appeared in the July 14 edition of the Daily Times in relation to a Press Conference held on 13 July 1995. The Defence lawyers also wrote to the DPP expressing our concerns.

The response of the DPP has been to threaten the entire team of Defence lawyers with prosecution under Section 113 of the Malawian Penal Code. I enclose copies of the relevant correspondence for your information. We are aware of the provisions of Section 113 of the Penal Code and do not think that our conduct amounts to any infringement of that provision.

You will see that we have informed the DPP that whilst we will comply with the provisions of the Penal Code, we will not be intimidated by his threat from properly and vigorously defending the interests of the Defendants. We have heard nothing from the DPP regarding the payment apparently made to or on behalf of the Prosecution Witness.

These developments are very worrying to us. We regard the DPP's threat of prosecution as a blatant attempt at intimidation and are concerned that this intimidation may increase.

We are also concerned, in the best interests of our clients, to ascertain the extent of financial inducements given to Prosecution Witnesses and the sources of such inducements. We are sure that you will agree that it is a matter of concern that funds contributed to by donor nations may have been used for the purpose of inducing Prosecution Witnesses to give evidence.

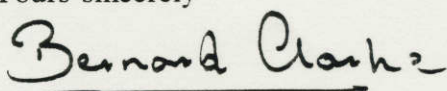
In summary, our concerns are twofold. Firstly, we wish to ensure that we are able to represent our clients without threats of prosecution or other harassment.

Secondly, we want to ascertain the extent to which aid funds have been used to make payments to Prosecution Witnesses.

Any pressure that you are able to bring to bear in order to help us to achieve these two objectives would be very much appreciated.

Kind regards

Yours sincerely

A handwritten signature in cursive script that reads "Bernard Clarke". The signature is written in dark ink and is positioned above a horizontal line.

Bernard Clarke

(The Earl of Clanwilliam)
 press the international point about the importance of the UN agreement on Straddle stocks but refer instead to the common fisheries policy promotion, which does not appear to be working. I wonder whether my noble friend will consider bringing forward the question of the common fisheries policy at the forthcoming IGC where we shall have a veto—there will not be majority voting—so that we can consider the number of boats at sea. Perhaps he could also mention the fact that the common fisheries policy is trying to limit the number of Spanish boats at sea—

Noble Lords: Question!

The Earl of Clanwilliam: My Lords, would my noble friend comment on the fact that the common fisheries policy is trying to limit the number of Spanish boats at sea, while the European Commission is busy commissioning new fishing boats for the Spanish fishing fleet, and—

Noble Lords: Order!

Earl Howe: My Lords, I thank my noble friend for his kind remarks and entirely agree with him that the conservation of stocks is a prime duty of the European Community. That is why the annual agreement on total allowable catches is conducted against a background of expert scientific advice. My right honourable friend the former Minister established a group to look at all the options for improving the CFP. It is expected to have completed its task by the end of the year. It is a wide-ranging review and appropriate recommendations will be brought to the attention of the European Commission. Meanwhile, as your Lordships will be aware, the central issue is that the available fishing effort is greater than the fish stocks can stand. To that end, we aim to reduce the size of our fleet in common with other member states, including Spain, to meet our MAGP targets through decommissioning, for example.

Lord Carter: My Lords, as this is the noble Earl's last appearance with the agriculture brief, perhaps I may thank him from his Dispatch Box for the unfailing courtesy and helpfulness that he has shown in his three-and-a-quarter years at the Ministry of Agriculture, Fisheries and Food and wish him well in his new post.

In the circumstances, perhaps it will be appropriate if I ask the Minister an easy question today. Does he agree that the common fisheries policy, as it has developed, is beginning to make the common agricultural policy look like a beacon of common sense and sweet reason?

Earl Howe: My Lords, I am extremely grateful to the noble Lord. I too have much enjoyed and appreciated our exchanges over the Dispatch Boxes over the past three-and-a-quarter years. I very much appreciate the constructive way in which he has approached our exchanges. In reply to the noble Lord's question, to put it at its mildest, the CFP is far from perfect. In particular, it is too bureaucratic. As I have said, we are reviewing our approach to it and shall continue to press for improvements. However, there are benefits as well as drawbacks to the CFP and any changes will need to be considered with great care.

Lord Campbell of Croy: My Lords, does my noble friend agree that since many fish migrate between waters near the shores of different countries, regulation and restraint are what matter most in the areas in and near north-west Europe because fishing methods and technology are now lethally effective?

Earl Howe: My Lords, my noble friend draws attention to an extremely important point. Although one may have capacity targets, total allowable catches and technical conservation measures, they have to be enforced properly. It is perhaps a truism to say that fish are no respecters of boundaries, but the CFP is a more effective vehicle for policing those boundaries and the entitlements of member states than unilateral action could ever be.

Lord Beaumont of Whitley: My Lords, is the Minister aware that efforts to reduce fishing by decommissioning seem to be more than outweighed by the efficiency of the vessels which catch the fish? As there is considerable evidence, as submitted to the North Sea ministerial conference, that supplies of cod in the North Sea are likely to fall below what is renewable, what do the Government propose to do?

Earl Howe: My Lords, the Government's decommissioning plan is only part of a raft of measures which we hope will deliver the necessary results in terms of conserving stocks, which is most important. The Government recognise that in the longer term the state of North Sea cod stocks remains a matter of concern. It is important that total allowable catches are set at prudent levels. However, given the large size of that stock, which at current reduced levels still number over 500 million fish, and its extensive distribution, it is not thought likely that North Sea cod will become extinct, as has been predicted in some quarters.

Dr. Hastings Banda

3.26 p.m.

Baroness Macleod of Borve asked Her Majesty's Government:

What representations they are making to the Government of Malawi to ensure a fair trial for Dr. Hastings Banda and others.

The Minister of State, Foreign and Commonwealth Office (Baroness Chalker of Wallasey): My Lords, as a party to the International Covenant on Civil and Political Rights, the Malawi Government are obliged to give Dr. Banda and his co-accused a fair and public hearing. We expect those obligations to be fulfilled completely. We shall be monitoring the trial and note that the defence counsel is British. There are no grounds at this stage for us to make representations.

Baroness Macleod of Borve: My Lords, in thanking my noble friend for her helpful Answer, perhaps I may also thank her on behalf of the people of Malawi for all that she has done over many years to help that very poor but very beautiful and kind country. However, in view of what she has just said, is my noble friend aware that on 14th February 1995 the Director of Public

Prosecutions of Malawi said on the BBC World Service that the decision to arrest Dr. Banda and others was entirely political and not made by his department?

Baroness Chalker of Wallasey: My Lords, I am always pleased to do all that I can for poor countries in the world. I was, of course, aware of the comments that had been made on the BBC, but not all comments that have been made on the BBC and in other places about that situation have been wise or accurate. We have sought to ensure that the trial is properly conducted. We have through our "Good Government" initiative arranged training in the UK on the conduct of jury trials for Malawian judges, including Justice Mkandawire who is presiding at this trial.

Lord Molloy: My Lords, may I ask the Minister to bear in mind that this country of ours is looked on throughout the world as the country that created democracy and decent justice? To that extent, will she add to the excellent statement that she has just made by assuring the House that we shall attempt to get the support of all democratic countries on this issue? I believe that our country can provide that lead and that we shall be supported.

Baroness Chalker of Wallasey: My Lords, this is a very vexed issue but, as the noble Lord knows, we have not only sought to promote sound democracy in emerging countries, but to ensure that they have the training and the institutional capacity to run a proper judiciary which has due respect for human rights. It is critically important that human rights are properly respected both in Malawi and other countries. There have been improvements in the past year or so in Malawi. Where democracy is to flourish, it is right that there should be freedom of the press, freedom of speech and full regard for the courts of law.

Lord Boyd-Carpenter: My Lords, is my noble friend aware that Dr. Banda is a very old man with a very long and distinguished record of public service? Will she assure the House that Her Majesty's Government are watching carefully to see that, if he has to be put on trial at all, he has a fair trial?

Baroness Chalker of Wallasey: My Lords, we are all aware of the many years of dutiful service that Dr. Hastings Banda has given to Malawi. We have been at pains to ensure that any trial, and particularly this trial, is conducted properly. The trial is now expected to start on 10th July when the judge will hear pleas. The jury selection is planned for 11th July. The whole world's eyes will be on the conduct of justice in Malawi. That is absolutely right and proper.

Lord Judd: My Lords, does the Minister agree that merely because of the tyranny and repression which characterised the previous regime it is tremendously important that this trial, of all trials, should be conducted in a way beyond reproach? Does she realise that she will have the full support of this side of the House in ensuring that that happens? Will she inform the House how much priority is given within the aid budget towards strengthening the administration of justice as part of good governance in the third world, to which the Government are committed?

Baroness Chalker of Wallasey: My Lords, I am grateful to the noble Lord, Lord Judd. He is absolutely right: this trial must be conducted in a way that is beyond reproach. That is why the United Kingdom has focused much of its support for good government on the proper training, for jury trials, of judges and of others. I can give the noble Lord details of the training attachments: six High Court judges and two Supreme Court judges are being trained in this country; and three jury trial workshops are being conducted in Malawi to ensure that that happens. I am glad that we have the full support of the Opposition. All the work that we are doing in institution building in Malawi and other countries is designed to make them self sufficient in running a system which is responsible and which enables every person to be heard before a court, with a proper defence, and that they be judged innocent until they are proven guilty.

Employment Rights Bill [H.L.]

3.32 p.m.

The Lord Chancellor (Lord Mackay of Clashfern): My Lords, I understand that no amendments have been set down to this or the next Bill standing in my name on the Order Paper and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee on either of them. Therefore, unless any noble Lord objects, I shall beg to move in each case that the order of recommitment be discharged.

Moved, That the order of recommitment be discharged.—(The Lord Chancellor.)

On Question, Motion agreed to.

Industrial Tribunals Bill [H.L.]

The Lord Chancellor: My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Therefore, unless any noble Lord objects, I beg to move that the order of recommitment be discharged.

Moved, That the order of recommitment be discharged.—(The Lord Chancellor.)

On Question, Motion agreed to.

Civil Evidence Bill [H.L.]

Read a third time, and passed, and sent to the Commons.

Child Support Bill

3.34 p.m.

Report received.

Clause 1 [Applications for departure directions]:

Lord Carter moved Amendment No. 1:

Page 1, line 26, leave out from beginning to end of line 7 on page 2.

The noble Lord said: My Lords, in Committee I moved an amendment which dealt with the question of how applications for a departure direction made outside the 28-day time limit without good reason should be handled.

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MULUZI ASSISTS MRS. KAMWANA

It is but the press's duty and responsibility to the public that bind us to publicise activities in the high seat of government which are incongruous with their position as entrusted to them by the people.

Below is a letter from Sam Kakhobwe, the National Co-ordinator of the Poverty Alleviation Fund, (of which State President Bakili Muluzi is

By Times Reporter

its chairman) to the British Council.

The letter is a directive from the state president which reveals that a sum of K19,000 in the form of a cheque NO. D1 147513 dated 30th June 1995 was paid to the British Council, as payment for training for Mrs. H. Kamwana's son, Ndilathu. The amount's equivalent to 826.39 Pounds sterling.

On the left is a receipt dated the same

day and signed by A.J. Kennedy acknowledging receipt of the said funds.

The assistance for the training of Ndilathu was requested for by Mrs. E. Kamwana from Mr. Muluzi, who in turn directed Mr. Kakhobwe to divert funds from the Poverty Alleviation Fund to the British Council in a covering letter copied to Mrs. H. Kamwana, wife of the late former Inspector General of Police, Mr. Mac Kamwana.

The British Council



Received from

Date

the sum of

(in words)

being

For and on behalf of The British Council

A. J. Kennedy

184929

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PAPAZI

30th June 1995

Mr. Charles Telawa
Project and Training Officer (CFT)
The British Council
P.O. Box 20222
Lilongwe

Dear Mr. Telawa,

TRAINING FOR MR. N. KAMWANA

I refer to your letter 11.07.95 dated 24th April, 1995, and addressed to Mrs. E. Kamwana.

I am pleased to inform you that His Excellency the President has kindly directed that an amount equivalent to K19,000 be paid out of the Poverty Alleviation Fund in support of Mr. Ndilathu Kamwana's education.

Please find enclosed cheque No. D1 147513 dated 30th June 1995 in the amount of K19,000.00.

The duty in processing this matter is deeply regretted.

Yours Sincerely,

Sam Kakhobwe

NATIONAL CO-ORDINATOR
POVERTY ALLEVIATION PROGRAMME

cc: Mrs. E. Kamwana
P.O. Box 1878
Lilongwe

THE MWANZA CASE

JURORS YET TO BE SELECTED

THE Mwanza case was adjourned indefinitely yesterday after the prospective members of the jury had failed to qualify for a panel.

According to Section 297 of the Criminal Procedure and Evidence Code, a juror is supposed to come from the same area as the accused usually resides.

The Director of Public Prosecutions, Kamudoni Nyasulu said that following some amendments in the law, the area of residence was specified as a traditional authority as opposed to a district.

It was then established that the first accused, Dr. H. Kamuzu Banda, who is being tried in absentia and Mrs. Cecilia Kamanda Kizankhumbwe from T/A Kuwata's

By Rankin Nyekanyeka



Mr. L. Llombe is led out of court

area in Blantyre while second accused Mr. J.Z.U. Tembo, third, Liston Likwamba, fourth, MacDonald Kalemba and fifth, MacWilliam Lunguzi are from T/A Chitukula's area in Lilongwe.

"The selection of jurors is very important. It's of fundamental importance," British lawyer Clive Stenbrook of the defence counsel emphasized to the court as technicalities on the jurors were being sorted out.

One such technicality was the ratio of the jurors. The defence counsel proffered that five come from Lilongwe and two from Blantyre as the majority of the accused are from Lilongwe. Cont. on page 3.

PAF/C/13

30th June 1995

Mr Francis Tchuwa
Project and Training Officer (CFT)
The British Council
P.O Box 30222
Lilongwe 3

Dear Mr Tchuwa,

TRAINING FOR MR N. KAMWANA

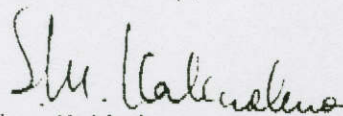
I refer to your letter LLW/2610/52 dated 24th April, 1995, and addressed to Mrs E Kamwana.

I am pleased to inform you that His Excellency the President has kindly directed that an amount equivalent to £826.39 be paid out of the Poverty Alleviation Fund in support of Mr Ndilathu Kamwana's education.

Please find enclosed cheque No. D1 147513 dated 30th June 1995
A
in the amount of K19,000.00.

The delay in processing this matter is deeply regretted.

Yours Sincerely,

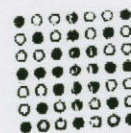


Sam Kakhobwe

**NATIONAL CO-ORDINATOR
POVERTY ALLEVIATION PROGRAMME**

cc : Mrs E Kamwana ✓
P.O. Box 5878
Limbe.

The British Council



Received from

Date

30th June 95

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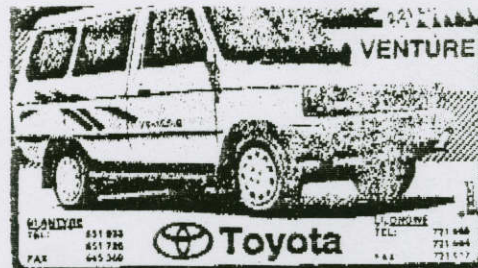
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14 JULY 1995

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MONEY TO WITNESSES DEPLOYED

Reacting to an article that appeared on this page yesterday stating that Mrs. Kamwana, widow of the late former Inspector General of Police, had received financial help from the Poverty Alleviation Fund as directed by its chairman, state president Bingu Mwaambi, the defence lawyers held a press conference yesterday, at which they deplored that action.

At the press conference, held at Mount Soche Hotel at noon, the defence lawyers read a press release which pointed out that a clear inference could be drawn that the money Mrs. Kamwana received is a financial inducement to a prosecution witness in the Mwanza case, since Donor Nations have been made to believe that the fund is to alleviate poverty in the rural regions in Malawi, and not for paying fees at a private school in England for Mrs. Kamwana's son.

The press release goes on to say that the article in yesterday's edition has coincided with information the defence already has on Mrs. Kamwana that a) she had known the state president for a considerable period and that he had asked for her assistance in providing information on the Mwanza case; b) that she had been approached by an officer who had originally been charged with murder, but after obtaining

information from her (through financial inducement on the Mwanza case, the officer has since had his charge of murder reduced to misuse of office because he will be used as witness and he has been since released on bail, (in Malawi the DPP has such powers) c) that Mrs. Kamwana herself admitted to inventing information in order to avail herself of these financial inducements; d) and that she has received other money from the Poverty Alleviation Fund and from other sources.

The release says it will keep the issue open as to the interpretation of the payment as appeared in our paper yesterday, but adds that counsel will be sought from the DPP to see if these matters involving financial inducements to prosecution witnesses can be investigated.

The release also calls upon the Donor Nations to participate in the enquiry and reads: "A full and independent enquiry into the use of the Poverty Alleviation Fund and into the extent and breadth of any payments offered or made to prosecution witnesses in the Mwanza case should now

By Times Reporter

be instigated."

The immediate question asked was what the defence lawyers would do if government stayed put and did nothing.

"It is to their credibility, whether they do something about our request or nothing. We are not demanding, but simply putting our request," offered defence.

One reporter questioned the credibility of the newspaper report in the first place, and asked whether



Counsel for Defence panel Bernard Clark, Gustav Kaliwo and Clive Stanbrook

the lawyers had checked with the British Council to ascertain facts.

"We are simply reacting to what we read and we are responding as concerned defence lawyers. It is up to either British Council or the National Co-ordinator of the Fund to cry foul or forgery and take it up with the paper.

But we are satisfied by the receipt number and the signature on it," came the response.

"But Mrs. Kamwana received the money as one of the poor people in this country," protested one journalist.

"No doubt about it. We are not denying the fact of

poverty. But our worry is that given the other facts we have surrounding her 'proximity' to the Fund, she is a prosecution witness, receiving money from government. What chances are there for her to disappoint her benefactor in the witness box? Who will assist her next time?"

AID ONLY ON PERFORMANCE—ENVOY

US Ambassador Mr. Peter Chaveas gave a press conference at Ryall's Hotel yesterday to clarify a misconception that had developed from his July 4 speech in Lilongwe regarding his country's aid cut backs.

Mr. Chaveas explained that for the first time in 40 years, both houses (Senate and Congress) were controlled by the Republicans and their agenda is to balance the budget. President Clinton, although a democrat, also has the balancing of the budget as his priority, but the crunch is at the timing.

The Republicans want the budget to take shape and achieve balance by the year 2002, seven years from now.

"That has hastened matters and proposals are that aid be cut right across the board—at a domestic as well as foreign level, globally," he observed.

Although Malawi is looked at favourably by the donor community because of her democratisation process, the US envoy advised that this country must brace itself for competition for aid because the yardstick is no longer the degree of need, but performance.

Mr. Chaveas also pointed out that Malawi should get into the habit of publicising itself so that more powers know of her.

On his part, Mr. Chaveas said he will continue bringing in his fellow countrymen with interests in different fields to broaden chances of getting Malawi involved in business partnerships, training workshops, and the like.

The envoy then appealed to the press to adopt an ethic of accuracy in their reporting and that they should take time, in case of donors, to ascertain facts pertaining to their stand on financial assistance to this country.

By Times Reporter

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14.7.95

Dear Mr Nyasulu,

The Republic of Malawi v Dr Hastings Banda & others

Your fax of yesterday addressed to Clive Stanbrook QC has been passed on to me as Mr Stanbrook has left Malawi for a short period of time.

As you are aware, before he left Mr Stanbrook did try to make contact with you in order to discuss our concerns following the publication of a letter purporting to be from the co-ordinator of the poverty alleviation programme to a representative of the British Council confirming a payment made from that fund at the direction of President Muluzi for the private school fees of the son of a prosecution witness.

It may, of course, be that there is no cause for concern. The letter may be of dubious veracity or there may be some other perfectly plausible explanation for this payment. We have to say that our concern about this issue has been heightened by other information which has been brought to our attention.

Because of the fair manner in which you are endeavouring to conduct the prosecution of this case we are sure that you will be concerned about any possible inference that inducements may have been given to a prosecution witness in order to testify and will be anxious to ascertain whether there is any merit behind such an inference.

If such inducements have been given then we are obviously anxious to know the extent of these inducements, the identity of the recipients and the sources.

Mr Stanbrook will be contacting you on his return to Malawi in order to discuss this issue.

Finally, I would like to take this opportunity of thanking both you and your staff for your help and co-operation during our recent attendance at your office in order to obtain copies of the additional police witness statements and other documents. This was much appreciated. We will be sending you a schedule of the documents copied for your agreement.

Yours sincerely,

Bernard Clarke

Bernard Clarke

The Director of Public Prosecutions
Ministry of Justice
Private Bag 333
Lilongwe 3

cc The Director of Public Prosecutions
Blantyre

Telegram: LEGAL, Lilongwe
Telephone: Lilongwe 782 411
Fax: 782 176



In reply please quote No.

DIRECTOR OF PUBLIC PROSECUTIONS
MINISTRY OF JUSTICE
PRIVATE BAG 333
LILONGWE 3
MALAWI

REF. NO. DPP/H/90/95/VOL.5

15th July 1995

Messrs:

Clive Stanbrook, Q.C.
Bernard Clarke ✓
Lovemore Munlo, S.C.
Bazuka Mhango
Gustav Kaliwo

C/O P.O. Box 536
BLANTYRE

Dear Sirs

NOTICE OF INTENDED PROSECUTION

On 3rd June 1995 you held a press conference which carried insinuations likely to lower or undermine the authorities of the learned Justice Mkandawire and myself. On 13th July 1995 you again held a press conference reported in the Daily Times of 14th July 1995 which clearly was libellous of myself.

I wish to draw your attention to provisions of s.113 of the Penal Code and give you notice that any further such conduct will prompt your prosecution.

Yours faithfully


I. N. K. NYASULU

DIRECTOR OF PUBLIC PROSECUTIONS

Date 17 July 1995

Our ref 78/P0231.1/hca

Your ref DPP/H/90/95/VOL.5

MEMERY CRYSTAL

Solicitors

FAO Mr I N K Nyasulu
The Director of Public Prosecutions
Ministry of Justice
Private Bag 333
Lilongwe 3
Malawi
By facsimile/Original by post

COPY

Dear My Nyasulu

The Republic of Malawi v Dr Hastings Banda and Others -
Your letter of 15 July 1995

There was no insinuation made in the Press Conference on 3 June 1995 that could have been considered to lower or undermine either your authority or that of Mr Justice Mkandawire and certainly no intention to do so.

As far as 14 July 1995 is concerned, the publication of the letter from the Poverty Alleviation Fund was a matter of public interest and its contents are as much a matter of concern for the Prosecution as it is for the Defence.

As the person who spoke on this issue, I went to considerable pains to explain that we would be contacting you about this matter. There is no basis for any suggestion that you were libelled and there was not the slightest intention on my part or on the part of any of the Defence lawyers of offering any disrespect to you or to the Court.

We are aware of the provisions of Section 113 of the Penal Code and take note of your threat to institute criminal proceedings against the Defence lawyers. We will naturally be very careful to avoid any conduct that could contravene that provision. However, you would not expect the Defence lawyers to be in any way intimidated by your threat from properly and vigorously defending the interests of their clients.

Meanwhile, I look forward to hearing from you in relation to the payment apparently made to or on behalf of Mrs Kamwana.

Yours sincerely

Bernard Clarke

31 Southampton Row
London WC1B 5HT

Telephone
0171-242 5905

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0171-242 2058

LDE No.156

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Regulated in the conduct
of investment business by
The Law Society

FROM: -
Telegrams: LEOAL, Lilongwe
Telephone: Lilongwe 782 411
Fax: 782 176



In reply please quote No.

DIRECTOR OF PUBLIC PROSECUTIONS
MINISTRY OF JUSTICE
PRIVATE BAG 333
LILONGWE 3
MALAWI

REF. NO. DPP/H/90/95/VOL.5

20TH JULY 1995

Bernard Clarke
31 Southampton Row
London WC1B 5HT

REPUBLIC VERSUS DR. HASTINGS BANDA AND OTHERS

Please refer to your letter Ref. No. 78/P0231.1/hca of 18th July 1995.

Be informed that it is unethical and not allowed for defence in a criminal case to approach let alone obtain a statement from a prosecution witness. I was actually in the process of writing you to warn you of this because I had received information that you had actually approached one of the prosecution witnesses.

If you do not desist I will not hesitate to have you prosecuted under Section 113 of the Penal Code.

Yours sincerely

A handwritten signature in black ink, appearing to be 'I. N. K. Nyasulu', written over a horizontal line.

I. N. K. NYASULU
DIRECTOR OF PUBLIC PROSECUTIONS



MALAWI

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

APPLICATION 14

Misc. CRIMINAL CASE NO. 4 OF 1995

THE REPUBLIC

VERSUS

1. DR. HASTINGS KAMUZU BANDA
2. JOHN ZENUS UNGAPAKE TEMBO
3. LESTINO AUGUSTINO LIKAOMBA
4. MACDONALD MOSES KALEMBA
5. MAC WILLIAM LUNGUZI
6. CECILIA TAMANDA KADZAMIRA

ORDER

Having heard the Director of Public Prosecutions and read a letter from Defence Counsel that defence counsel intends to obtain statements from prosecution witnesses the defence area hereby ordered not to approach or obtain any statement from any prosecution witness.

Ordered in the Chambers the 20th day of July 1995


E. B. TWEA
REGISTRAR



Date 20 July 1995

Our ref 78/P0231.1/hca

Your ref DPP/H/90/95/VOL.5

MEMERY CRYSTAL
Solicitors

FAO Mr I N K Nyasulu
The Director of Public Prosecutions
Ministry of Justice
Private Bag 333
Lilongwe 3
Malawi
By facsimile/Original by post

Dear My Nyasulu

The Republic of Malawi v Dr Hastings Banda and Others

Thank you for your letter of 20 July 1995, together with copies of the Notice and Order. We will naturally comply with the terms of the Order and I have arranged for copies to be passed to all members of the Defence team.

I am surprised that you felt it necessary to obtain an Order since had you informed me of your concerns on this issue, I would have requested that no further approaches be made to Prosecution Witnesses pending resolution of this matter.

I am very disappointed that you felt it appropriate to write, yet again, threatening me with prosecution under Section 113 of the Penal Code. You say (without quoting any authority) that it is "*unethical*" and "*not allowed*" for the Defence in a criminal case to approach, let alone obtain a Statement, from a Prosecution Witness.

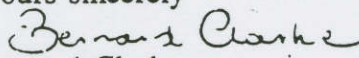
Ethically and legally, there is no property in a witness and we know of no provision in Malawian law which prohibits such an approach. We do not accept that such approaches contravened the provisions of Sections 107 or 113 of the Penal Code. Section 107 applies to a person who: "*... practises any fraud or deceit or knowingly makes or exhibits any false statement, representation, token or writing...*".

Section 113(1)(f) applies to a person who: "*... attempts wrongfully (our emphasis) to interfere with or influence a witness in a judicial proceeding...*".

We expressly refute any suggestion that the conduct of the Defence amounted to a breach of these provisions or of any other provisions of Section 113.

We take the view that any prosecution instigated by you under Sections 107 or 113 would be entirely without reasonable or probable cause and would be malicious.

Yours sincerely


Bernard Clarke

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