



REPUBLIC OF MALAWI
IN THE MALAWI SUPREME COURT OF APPEAL
MSCA MISCELLANEOUS CRIMINAL APPLICATION No. 1 OF 2026
(being High Court of Malawi, Lilongwe Registry, Misc. Crim. App no. 289 of 2025)

BETWEEN:

HON. RICHARD CHIMWENDO BANDA

APPLICANT

AND

THE REPUBLIC

RESPONDENT

RULING

1. The Applicant, Hon. Chimwendo Banda, Member of Parliament, was arrested on 12th December 2025 and is currently in custody at Maula Prison in Lilongwe pursuant to a remand warrant issued 15 December 2025 by the Chief Resident Magistrate sitting at Lilongwe. The Applicant claims that no formal charge has been proffered against him, nor have any committal proceedings commenced.
2. On 24th December 2025, he appeared before the High Court sitting at Lilongwe for his bail application hearing, and a ruling is pending. He claims that the High Court confirmed and upheld the remand warrant. The Applicant states that he has filed an appeal in this Court challenging the High Court's confirmation of the remand warrant, principally on the grounds that the court below lacked jurisdiction to remand him in the absence of a formal charge and a valid committal. He argues that he needs relief while waiting for the appeal hearing through the application for a stay or suspension of execution of the remand warrant, as the appeal will be rendered nugatory and his continued detention will persist without a lawful foundation.

3. To facilitate the interim remedy sought, on 3rd January 2026, the Applicant filed an *ex parte* summons in the Malawi Supreme Court of Appeal, seeking an order to stay or suspend the execution of the remand warrant. On 6th January 2026, this Court directed that the summons be heard through an *inter partes* hearing on 9th January 2026. The Applicant's summons is taken under sections 7 and 16 of the Supreme Court of Appeal Act, Order I rule 18 of the Supreme Court of Appeal Rules, and section 355 of the Criminal Procedure and Evidence Code.
4. The Applicant seeks an order to stay or suspend execution of the remand warrant pending the resolution of the appeal that he has filed and is marked Exhibit *HRCB* 3. He claims that his detention is unlawful as he has not been formally charged with any offence more than 48 hours after arrest and detention. He contends that this is a violation of section 42(2)(b) of the Constitution of the Republic of Malawi.
5. On 8th January 2026, the Respondent, through the Directorate of Public Prosecutions (DPP), filed a notice of preliminary objections to the Supreme Court application, arguing that the Applicant's summons lacks a legal basis and constitutes an abuse of process of the court. The DPP argues that the Supreme Court application is premature because the High Court has not yet made a final determination on the bail application. The Respondent further submits that they have acted within the law and that the charge of attempted murder permits a pre-trial custody time limit of 90 days.
6. On the date of the hearing, the Applicant filed skeleton arguments in reply to the preliminary objections requesting that they be dismissed *in limine* (at the outset). The Applicant contends that the notice of preliminary objection is procedurally incompetent due to the lack of a legal foundation, that the objections are legally misconceived and untenable, that a competent appeal exists, and that the DPP's assertions regarding lack of jurisdiction are overly technical and represent an incorrect view of the law. He urges the Court to have recourse to sections 3 and 5 of the Criminal Procedure and Evidence Code. The applicant argues that the

objections cannot undermine an application intended to prevent the ongoing illegal deprivation of his liberty.

7. A party to a proceeding may utilise a preliminary objection as a procedural tool to challenge a case at the outset, arguing that the case should be dismissed, as the Respondent has done, or the pleading should be corrected due to legal defects. The citing of a specific legal basis (either a statute or rule) in the headline or caption of a notice of preliminary objection does not seem to be expressly required in criminal litigation in this jurisdiction. However, the legal basis for the preliminary objections raised by the Respondent, which would cure any irregularities, has been effectively included in the Respondent's skeleton arguments in opposition to the application. Accordingly, the Court proceeds to determine whether to sustain or overrule the preliminary objections.

8. After hearing from the Director of Criminal Litigation and the Applicant's legal practitioner, as well as reviewing the documents they filed in this matter, this court determines that the application for a stay of execution should and is hereby dismissed due to a fundamental lack of jurisdiction, since the Supreme Court of Appeal is not currently seized of any competent appeal. The prerequisite for a court to hear a case is the existence of jurisdiction, as it is the cornerstone of its authority. Contrary to what the Applicant asserts, a court's jurisdiction is generally considered a substantive and fundamental issue rather than a mere technicality: *Mbale v Maganga* (MSCA Misc. Civil Appeal 21 of 2013) [2015] MWSC 1 (31 May 2015). This Court agrees with the Respondent's arguments that the Malawi Supreme Court of Appeal's criminal appellate jurisdiction is strictly limited to appeals arising from final decisions of the High Court under Section 11 of the Supreme Court of Appeal Act and Section 104 of the Constitution. The impugned remand warrant and its purported confirmation constitute interlocutory orders that are not appealable under settled law because they are provisional in nature and do not determine the parties' ultimate rights. In principle, an order of "stay or suspension of execution" only applies to final judgments or sentences, such as warrants of commitment after conviction, as occurred in the case of *Kumwembe & Anor. v R* | *Kasambala v R* (MSCA Criminal

Appeal 5 of 2017) [2017] MWSC 4 (12 August 2017) as noted by the Counsel for the Applicant. This interim relief does not really extend to interlocutory remand orders that authorise temporary detention while an investigation or trial is underway. The notion of "staying" a remand warrant as if it were an executable judgment or order has not been supported by any legal authority cited by the Applicant. The following cases are relevant to the issues herein: *Mbale v Maganga* (MSCA Misc. Civil Appeal 21 of 2013) [2015] MWSC 1 (31 May 2015); *Chihana v Republic*, 1992 15 MLR 86; *Yiannakis v Republic*, 1995 2 MLR 505; *Jeffrey, Nankhumwa & Chazama v Mutharika, Mwale & Democratic Progressive Party* (MSCA Misc. Application 65 of 2023) [2024] MWSC 1 (3 January 2024).

9. Furthermore, Order I, Rule 18 of the Supreme Court of Appeal Rules, which stipulates that an application for a stay must first be made to and denied by the court below, was not followed by the Applicant. The Applicant's summons is therefore premature, constitutes an abuse of process of the court, and does not provide this Court with a lawful basis to exercise jurisdiction because the High Court has not yet delivered any final decision. A substantial body of case law supports this legal position, such as *Parliament Service Commission v SJR Catering Services* (MSCA Civil Appeal 9 of 2018) [2018] MWSC 6 (13 April 2018); *Registered Trustees of Khusi Trust v Ngwira* (MSCA Civil Cause 18 of 2023) [2023] MWHCCiv 43 (19 May 2023).
10. Accordingly, the Respondent's preliminary objections are upheld, and the Applicant's summons for stay or suspension of execution of the remand warrant is dismissed.

DATED and DELIVERED at BLANTYRE this 9th day of January 2026.



Dorothy nyaKaunda Kamanga, SC

JUSTICE OF APPEAL

Case information:

Mr. K. Mchizi : Legal practitioner for the Applicant.
Mr. D. Malunda & Ms. Jafali : DCL & SSA for the Respondent.
Mrs. Pendame : Senior Court Reporter
Mrs. Mthunzi : Law & Court Clerks.