



REPUBLIC OF MALAWI
IN THE SUPREME COURT OF APPEAL
PRINCIPAL REGISTRY

MSCA MISC CIVIL APPLICATION NO. 35 OF 2025

(Being High Court of Malawi, Lilongwe District Registry, Civil Division, Judicial Review Cause No. 37 of 2025)

BETWEEN:

HENDRIX LAHER.....1ST APPELLANT

LUTHANDO HOLDINGS.....2ND APPELLANT

-AND-

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

CORAM

Justice D. Madise SC, JA

Mr C. Gondwe, for the applicants/appellants.

Ms Masaninga, Sitima, Ndau, for the respondent

Mr. Chinkono, Law Clerk

RULING

**[Under Section 7(b) of the Supreme Court of Appeal Act as read with Order I rule 18 of the
Supreme Court of Appeal Rules & under the Inherent jurisdiction of the Court]**

I, This matter has once again come before me as a single member of the Court pursuant to **section 7 (b)** of the Supreme Court of Appeal Act as read with Order 1 rule 18 of the Supreme Court of Appeal rules. . Today the parties appeared before the Court for an interpartes hearing for the continuation or discharge of the order of stay which was granted exparte. Both parties have filed skeleton arguments and affidavits in support and against the continuation of the order of stay and they addressed court in oral submission. This application is made under Section 7 (b) of the Supreme Court of Appeal Act. The section provides for powers of a single member of the Court to exercise any powers vested in the Court in as far as it does not determine the appeal. The provision states as follows:

“A single member of the Court may exercise any power vested in the Court not involving the hearing or determination of an appeal: Provided that –

(b) in civil matters, any order, direction or decision made or given in pursuance of the powers conferred by this section may be varied, discharged or reversed by the Court.”

Order I rule 18 of the Supreme Court of Appeal Rules offers some direction on applications that may be made in the High Court and the Supreme Court of Appeal alike (concurrent jurisdiction). It provides as follows:

“Whenever an application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below but, if the Court below refuses the application, the applicant shall be entitled to have the application determined by the Court.”

2, The appellants in this matter were the claimants in Judicial Review Cause No. 37 of 2025, a matter before the High Court of Malawi, Civil Division, Lilongwe Registry, wherein they challenged the decision of the respondent to discontinue criminal proceedings against certain accused persons; a decision they believed was made unlawfully, unreasonably, and contrary to the oversight powers of Parliament.

3, The appellants are challenging by way of judicial review the decision of the respondent, the Director of Public Prosecutions (DPP), to discontinue Criminal Case No. 868 of 2023 of The Republic v Prakash Vurji Ghedia, Arvindkumar Atit Patel, Suresh Khimji Jagatiya and Paramount

Holdings Limited. The appellants applied in the High Court for permission to commence judicial review proceedings, but their application was denied. Dissatisfied, the appellants invoked the concurrent jurisdiction of the Malawi Supreme Court of Appeal under Order 1 Rule 18 of the Supreme Court of Appeal Rules.

4, The appellants sought to challenge that decision in the High Court but the Judge refused to grant them permission to move for Judicial Review against the decision of the DPP to discontinue a criminal matter against persons cited above which decision allegedly adversely affected the appellants. Under Order 1 rule 18 Supreme Court of Appeal rule the appellants came to this Court to seek fresh leave which was granted and the matter was remitted back to the High Court to hear and decide the case on the merits. The Judge upon an application by the respondent discharged leave which was granted by this Court without hearing the case on the merits as ordered by this Court. When the appellants sought an order of stay of execution the Judge refused to grant it. Being aggrieved by this denial the appellants sought an order of stay before this Court which was granted *ex parte* on 18th December 2025 on condition that the appellants files a fresh application with notice for the continuation of the order of stay.

5, I have read both the arguments that have been filed and adopted, I have also heard counsel in oral arguments. The appellants argued that the stay is needed to preserve the status quo so that the appeal is not rendered nugatory. The appellants have not cited specific acts that may be taken by the respondents in satisfaction of the judgment which can adversely affect them and therefore render the appeal academic. The respondent on the other hand argued that the stay is not necessary as the order to discharge leave for judicial review was negative in nature which does not require the respondent to take any action in the matter against the appellants.

6, Secondly they submitted that the judgment imposes no obligations, creates no enforceable rights, and alters no legal position. There is no subject matter that requires preservation, no risk of irreparable harm, and no consequence that could be rendered hollow by refusing the stay. That granting the application would serve no practical purpose and would not advance the cause of

justice in any meaningful way. The respondent submitted that the appellants' application is devoid of merit and should be dismissed in its entirety as the appellants have no legal basis to stay its execution. That the law and the circumstances leave no room for doubt that the application must fail.

7, I have gone through all documents that have been filed and I'm of the considered view that this matter raises serious constitutional questions about the powers of the DPP to discontinue a criminal matter notwithstanding the specific instructions that were given the Legal Affairs Committee of Parliament that the prosecution should proceed. The case gives an opportunity for the Supreme Court to give direction as to role and binding nature of the recommendations of the legal Affairs Committee of Parliament. However, I entirely agree with the respondent and I do not see any need for a stay of execution of the judgment of the Court below.

8, The first principle for consideration is that the granting of an order of stay solely dependent upon the court's discretion. In this regard, the court in The *Anti-Corruption Bureau v Atupele Properties Limited*, MSCA Civil Appeal Number 27 of 2005, stated that:

“the first is that it lies within the broad discretion of the court to grant or refuse an application for stay of execution.”

9, In this regard I find that it is moot in this appeal to continue with the order of stay in so far as the dictates of law and the interest of justice so require. I fail to see any adverse action that will be taken by the respondent against the appellants. I therefore vacate the order of stay of execution of judgment pending appeal.

Direction.


10, The parties should settle the record within 21 days at the initiation of the appellants and that the appellants should enter the appeal with this court 7 days thereafter. Once the appeal is entered

practice direction no 1 of 2010 will take effect. Once parties have filed their arguments the Registrar of the Court shall set a date for the hearing of the appeal,

Cost are in the cause.

I So Order.

Made at the Supreme Court of Appeal at Blantyre on 13th May 2026

A handwritten signature in brown ink, consisting of several overlapping loops and lines, positioned above a horizontal line.

Dingiswayo Madise SC

Justice of Appeal