



**IN THE MALAWI SUPREME COURT OF APPEAL  
SITTING AT BLANTYRE**

**MSCA MISCELLANEOUS CRIMINAL APPLICATION NO. 18 OF 2017**  
[Being Criminal Case Number 4 of 2017 High Court of Malawi, Criminal Division,  
Blantyre Registry]

**BETWEEN**

**ABDUL REHMAN ABDULLAH**

**FIRST APPLICANT**

**RIZWANA ABDUL REHMAN**

**SECOND APPLICANT**

**AND**

**THE REPUBLIC**

**RESPONDENT**

**CORAM: HON. JUSTICE L P CHIKOPA SC, DEPUTY CHIEF JUSTICE**

Maele, M G[Mr.]/Kalimbuka[Mr.] Of Counsel for The Applicant

Salamba [Ms.]/ Chione[Mr.], State Counsels for The Respondent

Minikwa[Mr.], Clerk

**RULING/ORDER**

On March 12, 2025 we heard an application from the applicants for an order varying their bail conditions to the extent that;

1. *'The passports be released to the applicants to facilitate and application for a visa to Pakistan;*
2. *They be allowed to travel to Saudi Arabia for hadji and Pakistan for medical attention within a period of 45 days'*

The application was duly served on the respondent. They chose not to file anything about the application. There was a halfhearted attempt on the date of hearing to explain why they could not do so. We did not have it. The respondent should have, if it was their wish to explain their inability to file anything about the application, filed an affidavit explaining their inactivity. Or showing good cause why they did not respond. The respondent did none of the above. We therefore, as is the practice in this court, denied the respondent an audience and proceeded to hear the applicants.

For purposes only of context the applicants were arrested in September 2017. The second applicant was almost immediately admitted to bail. The first applicant was on remand until this court granted him bail in May, 2018.

The applicants are now answering charges of:

*[i] Conspiracy to Defraud contrary to section 323 of the Penal Code;*

*[ii] Obtaining by False Pretences contrary to section 322[a] of the Penal Code;*

*[iii] Fraudulent Trading by a Company contrary to section 336[A][1] of the Penal Code; and*

*[iv] Money Laundering contrary to section 35[1][c] of the Money Laundering Proceeds of Serious Crimes and Terrorist Financing Act.*

For the record only one witness has testified in the case so far. Some more will testify even though we were not told how many more.

The appellants inform us that they are devout Muslims. They had before their arrest in 2017 always gone for Hadji in Saudi Arabia. They have, due to their bail conditions and the case against them in the court below, not been able to continue doing so.

We have also been told that the applicants are not in robust health. We do not think it necessary that we set out the applicants' health issues. Suffice it to say that before their present predicament they used to go to Pakistan for treatment. Every three or four months according to the applicants. They cannot do that now.

Their condition is getting worse. And according to them there is no doctor in Malawi who can treat their respective conditions. It is in those circumstances that they have approached this court for the orders set out above.

Like we have said above there is no response from the respondent. We will therefore have to decide whether or not to grant the orders requested on the basis of materials placed before us by the applicant.

Before we do so let us say something about the paperwork in this matter. It could be better is the short conclusion. Take the summons for instance. The heading indicates them as an application for variation of bail conditions to allow the applicants to *travel to Pakistan for medical checkup*. The body of the summons on the other hand talks of travel not just to Pakistan for medical checkup but also to Saudi Arabia for Hadji.

The heading for the affidavit in support of the application is another example. The heading is for a matter in the High Court and not the Supreme Court of Appeal. It also speaks only of travel to Pakistan for medical checkup. The body of the affidavit on the other hand speaks of travel to Pakistan and Saudi Arabia. And as if the foregoing is not enough the affidavit claims to have been sworn by '*Abdul Rehman Abdullah, Legal Practitioner in the practice Messrs Law Practice*'. Basic shortfalls one would think but shortfalls that should not appear in paperwork placed before this court.

Coming back to the application itself it is in the judicious discretion of this court whether or not to grant it. And looking at this matter in its totality we are of the most considered view that it is not in the interests of justice that the variation sought be granted. Take the first applicant for instance. There is always the lingering doubt about his movement from Malawi to Pakistan and back when this matter first arose. Was it an attempt at evading these criminal proceedings? Was his return voluntary? This court addressed these issues when granting the applicant bail 2018. We took a chance on him only because he would be resident in Malawi and his travel documents kept by the court. We do not think we should extend that magnanimity to include allowing him to go to Saudi Arabia and Pakistan in 2025.

He has in our judgment less reasons for coming back to Malawi to attend these proceedings.

Actually, we do not think that a variation should be done merely because the applicants want to go for Hadji in Saudi Arabia. The applicants have not been to a Hadji since 2018. It has not to our knowledge made them lesser exponents of their religion. Neither on the facts now before us will a failure to do so in 2025. We are not, in saying the immediately foregoing, in any way suggesting that religious considerations are of no consequence. They are. Just that put side by side with the interest of justice i.e. the need to have this matter dealt with to completion timeously, we are of the firm view that denying the applicants the variation to their bail conditions sought will serve these proceedings better.

About the applicants' medical condition, it must be pointed out that the copy medical report only talks about the applicants' ailments and the need for, especially the second applicant, to go to Pakistan to attend her doctors. With the greatest respect and without in anyway trying to trivialize the second applicant's medical condition the report does not say that there is no doctor in Malawi who can treat either of the applicant. Or that only Pakistani doctors can attend to them. We do understand that it might be more convenient for the applicants to get treated by Pakistani doctors just that such convenience should, in our opinion, be considered in the light of their present circumstances.

If we might say so, the first applicant's case is even less strong. There are no medical reports of what he is suffering from. Only statements from him about his ailments and the fact that he would prefer Pakistani doctors to attend to him.

This application must, like we have said above, fail. Principally because we are unable on the facts and circumstances of this case unable to conclude on a balance of probabilities that the applicants will come to this jurisdiction for trial if they were allowed to leave Malawi for Pakistan and Saudi Arabia as requested. The interest of justice in other words weighs more towards a denial than a grant.

Having concluded as above we must also express our deep concern at the speed at which this matter is progressing. One witness in eight years. More can and should be done by all involved to speed up the matter. We would urge the trial court to

take greater control of the proceedings. Be very less generous with adjournments for instance. Summon all parties and agree on a road map for the way forward. Sanction any and all who seem to be more intent on slowing down the wheels of justice.

Dated at Blantyre this 8<sup>th</sup> day of April, 2025

A handwritten signature in black ink, consisting of a large loop at the top, followed by a horizontal line, and a long, straight vertical line extending downwards.

L P CHIKOPA SC

**DEPUTY CHIEF JUSTICE**