



**IN THE HIGH COURT OF MALAWI  
FINANCIAL CRIMES DIVISION  
MISCELLANEOUS APPLICATION NO. 03 OF 2026**

**BETWEEN**

**YUSUF INVESTMENTS LIMITED t/a**

**AMARYLLIS HOTEL .....APPLICANT**

**-AND-**

**THE FINANCIAL INTELLIGENCE AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF THE**

**ANTI-CORRUPTION BUREAU..... 2<sup>ND</sup> RESPONDENT**

**CORAM: THE HONOURABLE JUSTICE R.E. KAPINDU**

Mr. Kambale, Counsel for the Applicant

Mr. Chawoneka, Counsel for the 1<sup>st</sup> Respondent

Mr. Khunga, Mr. Phiri, and Ms. Mlava, Counsel for the 2<sup>nd</sup> Respondent

Mr. F. Dzikanyanga, Court Clerk/Court interpreter

## RULING

KAPINDU, J

1. For quite some time now, the legal and economic climate in Malaŵi has demanded very robust investigative action by the State law enforcement agencies in combating various types of financial crimes in the country. Reports such as the *UNCTAD Economic Development in Africa Report 2020 - Tackling Illicit Financial Flows for Sustainable Development in Africa - Background Paper; Illicit financial flows and sustainable development: Panel data Evidence for Africa* (2020), and the *UNODC Global Study on Illicit Financial Flows*, (2023), among numerous other studies, demonstrate how African economies, including Malaŵi, have been bleeding and continue to bleed huge sums of money annually, aggregating in billions of US Dollars worth, on account of financial crimes and attendant illicit financial flows, both within the country as well as transboundary flows.
2. And yet, in engaging in such robust law enforcement action in an open and democratic society such as ours, the imperative for these agencies to combat financial crime increasingly intersects, frequently in very uncomfortable ways, with the competing constitutional imperative of ensuring the protection of property rights, economic rights, natural justice rights, and indeed on how to ensure that law enforcement measures in this rather delicate area of law enforcement, do not unduly hamper legitimate business or trade activities that are, in turn, the heartbeat of the country's much needed economic development.
3. These are the practical realities and delicate tensions that these courts are frequently called upon to mediate and adjudicate upon, in financial crime matters such as the present one.
4. In the present matter, on or about the 17<sup>th</sup> of November, 2025, the Public Pension Trust Fund (PSPTF), concluded a Sale Agreement with the Applicant herein,

Yusuf Investments Limited trading as Amaryllis Hotel, wherein the PSPTF purchased, or purported to purchase, Amaryllis Hotel, a Five Star hotel that is located in the Central Business District of the City of Blantyre, from the Applicant.

5. It is a notorious fact that the abovesaid sale has generated very significant public interest. This is essentially because of the nature of the PSPTF itself which, being a retirement and pension benefits fund for people employed in the Malaŵi Public Service, is an entity of great public interest. Perhaps it is germane at this point to say a word or two about the nature and character of the PSPTF.
6. The PSPTF runs a contributory pension fund scheme for officers in the public service in Malawi. Information in the public domain, available on the PSPTF website (<https://psptf.mw>), shows that the PSPTF started operating on 1<sup>st</sup> July 2017 and was licensed on 10<sup>th</sup> July 2018 by the Registrar of Financial Institutions (the Governor of the Reserve Bank of Malaŵi). The central objective of the PSPTF is to ensure that its members receive pension financial support upon reaching retirement age which, ordinarily, is 60 years, as well as benefits in such other cases as death or persistent unemployment of its members. In this regard, the PSPTF administers retirement benefits, death benefits for beneficiaries, and withdrawal benefits where applicable.
7. Another major objective of the PSPTF is to prudently invest the abovesaid pension contributions, or pension funds, so as to ensure growth and sustainability of the Fund, which, in earnest, represents the members' savings. Administering such funds, including the investment thereof, thus creates fiduciary obligations which include the duties of due diligence and utmost good faith. It is this second major objective that seems to be in issue in the present matter. The PSPTF agreed to purchase the hotel as part of, or ostensibly as part

of, its prudential responsibilities in investing the assets of the fund, so as to ensure the growth and sustainability thereof.

8. The PSPTF has a very enviable vision, which is to be *“an enviable pension scheme defined by excellence.”* Its mission is likewise admirable. It is to *“provide timely benefits to members and their beneficiaries, and ensure prudent investments for the fund.”* The PSPTF also has very laudable and exemplary core values. These are *“integrity,” “diligence,” “professionalism,” “transparency and accountability,” “efficiency and effectiveness,”* and *“innovativeness and creativity.”*
9. At the core of the present matter are the Freezing Directives and Restriction Notices that were imposed in March 2026, in respect of the bank accounts of the Applicant, following investigations by the 1<sup>st</sup> Respondent, the Financial Intelligence Authority (FIA) and the 2<sup>nd</sup> Respondent, the Anti-Corruption Bureau (ACB), into the circumstances of the abovesaid purchase and sale of Amaryllis Hotel between the PSPTF and the Applicant herein, as stated under paragraph 4 of this Ruling.
10. The Applicant states that they learnt about the Respondents’ actions on their bank accounts on or about the 11<sup>th</sup> of March 2026 and again on the 17<sup>th</sup> of March 2026, when National Bank of Malaŵi informed them via email that all their bank accounts had been frozen, blocked and/or otherwise restricted, thereby suspending all transactional activity thereon.
11. The Applicant, having had their bank accounts frozen by reason of the measures of the Respondents, felt and still feel deeply aggrieved. They characterise the measures as commercially suffocating, or, in the words of Counsel Gabriel Kambale, as amounting to *“commercial strangulation.”* They also believe that these measures are as unlawful as they are unreasonable.

12. The Applicant consequently approached this Court, first by way of a without Notice Application which this Court summarily dismissed on the 2<sup>nd</sup> of April 2026 for being utterly defective in failing to follow the requisite procedures by which such an application ought to have been brought. The Court determined that the application was so defective that it was deemed as not having been filed at all.
13. In a sequel to that initial failed application, the Applicant has returned to Court, this time following, by and large, the correct procedure, and with a With Notice (*Inter partes*) Summons, supported by Sworn Statements and Skeleton Arguments.
14. Save for the status of two accounts over which the parties have eventually mutually settled, as will be discussed further below, the application has been vigorously opposed by the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent's involvement in these proceedings has been barely passive, for reasons that will also be canvassed later in this Ruling.
15. The with notice application herein was heard by the Court on Tuesday, the 21<sup>st</sup> of April, 2026. This is now the Court's Ruling following that application.
16. By the said application, the Applicant originally asked this Court to set aside, discharge, or vary the Freezing Directives and Restriction Notices issued by the Respondents in respect of several bank accounts held by the Applicant with National Bank of Malaŵi plc.
17. The impugned Freezing Directives and Restriction Notices herein were issued by the 1<sup>st</sup> Respondent, the FIA, in the form of Freezing Directives pursuant to its statutory powers under Section 23 of the Financial Crimes Act (Cap. 7:07 of

the Laws of Malaŵi) (the FCA) and by the 2<sup>nd</sup> Respondent, the Acting Director of the Anti-Corruption Bureau (ACB), in the form of Restriction Notices under Section 23 of the Corrupt Practices Act (Cap. 7:04 of the Laws of Malaŵi) (the CPA), respectively.

18. The main purpose of both restrictive measures as adopted by the Respondents herein was and is to preserve the property, being funds in this case, which they reasonably suspect to be connected to money laundering, corrupt practices, or other related financial crimes whilst investigations are ongoing.
19. The present application is supported principally by the Sworn Statement of Mr. Yusuf Shiraz Yusuf, Chief Executive Officer of Yusuf Investments Limited, trading as Amaryllis Hotel (the Applicant herein), dated 3<sup>rd</sup> April 2026, as supplemented by his subsequent supplementary Sworn Statement dated 14<sup>th</sup> April 2026, and the various exhibits thereto.
20. The 2<sup>nd</sup> Respondent, the ACB, vigorously opposes the Application. They have filed a Sworn Statement in opposition together with Skeleton Arguments in Opposition.
21. The FIA, the 1<sup>st</sup> Respondent herein, filed its response very late, on the day of the hearing on 21<sup>st</sup> April, 2026. They sought the permission of the Court to be heard on the documents, even though filed very late. Counsel Chaoneka appearing on behalf of the Applicant, explained that there had been some sudden staffing changes at the FIA, leading to a situation where there was no legal Counsel to attend to the matter, until practically the day before the hearing of the Application when he was told to intervene soon after reporting for duties. However, the Applicant's Counsel, Mr. Kambale for the Applicant had no objection to the 1<sup>st</sup> Respondent's request notwithstanding the late filing and service. I should quickly state that this was unsurprising as, effectively, the 1<sup>st</sup>

Respondent state in those documents that they have since lifted all the Freezing Directives that they had earlier imposed on the Applicants' bank accounts.

22. Order 1 Rule 5(1) of the Courts (High Court) (Civil Procedure) Rules, 2017 (the CPR, 2017), provides, as an overriding objective of the Rules, "*to deal with proceedings justly.*" The Court considered that the Applicant herein expressly indicated that they would suffer no prejudice if the FIA was heard in response to the application, notwithstanding the late filing and service of their documents in response. Accordingly, the Court considered it just to grant the 1<sup>st</sup> Respondent's request to be heard and to use the documents, albeit the same having been filed late, and so directed.
23. Indeed, at the outset of the hearing, Counsel Kambale confirmed with the Court that the Applicant would no longer pursue any issues in respect of the 1<sup>st</sup> Respondent as that part of the application had been completely overtaken by events, the 1<sup>st</sup> Respondent having withdrawn all the Freezing Directives that it had imposed on the Applicants' bank accounts. They thus only remained frozen by reason of the 2<sup>nd</sup> Respondent's Restriction Notices.
24. Turning to the effect of both the Freezing Directives (since withdrawn), and the 2<sup>nd</sup> Respondent's Restriction Notices, Counsel Kambale started by arguing that the Freezing Directives and Restriction Notices herein had effectively paralysed the applicant's business, thus causing what he described as "*commercial strangulation*". He highlighted various statements in the Sworn Statement of Mr. Yusuf Shiraz Yusuf, wherein he averred that Amaryllis Hotel, whose operations had effectively been paralysed by the restrictions, is a substantial hospitality enterprise, a Five-star hotel in Blantyre City, that employs approximately 195 people.

25. Counsel Kambale stated that at the heart of the Applicant's case is what he characterised as unlawful executive overreach, in that the Respondents herein had exercised drastic statutory powers without meeting the requisite legal threshold, without affording the Applicant a hearing, and without disclosing the factual basis for their actions.
26. Counsel Kambale contended that the funds in the affected bank accounts in fact derived from what he referred to as a lawful arm's-length commercial transaction involving the sale of Amaryllis Hotel to the PSPTF.
27. He proceeded to submit that the 2<sup>nd</sup> Respondent's impugned actions had been taken without any reasonable suspicion of criminality or illegality. He pointed to paragraph 12 of the Sworn Statement in Opposition of Isaac Nkhoma, which, according to him, merely stated that the 2<sup>nd</sup> Respondent reopened its investigation following deliberations from the Public Accounts Committee's ongoing inquiry into the matter. Counsel was emphatic that there was no factual basis, nor was any nexus established, between the frozen funds and any criminal activity.
28. By contrast, Counsel Kambale contended that the Applicant's evidence was incontrovertible, namely that the funds herein that were frozen, or the accounts that were restricted, all originated from a lawful sale of the Amaryllis Hotel to the PSPTF. He reiterated that the transaction herein was conducted at arm's length, that it moved through formal banking channels and was not clandestine in any way, and further that, most importantly, the transaction had been cleared by the 2<sup>nd</sup> Respondent itself and by the Honourable the Attorney General. Counsel emphasised that the sale would not have taken place without that clearance.

29. Counsel further invited the Court to note that the Sworn Statement in Opposition had not challenged the validity of the sale agreement between the Applicant and the PSPTF. He called upon the Court to apply the settled elementary principles of the law of contract that define the validity of a contract, namely the existence of an offer, acceptance, valuable consideration, and an intention to create legal relations between the parties. Counsel submitted that all these elements were present in the transaction between the Applicant and the PSPTF.
30. Mr. Kambale proceeded to state that Paragraph 13 of the Sworn Statement in Opposition acknowledged that the PSPTF paid a sum of MK90 billion to the Applicant after the signing of the sale agreement. It was his submission that this payment was part of the the valuable consideration payable under the abovesaid contract. He contended that once paid, the money became the Applicant's private property, which the Applicant could use as he wished.
31. Counsel Kambale went on to point out that the 2<sup>nd</sup> Respondent took issue, as evidenced by paragraphs 14 to 18 of its Sworn Statement in Opposition, with the fact that various payments had been made from the Applicant's bank account. He argued, however, that this, per se, provided no justification at all for the 2<sup>nd</sup> Respondent's actions because the money in issue was private property. It was therefore his submission that the exercise of the power to freeze the accounts was *ultra vires* the 2<sup>nd</sup> Respondent's powers.
32. Counsel Kambale further relied on the doctrine of legitimate expectations under the Constitution. He submitted that the green light that was given by both the 2<sup>nd</sup> Respondent and the Honourable the Attorney General, that the sale herein could proceed, created a legitimate expectation on the part of the Applicant and indeed on the part of all creditors dealing with him, that the transaction was in fact lawful. That legitimate expectation, Counsel argued, is well protected under section 43 of the Constitution. That Section provides that:

*“Every person shall have the right to—*

*(a) lawful and procedurally fair administrative action, which is justifiable in relation to reasons given where his or her rights, freedoms, legitimate expectations, or interests are affected or threatened; and*

*(b) be furnished with reasons, in writing, for administrative action where his or her rights, freedoms, legitimate expectations or interests are affected.”*

33. Counsel argued that the 2<sup>nd</sup> Respondent’s actions were inconsistent with the provisions of this Section as the Applicant had to inquire, through Counsel, as to why the action was being taken, and that the only response thus far given has been that an investigation is being carried out.
34. Counsel Kambale invited the Court to carefully consider that in fact, the 2<sup>nd</sup> Respondent herein had previously indicated that there was insufficient evidence to sustain criminal charges in the present matter. He therefore submitted that the continued freezing of the accounts herein is, in this regard, irrational, disproportionate, and unlawful.
35. Counsel went further to submit that the action of the 2<sup>nd</sup> Respondent in freezing the bank accounts herein was in contravention of Sections 28 and 29 of the Constitution, which guarantee protection against arbitrary interference with private property and freedom to engage in economic activity, respectively. He reiterated his earlier submission that once the MK90 million was paid, the same became the Applicant’s private property which they could deal with as they please, and that freezing it in the manner done by the 2<sup>nd</sup> Respondent constituted, at a minimum, an indirect unjustified interference with private property.

36. Counsel Kambale proceeded to refer to Paragraph 4 of the Supplementary Sworn Statement in Support of the Application, with regard to the Applicant's Account Number 1005511212 with National Bank of Malaŵi, which is a foreigncurrency denominated account. He submitted that both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had expressly stated that no money from the sale of the hotel herein went into that account. Indeed, he submitted, as a foreigncurrency denominated account, that account could not lawfully have received the local Malaŵi Kwacha currency.
37. It was thus Mr. Kambale's contention that by freezing that account, the Applicant was rendered unable to make the payments that the Applicant particularised in Paragraph 4 of Yusuf Shiraz Yusuf's Supplementary Sworn Statement, nor could they access incoming revenue for hotel bookings that were made from outside the Country. That, Counsel argued, was not regulation but economic strangulation.
38. Finally, Counsel Kambale submitted that when one carefully examines the facts of the present matter, one cannot escape the conclusion that the 2<sup>nd</sup> Respondent already exercised its investigative powers on this matter, and reached a conclusion that there was nothing criminal about it, and therefore closed the issue. It was his argument that to reopen it by freezing the funds herein, being the proceeds of the sale, was an improper and, in fact, collateral attack on the 2<sup>nd</sup> Respondent's own decision and integrity, and that this was generally an abuse of the 2<sup>nd</sup> Respondent's power.
39. Counsel therefore prayed that the 2<sup>nd</sup> Respondent's Restriction Notices herein be set aside, *in toto*, and immediately. In the alternative, Counsel prayed, on the Applicant's behalf, that those Restrictions that related to accounts that had not received any of the relevant funds herein, be lifted. Counsel for the Applicant also prayed that the Applicant be awarded costs of the present proceedings.

40. In response, Counsel Khunga for the 2<sup>nd</sup> Respondent adopted the Sworn Statement in Opposition, sworn by Mr Isaac Nkhoma, Chief Fraud Investigations Officer of the Anti-Corruption Bureau, and also the Skeleton Arguments in Opposition.
41. Counsel Khunga submitted that the legal basis for the Restriction Notices herein was Section 23(1) of the CPA. That Section, he stated, empowers the ACB, where it has instituted an investigation or a prosecution, to take the exact course of action that it has taken in the present matter. Counsel referred to a letter from the ACB Acting Director General marked “IN04” exhibited to Mr Nkhoma’s Sworn Statement, clarifying that the notice was issued pursuant to section 23(1) of the CPA, and that it was triggered by the ongoing investigations into the sale of the hotel on suspicion of corrupt practices and money laundering.
42. Counsel submitted that there was no requirement under the law for the Director of the ACB to give detailed reasons to the Applicant at this stage, because to do so might in fact jeopardise the investigation. He cited the case of *Geobra Kamanga (Trading as Genemarks Associates) vs Anti-Corruption Bureau*, Miscellaneous Civil Cause No. 46 of 2015 (HC, PR), in support of the proposition that the ACB cannot be required to lay any evidence of its investigations before the very person who is the subject of the Restriction Notice, as the threemonth period is an exclusive factfinding period.
43. As regards the Applicant’s assertion that the ACB had previously cleared the transaction, Counsel Khunga drew the Court’s attention to exhibit YY8A, which is a letter from the Acting Director General of the ACB to the PSPFT. He submitted that that letter stated that the ACB had not found sufficient evidence to sustain charges of corrupt practices or abuse of office, and on that basis the Restriction Notice that was issued on 19<sup>th</sup> November, 2025 was set aside.

44. However, Counsel proceeded to note that Paragraph 2.3 of the same letter expressly advised that the ACB might revive its investigation should new evidence emerge. Counsel Khunga submitted that the ACB had therefore, in this regard, reserved the right to reopen the matter, and that is what has occurred in the present matter.
45. On the question of natural justice, Counsel for the 2<sup>nd</sup> Respondent relied on the case of *The State and The Director of Anti-Corruption Bureau vs The Governor of The Reserve Bank Ex-parte Zeva Hashimi and Finance Bank*, Miscellaneous Civil Cause No. 258 of 2005 (HC, PR), in which Chimasula-Phiri, J stated that:

*“...it would be a breach of a principle of natural justice when the Anti-Corruption Bureau obtained the renewal of the Restriction Notice without giving the respondent a chance to be heard. However, the same would not apply when the Director of the Anti-Corruption Bureau is making a Notice of Restriction for the first time since the aim at this time is to preserve evidence which otherwise might be tampered if the formalities relating to natural justice principles were to be undertaken. The legislature intended the initial three months to sufficiently cover intrusive probe.”*

46. On a similar point, but also covering the argument on the alleged arbitrary deprivation of property rights, Counsel Khunga cited the Supreme Court of Appeal’s decision in *Collins Monte Ng’ambi v Director of Anti-Corruption Bureau* [2010] MLR 68 (SCA), where the Court stated that:

*“It was submitted that since the dawn of the restriction notice on the property, the appellant has been denied access to it*

*and the proceeds therefrom which is contrary to the provisions of Section 28 of the Constitution of the Republic of Malawi which provides that no person shall be arbitrarily deprived of property. The question of arbitrary deprivation of property does not arise here. The primary purpose for the Notice is to preserve the property so that there would be something to salvage in the event of a conviction and not to deprive the Appellant of it arbitrarily. It is more so considering that there is a procedure which must be followed before a Notice is issued and effected. This argument too must fall.”*

47. Counsel Khunga submitted that the same reasoning applied in the present matter.
48. He then addressed the specific issue of the foreigncurrency denominated account as raised by Counsel for the Applicant. He noted that the Applicant had previously written to the Acting Director General of the 2<sup>nd</sup> Respondent, as shown by Exhibit “IN02” to the Sworn Statement of Isaac Nkhoma, requesting immediate access, whether full or controlled, to one operational account, namely Account Number 155011239. He stated that that request was duly granted by the 2<sup>nd</sup> Respondent as shown by Exhibit “IN03” to the Sworn Statement of Isaac Nkhoma. He proceeded to state that the 2<sup>nd</sup> Respondent was therefore surprised that the Applicant was now claiming that another bank account, the foreign currency denominated account herein, being National Bank of Malawi Account Number 1005511212, should also be unrestricted.
49. Counsel submitted that the 2<sup>nd</sup> Respondent was still investigating that account, and that the Applicant could have made a similar request asking for the withdrawal of the restriction of that account much earlier, as had been done with the other account, i.e Account Number 155011239, before rushing to Court.

Counsel Khunga then stated, in this regard, that the 2<sup>nd</sup> Respondent needed to reexamine the Account and conduct further investigations to determine the truth of the Applicant's assertions. Counsel stated that the 2<sup>nd</sup> Respondent could reach a position on that account by the end of the week, on Friday, the 24<sup>th</sup> of April, 2026.

50. The Court then suggested, by way of active case management under Order 1 Rule 5(5) of the CPR, 2017, that the parties discuss the matter out of Court, and report back to the Court by close of business on the abovesaid Friday, the 24<sup>th</sup> of April, 2026. The Court directed that if agreement was reached, no further Order would be made by the Court in respect of that account, but that if disagreement persisted, the Court would then proceed to make a determination on the issue.
51. Having carefully considered the Sworn Statements, exhibits, correspondence and legal arguments before the Court, I reckon that the determination of the present application demands a very careful balancing act that ensures that the statutory purpose for the issuance of Restriction Notices, or kindred measures by various competent authorities herein, is achieved; without at the same time unnecessarily paralysing the operations of a business or businesses that is, or that are, a going concern, or property that is not shown to bear any connection to the subject matter of the investigation nor targeted for potential recovery as realisable property.
52. Whilst in the present matter the 2<sup>nd</sup> Respondent acts primarily under the CPA and not under the FCA, the Court notes that the 2<sup>nd</sup> Respondent is a direct competent authority as defined under the FCA. Under Section 2(1) of the FCA:

*“Competent authority means where appropriate, office of the Attorney General, office of the Director of Public*

*Prosecutions, office of the Registrar General, office of the administrator General, a police officer, an immigration officer, a revenue officer, the Anti-Corruption Bureau, the Authority [Financial Intelligence Authority], the Reserve Bank of Malawi, the Registrar of Financial Institutions as defined in the Financial Services Act, and includes any person authorized by any of them in that behalf and any other person the Minister may, by notice published in the Gazette, designate.”*

53. As such, the ACB being a competent authority as defined under the FCA, the Court forms the view that even in respect of Restriction or Seizure Notices issued under the CPA, the same also being civil in character, the spirit and intendment of the law as expressed under Section 54(3) of the FCA must still be borne in mind and indeed applied. That Section provides that:

*“The Competent Authority shall take all necessary measures to ensure that the application of provisions under this Part do not unduly hamper trade activities.”*

54. Part VI of the FCA, to which this Section relates, applies to civil forfeiture, seizure, detention, freezing, and preservation of assets proceedings under the Act.

55. The 1<sup>st</sup> Respondent’s Director General, in the letter dated 20<sup>th</sup> March 2026, exhibited to the Sworn Statement of Yusuf Shiraz Yusuf and marked as Exhibit YY6, which communicated her decision to lift the Freezing Directives on two of the various accounts that the 1<sup>st</sup> Respondent had frozen, made explicit reference to the principle that measures adopted by competent authorities must not unduly hamper trade activities. She stated that:

*“The FIA appreciates the operational importance of accounts:*

- *1005511212, and*

- *1005511239,*

*as they are integral to hotel operations and were not recipients of proceeds from the sale of Amaryllis Hotel. Having considered the circumstances and **mindful of the principle in the Financial Crimes Act that regulatory actions should not unduly impede legitimate trade**, the FIA is agreeable to lifting the freezing directives on these two operational accounts. This decision has been made to ensure continuity of the hotel business and avoid unnecessary prejudice to its day-to-day operations.”* [Emphasis supplied]

56. She then went ahead to state that:

*“It is important to note that the above two accounts are also subject to restriction notices issued by the Anti-Corruption Bureau (ACB) pursuant to the Corrupt Practices Act. The ACB is taking the lead in the broader investigation relating to the sale transaction. As such, you are strongly advised to submit a similar request to the ACB for consideration of lifting or modification of their restriction notices. Failure to engage the ACB will render the relief granted by the FIA ineffective as ACB restrictions remain independently enforceable. Once appropriate procedures have been completed and at the proper time, the FIA will vacate all its freezing directives on your client's accounts after which only the ACB restrictions will subsist. The FIA remains committed*

*to exercising its statutory mandate within the confines of the law, respecting procedural propriety, and **ensuring that its interventions are both proportionate and necessary to safeguard the financial system.***” [Emphasis supplied]

57. The Court considers the rule under Section 54(3) of the FCA to be a rule that is grounded in legal wisdom and whose application must generally be extended, as a common law rule, to apply to all other civil forfeiture, seizure, detention, freezing and preservation of assets proceedings under any other written law in Malaŵi. In the event that there is no pre-existing general common law rule to that effect, then the Court considers it to be so by way of development of the common law by this Court, under Section 10(2) of the Constitution.
58. Thus, competent authorities must have due regard to the need to take all necessary measures in order to ensure that in pursuing such proceedings, they do not unduly hamper trade activities.
59. To be clear, the rule does not mean that such proceedings should not hamper or negatively impact trade activities at all. The measures, by their very nature, will necessarily have some unhappy effect on the affected person’s or entity’s trade or business activities in issue. The point, however, is that appropriate measures must be taken to ensure that, wherever possible, legitimate trade activities are not disproportionately hampered, and hampered to the point of trade or business paralysis. Measures should be put in place to ensure that such activities are permitted to proceed whilst issues related to the affected property are being investigated or litigated, but whilst ensuring, at the same time, that the objects and purposes of appropriate restrictive or preservation measures are not defeated or frustrated.

60. So, for instance, if the owners of a major business enterprise that generally conducts legitimate business, such as running an airline that provides a very useful service to society, enter into a specific transaction that raises concerns of possible criminal conduct by a law enforcement agency, such as the 2<sup>nd</sup> Respondent in the case of Malaŵi, the import of the rule is that where such competent authority intervenes to investigate or prosecute, the competent authority must take appropriate measures to make sure that the operations of the airline's business as a going concern are not completely paralysed.
61. Thus, the rule expressed under Section 54(3) of the FCA is, in the estimation of this Court, an especially important rule within the framework of financial crimes law in this country. The rule requires a careful balance between the objective of pursuing asset preservation for possible subsequent recovery in the public interest on the one hand, and the constitutional and economic necessity of maintaining the free flow of lawful trade and/or commerce/or business, in the broader interests of the national economy on the other.
62. Thus, properly understood, the rule under Section 54(3) of the FCA, which this Court has found to be one of general application in civil forfeiture, seizure, detention, freezing and preservation of assets proceedings under any other written law in Malaŵi, imposes a positive and continuing duty upon the responsible competent authority to exercise its considerable coercive powers in this regard, not in a mechanistic or an indiscriminate fashion, but rather in a manner that is proportionate, targeted, and commercially sensitive, ultimately seeking to ensure that no person should benefit from their own crime on the one hand, whilst on the other hand not killing viable businesses that are going concerns and are beneficial to the national economy.
63. The rule recognises that while the State is entitled, and indeed obliged, to secure property that is reasonably suspected to be connected to financial crime, such

intervention or interventions must not produce collateral damage to legitimate trade activities beyond what is strictly necessary in order to achieve the statutory objective of recovery. It follows, therefore, that underlying this rule is the principle of proportionality, namely that the measures adopted by the competent authority in securing such property must be rationally connected to the purpose of the investigation or prosecution/litigation, and that they must impair lawful economic activity no more than is required. Further, the measures must also be subject to ongoing review both by the competent authority itself and, wherever appropriate, by the Court, in order to prevent undue disruption of legitimate trade activities.

64. This is therefore a rule which the Court keeps in mind in its determination of the present matter.
  
65. Pausing there, the material before this Court shows that the following accounts were subjected to Restriction Notices and Freezing Directives:
  - (a) account number 1001565717 in the name of Yusuf Investments Limited;
  - (b) account number 1010354548 in the name of Amaryllis Hotel Limited;
  - (c) account number 1005511239; Yusuf Investments Ltd t/a Amaryllis Hotel
  - (d) account number 1005511212, Yusuf Investments Ltd t/a Amaryllis Hotel, USD;
  - (e) account number 1009612021, Yusuf Investments Limited, USD escrow account;
  - (f) account number 1009612037 described as a Malaŵi Kwacha escrow account.
  
66. The Respondents' evidential material indicates that the purchase price arising from the sale of Amaryllis Hotel herein, was paid into account number 1010354548, and that substantial transfers were thereafter made from that

account into account number 1001565717, from which substantial withdrawals were subsequently effected.

67. In this regard, based on the facts before this Court, I find a direct, specific, and substantial nexus between the impugned funds herein and accounts 1010354548 and 1001565717 as above. Those two accounts, together, were evidently the principal transactional pathway through which the purchase money herein moved.
68. Where the 2<sup>nd</sup> Respondent institutes an investigation into such a transaction, therefore, Section 23(1) as read with Section 23(3) of the CPA operate, to preserve such property pending completion of the investigations and any possible prosecution. In the ***Geobra Kamanga case*** (above), the Court emphasised on the object and purpose of a Restriction Notice, stating that:

*“The purpose of the Restriction Notice is to preserve the evidence during the time of investigation in case there are adverse intentions of dissipating it which would make investigations and future prosecution futile and difficult.”*

69. In the case of ***Everson Chirwa v Director of Anti-Corruption Bureau*** [2009] MLR 153 (HC), Mzikamanda, J (as he then was), also explained, in part, the object and purpose of a Restriction Notice under the CPA, stating that:

*“The import of section 23(1) of the Act is not to suggest that the person to whom it relates is guilty of an offence or is likely to be guilty of an offence under the Act (if there is any such thing) but to enable the Anti-Corruption Bureau to carry out its duty of investigation and prosecution without hinderance or impediment and without allowing for an*

*opportunity to interfere with the evidence that the bureau would need to establish the occurrence of the offence.”*

70. As shown earlier, further to the views expressed in ***Everson Chirwa vs Director of Anti-Corruption Bureau***, and buttressing the view expressed in the ***Geobra Kamanga*** case, the Supreme Court of Appeal, in ***Collins Ng’ambi vs Director of ACB***, (above), stated that:

*“The primary purpose for the Notice is to preserve the property so that there would be something to salvage in the event of a conviction and not to deprive the Appellant of it arbitrarily.”*

71. In the case of ***Republic v Mkandawire*** [2002–2003] MLR 379 (HC), Chipeta, J (as he then was) stated, at page 393, that:

*“The restriction notice, as I understand it, is meant to preserve and protect certain property connected to an investigation from disappearing, changing hands or even changing form as investigations go on.”*

72. I fully agree with the reasoning expressed by their Lordships in these decisions, taken together. I find that if restrictions over bank accounts that are shown to have received and transmitted the impugned funds herein were to be lifted at this stage, the object and purpose of the scheme under Section 23 of the Corrupt Practices Act would, in the present matter, be defeated or frustrated.

73. I therefore find that the continued restriction of accounts 1010354548 and 1001565717 by the 2<sup>nd</sup> Respondent’s Restriction Notice herein is justified, proportionate and warranted, and I so order.

74. The Court recalls that the Applicant submitted that the restriction measures adopted by the 2<sup>nd</sup> Respondent herein, in the form of the Restriction Notices herein, are in violation of the Applicant's property rights as guaranteed under Section 28 of the Constitution.
75. With respect, the Court does not agree. The consistent jurisprudence of both the High Court and the Supreme Court of Appeal clearly shows that preservation measures do not generally constitute arbitrary deprivation of property where they are directed toward safeguarding property that is pending investigation. The decision of the Supreme Court of Appeal in *Collins Ng'ambi vs Director of Anti-Corruption Bureau, (above)*, is a clear authority for this proposition. The Court rejected, in that case, the contention that a Restriction Notice constitutes arbitrary deprivation of property. Among other things, the Court, per Mtambo, JA, stated that:

*“The third issue is “whether the Restriction Orders and seizure order are against the interest of justice regarding proprietorship.” It was submitted that since the dawn of the Restriction Notice on the property, the Appellant has been denied access to it and the proceeds therefrom which is contrary to the provisions of s. 28 (2) of the Constitution of the Republic of Malawi which provides that no person shall be arbitrarily deprived of property. The question of arbitrary deprivation of property does not arise here. The primary purpose for the Notice is to preserve the property so that there would be something to salvage in the event of a conviction and not to deprive the Appellant of it arbitrarily. It is more so considering that there is a procedure which*

*must be followed before a notice is issued and effected. This argument too must fail.”*

76. The existence of commercial inconvenience or temporary inability to deal freely with property as a result of a legally sanctioned measure by the competent authority does not, per se, amount to arbitrary deprivation of property, and more so when such measures, under the scheme of the law, are subject to judicial oversight. The right to property is not an absolute right that permits of non restriction, limitation, or derogation. Restrictions on property rights based on suspicion of the connection of such property to the commission or crimes, or that the property in issue is realisable property that may have to be resorted to if a final forfeiture or confiscation of property order is made, have been shown in open and democratic societies around the world be shown, again and again, to be acceptable in such societies, reasonable and necessary as long as there are proportionate to the aims sought to be achieved. For instance, in Seychelles, in the case of *Hackl v Financial Intelligence Unit* (2010) SLR 98, Egonda-Ntende, CJ, delivering judgment on behalf of the Court, stated that:

*“The right to property protected under article 26(1) of the Constitution extends only to property lawfully acquired. It does not protect property unlawfully acquired. The restriction against disposal of specified property, at the commencement of proceedings that will determine, whether such property is the benefit from criminal conduct, is necessary in order not to render those proceedings nugatory. If no restraint was imposed on the current holder of such property, it could be possible to dispose of the property as soon as one got wind of the commencement of such proceedings. Restraint is imposed for only 30 days and the*

*affected person has a right to apply to court to discharge or vary such order.”*

77. Another firm contention advanced by the Applicant is that the Respondents herein have not provided sufficient details concerning the allegations underlying the investigation.
78. I must quickly state that I do not accept that submission. This is not the stage for such issues to be adjudicated upon. The authorities are clear that the purpose of the initial restriction period is purely investigative rather than adjudicative. A relevant passage from the case of ***Geobra Kamanga*** (supra), quoted *in extenso* below, is apposite. The Kamwambe, J, stated that:

*“The Applicant has made this application principally complaining about the Director General’s failure to divulge the nature of the complaints of the informers and its connection to the Applicant’s account. I do not think that is the purpose of section 23 that all what the Bureau is doing at this early stage of investigations should be disclosed to the Applicant. It is enough that the Bureau mentions that it has received a complaint about the accounts which relate to the Applicant concerning matters of corruption of course. The Bureau should not even be compelled to disclose where the complaint came from. For the Applicant demanding details of the complaint/s is completely out of the way and this would be inimical to the expected operations of the Bureau...**At this stage the Bureau need not carry with it compelling evidence to issue the Restriction Notice summarily because this is a time when the Bureau is by law given to fish for evidence. If such evidence is not available, the Bureau would***

*naturally discontinue the investigations and it may cancel the Notice in accordance with sub-section (3). The Notice expires after three months when the Bureau should decide whether to renew it. It must show cause why the Notice should be renewed. It is not just easy sailing at this stage. Within the three months subsistence period of the Notice, the Bureau cannot be required to lay before anyone, including the Applicant, any firm evidence of its investigations. For the Bureau, this period, as already stated, is a fact-finding period and no more. As such, accusations that the Bureau has failed to bring hard evidence entitling him to issue the Notice is not called for or is out of order with regard to the purpose of section 23 of the Act. I may go further that at this occasion the rule as to transparency shall not apply in fear of jeopardising investigations.*

*Let me lend support from the case of **The State and The Director of AntiCorruption Bureau v The Governor of The Reserve Bank Ex-parte Zeya Hashimi and Finance Bank** Miscellaneous Civil Cause No. 258 of 2005 where Justice Chimasula held that:*

*‘... it would be a breach of a principle of natural justice when the Anti- Corruption Bureau obtained the renewal of the Restriction Notice without giving the respondent a chance to be heard. However, the same would not apply when the Director of the Anti- Corruption Bureau is making a notice of Restriction for the first time since the aim at this time is to preserve evidence which otherwise might be tampered if the formalities relating to natural justice principles were to be undertaken. **The legislature intended the initial three***

*months to sufficiently cover intrusive probe.*” [Emphasis supplied by the Court]

79. I agree with these judicial statements by my senior brother Judges. It is my considered view that the framework of the CPA in this regard contemplates a degree of investigative confidentiality during the initial restriction period. As shown in the *Geobra Kamanga case* (above), Kamwambe, J went as far as stating that “*I may go further that at this occasion the rule as to transparency shall not apply in fear of jeopardising investigations.*”
80. The question before the Court is, therefore, not whether the Respondents have already proved wrongdoing, but whether there exist reasonable grounds that justify preservation through the Restriction Notices, pending completion of the investigations.
81. The Court recalls that the Applicant emphasised, in its application, that the unfreezing of certain operational accounts is necessary for the continued functioning of the hotel business and that freezing those accounts has created immediate serious challenges to the Applicant’s satisfaction of payroll, suppliers and other ongoing contractual obligations. The accounts highlighted are account numbers 1005511212 and 1005511239. It has further been emphasised that these accounts were in fact not used for the receipt of proceeds from the hotel sale transaction.
82. Indeed, the 1<sup>st</sup> Respondent (FIA), as shown above, acknowledged the operational character and importance of those accounts, as well as the fact the proceeds of the sale herein did not in any way go through those accounts. The FIA therefore decided to remove its restrictions in respect thereof, by way of lifting the Freezing Directives thereon, in order to avoid undue interference with the Applicant’s legitimate commercial activity.

83. Following on the heels of the 1<sup>st</sup> Respondent’s lifting of its Freezing Directives, first on the above named two accounts, and subsequently all the remaining Freezing Directives, the 2<sup>nd</sup> Respondent, the ACB, has also followed, albeit in a more limited way, to lift its Restriction Notices on the two above-named accounts.
84. Firstly, through its letter dated 24<sup>th</sup> March, 2026, marked “IN/O4” and exhibited to the Sworn Statement of Isaac Nkhoma, the 2<sup>nd</sup> Respondent, stated that:

*“The ACB appreciates the Importance of account number 1005511239 to the Company's core operations, Including receipt of customer payments and settlement of essential operational expenses. Also on the strength of Financial Intelligence Authority’s communication that it has already unfrozen the account based on findings that the account was not a recipient of proceeds from the sale of Amaryllis Hotel and based on the principle in the Financial Crimes Act that regulatory actions should not unduly impede legitimate trade, the Anti-Corruption Bureau hereby lifts the restriction on this account while investigations of corrupt practices and money laundering surrounding the other accounts continue.”*

85. Thus, based on the 2<sup>nd</sup> Respondent’s letter above, the Restriction Notice on Account Number 1005511239 was lifted.
86. Proceeding further, during hearing of the present matter, the Court noted that the 2<sup>nd</sup> Respondent’s Counsel was asking the Applicant’s Counsel why the Applicant did not take the same approach of simply engaging the 2<sup>nd</sup> Respondent

in respect of Account number 1005511212 in the same manner as they did in respect of Account Number 1005511239 instead of rushing to Court.

87. In the circumstances, the Court recalled that the whenever there is a prospect, in civil proceedings, of seeking amicable settlement of issues that are not contentious, or that are not very contentious between the parties, the Court is enjoined to encourage them to meaningfully engaged for purposes of possible settlement, as part of the Court's role of active case management which the law prescribes under Order 1 Rule 5(5) of the CPR, 2017.
88. Indeed, this principle of pursuing amicable settlement of issues wherever possible, was, in the context of restraint or seizure orders or measures adopted by the 2<sup>nd</sup> Respondent herein, affirmed by the Supreme Court of Appeal in the case of *Jeffrey and another v The Anti-Corruption Bureau* [2002–2003] MLR 90 (SCA), long before the CPR, 2017 came into force. In that case, the Court stated, at page 104, that:

*“Before an application for a variation order is made, it is good practice for the party desiring variation of the seizure and freezing order to consult the Director or senior police officer with a view to reaching mutual agreement or compromise on the terms of the variation order sought. In the event that such agreement is reached, a consent order may be drawn up, signed by the parties, and brought to the court for the court's signature and seal. The sealed copies of the order should subsequently be served on all the persons and bodies who may be affected by the variation order.”*

89. As such, the Court encouraged the parties herein to constructively engage on the matter, to explore the possibility of achieving a mutually acceptable settlement,

and to revert to the Court no later than the 24<sup>th</sup> of April 2026 with the outcome of their engagement.

90. On 24<sup>th</sup> April 2026, the Applicant and the 2<sup>nd</sup> Respondent filed with the Court an Agreed Order dated 24<sup>th</sup> April, 2026, for the Court's formal endorsement and sealing. The said Agreed Order states that considering that *“Account Number 1005511212 is an operational account and did not receive any proceeds of the sale”*, agreed: *“That the Applicant's USD Account Number 1005511212 held with National Bank of Malawi Plc be and is hereby forthwith unfrozen, and all restrictions, directives, or limitations affecting the said account are hereby lifted with immediate effect.”* They further agreed that: *“the Applicant shall maintain proper records of all transactions conducted on the said Account Number 1005511212 and shall, upon reasonable notice, make such records available to the 2<sup>nd</sup> Respondent for purposes of any ongoing investigations.”* Finally, per the said Agreed Order, the parties agree that: *“all other bank accounts held by the Applicant with National Bank of Malawi Plc currently frozen shall remain frozen and/or restricted pending the determination of the substantive application by this Honourable Court.”*

91. This therefore means that the parties herein found it mutually acceptable that the Restriction Notice on Account Number 1005511212 be removed.

92. It thus follows that under the circumstances, the Freezing Directives and Restriction Notices on National Bank accounts number 1005511239 and 1005511212, which according to the Applicant are the Applicant's operational accounts via-a-vis the business of Amaryllis Hotel, have been withdrawn by mutual consent of all the parties herein.

93. Be that as it may, before moving on to the next issue, the Court wishes to clarify one point. The Court observes from the sentiments expressed by both the FIA,

the 1<sup>st</sup> Respondent, and the ACB, the 2<sup>nd</sup> Respondent herein, in their respective decisions lifting the restrictions on the Applicant's accounts, that they seem to take the view that where it is shown that a particular bank account was unconnected to the impugned funds, then, necessarily, the same ought not to be restricted. With respect, that should not always be the case, and such reasoning is, in this Court's view, inconsistent with clear case authority from the Supreme Court of Appeal.

94. The Supreme Court of Appeal in the case of *Jeffrey and another v The Anti-Corruption Bureau (above)*, stated, at pages 100-101, that:

*“In the United Kingdom, where similar orders can be made, the position is different from that canvassed by the appellants. There, the relevant statutes permit the making of restraint or charging orders in respect of all property held by the suspected person, including property coming to him after the making of the order. The reason being: “A restraint order is frequently obtained at an early stage in the proceedings before the full extent of the defendant’s realisable property is known. When applying for a restraint order, the prosecutor probably has somewhat limited information as to the defendant’s assets, yet an immediate application may be necessary in order to prevent dissipation. In the last analysis, the nature, extent and location of the defendant’s realisable property is peculiarly within his own knowledge and at this stage the prosecutor will not have the benefit of any affidavit of means sworn by the defendant pursuant to any order for disclosure granted by the court.” (See Restraint and Confiscation Order by TJ Millington (led) at 18 paragraph 2.5.4.). Then at paragraphs 2.5.5 and*

*2.5.6 of the same book, it is stated as follows: “2.5.5 It is a common misconception that restraint and charging orders may only be made in respect of assets which represent directly or indirectly the proceeds of the defendant’s criminal activities . . . 2.5.6 The court is thus able to confiscate (and therefore restrain) any assets held by the defendant whether legitimately acquired or not, up to the amount by which he benefited from the offence.” From the wording of section 32(5) of the CPA, it is clear to us that the correct position is analogous to that obtaining in the United Kingdom.”*

95. The Court thus emphasises that asset recovery proceedings may target realisable property even where such realisable property had no connection to the alleged unlawful activity. The Supreme Court of Appeal states that: *“It is a common misconception that restraint...orders may only be made in respect of assets which represent, directly or indirectly, the proceeds of the defendant’s criminal activities.”* Under Section 2(1) of the FCA, “realizable property” is defined as meaning:

*“Property of corresponding value—  
(a) held by a defendant;  
(b) possessed by a person to whom a defendant has directly or indirectly made a gift as defined in this Act; or  
(c) to which a defendant is a beneficiary entitled.”*

96. The term property itself is defined to mean:

*“An asset of every kind, whether corporeal or incorporeal, movable or immovable, whether situated in Malaŵi or*

*elsewhere and whether tangible or intangible, and includes any legal or equitable interest in any such property.”*

97. It is thus very clear from the foregoing that money to the credit of any person or entity in a bank account, as an asset, constitutes property within the meaning of the FCA, and may therefore, in appropriate cases, constitute realisable property within the meaning of the same.
98. Again, as is evident from the definition of realisable property both generally and specifically as defined under the FCA, money in a bank account that is unconnected to any criminal or other unlawful conduct may still qualify as realisable property and thus be subject to a Restriction Notice or other lawful restraint as explained in *Jeffrey and another v The Anti-Corruption Bureau (above)*.
99. Thus, in the instant case, an impression should not be created that Restriction Notices by the ACB may only be made in respect of assets, including funds in bank accounts, which represent directly or indirectly, the proceeds of the Applicant’s alleged criminal activities. The Court may also target the funds in such accounts as potential realisable property even though not tainted.
100. Proceeding to the other restricted accounts, it seems to me that the position of accounts number 1005511239 and 1005511212 is materially different from that of the two escrow accounts, namely account numbers 1009612021 and 1009612037.
101. The material before the Court identifies account numbers 1009612021 and 1009612037 as escrow accounts that form part of the Applicant’s set of bank accounts. Notably, counsel for both parties did not proceed to elucidate on what

exactly an escrow account entails, and why it should be treated differently by this Court, as the Applicant seems to suggest.

102. Escrow accounts, by their very nature, frequently function as intermediate repositories through which funds may be temporarily held pending disbursement, allocation, conversion, or onward transfer. In Bryan a. Garner (Ed.), *Black's Law Dictionary*, 9<sup>th</sup> Edition, an “*escrow account*” is defined as:

*“A bank account, generally held in the name of the depositor and an escrow agent, that is returnable to the depositor or paid to a third person on the fulfillment of specified conditions. Also termed escrow deposit.”*

103. Sir Alastair Norris, J, in *PDVSA Servicios SA v Clyde & Co LLP and Petrosaudi Oil Services (Venezuela) Limited* [2020] EWHC 2819 (Ch), provides a fairly extensive discussion of what constitutes an escrow account. I find it pertinent to state the facts of that case to some fair degree of detail, in order to provide a proper background and context to the discussion.

104. In *PDVSA Servicios SA v Clyde & Co LLP and Petrosaudi Oil Services (Venezuela) Limited*, the claimant, PDVSA Servicios SA (“PDV”), a Venezuelan state-owned entity, entered into a contract with the second defendant (“POS”) for the provision of drilling services. Payment security was furnished by way of a standby letter of credit (“SBLC”). Following disputes and arbitral proceedings under UNCITRAL Rules seated in Paris, POS made calls under the SBLC in respect of unpaid invoices. Pursuant to a “*super-interim order*” of the arbitral tribunal, the proceeds of the SBLC, roughly US\$325 million, were paid into an escrow account held by the first defendant, Clyde & Co LLP, acting as escrow agent. The escrow arrangement was formalised by a tripartite agreement governed by English law. The tribunal subsequently issued

a final award in favour of POS, ordering that the balance of the escrow account be transferred to POS. PDV initiated annulment proceedings in the Paris Court of Appeal and, pending that challenge, sought an injunction under CPR Pt 64 restraining Clyde from distributing the escrow funds, asserting that the monies were held on trust and that it had a contingent beneficial interest. An interim injunction was granted at first instance. Clyde and POS applied to strike out the claim and discharge the injunction on the basis that no trust existed and that PDV had no real prospect of success.

105. One of the key issues for determination in that application was whether the escrow arrangement therein created a trust such that the court could then exercise jurisdiction under English CPR, Pt 64, to give directions to Clyde as trustee.

106. The High Court of Justice (Business and Property Courts of England and Wales) held that on the true construction of the tripartite agreement, the escrow arrangement was a conventional stakeholder arrangement, giving rise to contractual, not fiduciary, obligations. The language of the agreement, according to the Court, contained no indicia of trust, and indeed pointed away from the existence of fiduciary obligations. Accordingly, the Court held that Clyde was not a trustee, and the monies were not held on trust. The relationship was that of debtor and creditor, analogous to banker and customer. The monies paid under the SBLC, according to the Court, were the property of POS, and that any rights of PDV were purely contractual (e.g., to repayment in the event of overpayment), and no proprietary or beneficial interest arose merely by virtue of the escrow arrangement.

107. The Court thus held that since the existence of a trust was foundational in order to invoke the English CPR, Pt 64, and that no trust existed, PDV's claim disclosed no real prospect of success under the circumstances.

108. The detailed words of Sir Alastair Norris, J in that case, at paragraphs 26-32, are particularly instructive. In finding that the escrow account did not create or constitute a trust, the learned Judge stated that:

*“An escrow account is one species of stakeholder arrangement, where a third party receives money for which it must account pending a triggering event and is then required to pay it out in response to that event. The arrangement is generally (as here) embodied in a tripartite contract. It is well established that such arrangements do not of themselves create a trust of the monies so received...customarily the arrangement is entirely contractual (see in particular the reference to the stakeholder’s obligation being to make payment of an equivalent sum). It does not create property rights in a segregated fund. I began by noting that the Tripartite Agreement appeared to contemplate just such a conventional escrow or stake holding arrangement, and I have examined the consequences of that. But it is necessary to examine the Tripartite Agreement to see whether upon its true construction its apparent effect is, indeed, its true effect in law.*

*As was pointed out by the Master of the Rolls in **Tradegro UK Ltd v Wigmore Street Investments Ltd** [2011] EWCA Civ 628 (which concerned an undertaking by a solicitor to hold the money) at [15]: -*

*“The Undertaking is an arrangement negotiated for a commercial purpose, and therefore must be interpreted according to well established principles, namely by considering the words of the Undertaking, in the context of*

*the factual matrix and taking into account commercial common sense... As I see it, this exercise may result in the Undertaking being interpreted in such a way as to give rise to a trust, a stakeholder arrangement, a solicitors undertaking, or a personal contract (and not all of these are by any means mutually exclusive), but that is merely a result of the interpretation exercise” (Emphasis supplied).*

*To look first at the words of the Tripartite Agreement, there is no hint in them that POS intended, by signing the Tripartite Agreement, to create a trust of the SBLC monies then held by its solicitors. The courts are not very ready to hold that, where A and B agree an arrangement whereby A’s money is held by a third party to protect a prospective claim by B (here a claim for reimbursement of an overpayment of specific invoices), the money is to be treated as held on trust for B, or as security for B’s claim. Clear words are needed to show that this was the intention of the arrangement before the court will hold that that is its effect...Indeed, the wording of the Tripartite Agreement points away from the creation of a trust of the escrow account. The words used are entirely those of personal obligation, not of the creation or transfer of property interests. The terms of clause 6.1 (that Clyde’s duties were “administrative only” and limited to instructing the bank to hold and deal with the escrow monies in accordance with the orders of the Tribunal) seem to rule out the assumption or imposition of the fiduciary obligations of a trustee. The terms of clause 6.3 (whereby PDV and POS waived all rights they may have or acquire against Clyde arising out of or in connection with any of the arrangements*

*referred to or contemplated by PO62) are difficult to square with the existence of the core obligations of a trustee.”*

109. Put simply, clear words are needed in order for a Court to conclude that an escrow account is a trust account that creates trustee and beneficiary obligations and rights.

110. In the present matter, the Applicant did not expound on the exact nature of the escrow accounts and whether the details related to their creation would demonstrate that they are in the nature of a trust rather than contractual accounts that remain under the holder’s control and pure transactional discretion and direction.

111. The Court reiterated that in financial investigations involving substantial commercial transactions, preservation of assets through various types of restrictive or other preservation measures, may legitimately extend beyond the bank accounts which directly received the impugned funds to include accounts that are reasonably capable of facilitating their movement or dissipation, or in appropriate cases, accounts that contains funds that are potentially realisable in the event of a final forfeiture or confiscation order.

112. Section 23 of the CPA, in this Court’s considered view, would be rendered ineffective if its effect were to be confined to the preservation of the final resting place (account) of the funds, whilst leaving out associated or intermediary accounts which, though not demonstrated to have been used, remain capable of enabling dissipation outside the preservatory net.

113. More than that, however, is the point again already made, that funds in such escrow accounts, the same not having been shown by any scintilla of indicative material to constitute trust accounts or with trust funds, may potentially be

realisable funds as held by the Supreme Court of Appeal in *Jeffrey and another v The Anti-Corruption Bureau (above)*.

114. I remind myself that at this stage, the 2<sup>nd</sup> Respondent has not brought, and is not required to bring, a full detailed account of what they have found thus far as part of their investigations. They are required however to demonstrate that they are actively investigating the Applicant or other persons directly related to the Applicant's business, for an offence or offences under the Corrupt Practices Act. The responsibility to explain what exactly they are doing however heightens with passage of time, where the 2<sup>nd</sup> Respondent keeps asking for more time by applying for renewals of the Restriction Notices. The Court will require more cogent explanations as to why the Restriction Notices should be renewed.

115. I should add that even for trust accounts, it is possible, as may be determined on a case-by-case basis, that funds therein could still be restricted if indications of abuse, or potential for abuse, for purposes of acting as a conduit for the impugned funds suspected to be tainted, exist. They may however not be preserved merely as realisable assets, save to the extent that the interests of the targeted party and those of the "innocent" beneficiaries of the funds in the account may be clearly segregated.

116. As for now, I find that the escrow accounts herein not having been demonstrated to be trust accounts or to hold trust funds, the 2<sup>nd</sup> Respondent has a rational basis for preserving the accounts, at least at present. During the continuing investigations, the Applicant could then provide clarification on the full transactional pathway of the funds under investigation, the nature and character of the escrow accounts, and whether there is any risk with keeping the accounts running, whether fully or in a limited fashion, whilst the investigations or any possible prosecution continue.

117. It is my finding that at this interlocutory stage, it is not necessary for the 2<sup>nd</sup> Respondent to be required to demonstrate conclusively that the impugned funds, or any part thereof, presently form part of the funds in the restricted escrow accounts. The explanation provided in the *Geobra Kamanga case* (above), provides ample authority for taking this position.

118. It is sufficient that the 2<sup>nd</sup> Respondent demonstrates at least a rational basis for considering that the accounts may have formed part of the broader financial scheme within which the proceeds of the impugned transaction may have been routed, layered, converted or shielded, or that they may contain potentially realisable funds.

119. I find the 2<sup>nd</sup> Respondent's explanations in the sworn statements to provide such rational grounds or basis. The accounts herein are operated at the Applicant's discretion notwithstanding their escrow character, and no trust obligations have been demonstrated. I therefore find that the continued restriction of accounts 1009612021 and 1009612037 is reasonably necessary in order to prevent possible frustration of the investigative process and any possible consequential recovery proceedings, and I so order.

120. The Applicant has contended that in fact the entirety of the Restriction Notices herein should be discharged because the underlying transaction was lawful, at arms-length, and above board. The Applicant submits that it was a clean commercial transaction and that there was nothing irregular with it.

121. It seems to me however that it is that very issue that the 2<sup>nd</sup> Respondent says the ACB is investigating.

122. The 2<sup>nd</sup> Respondent, through the Sworn Statement in Opposition of Isaac Nkhoma dated 16<sup>th</sup> day of April 2026, states that he received a complaint on

19<sup>th</sup> November 2025, alleging that the Public Service Pension Trust Fund (PSPTF) Board reversed a resolution earlier passed on 17<sup>th</sup> January 2024, in which it had resolved not to purchase the Amaryllis Hotel based on expert advice from one of the Fund Managers to the effect that the transaction was not viable. He states that it was further alleged that the purchase price of the hotel had been inflated from MK47 billion to a price ranging between MK115 billion and MK145 billion. He proceeds to state that he authorized investigations into the allegation and issued a Restriction Notice against the purchase of the Hotel on the same day, namely, 19<sup>th</sup> November 2025. He states that even though the investigation did not find enough evidence to sustain charges of corrupt practices at the time, the ACB highlighted concerns about the purchase of the hotel, including operational risks and the increased purchase price. He further states that he clearly stated in his decision removing the Restriction Notices, *“that the ACB may revive its investigation into the matter should new evidence emerge that indicates potential criminality.”*

123. The 2<sup>nd</sup> Respondent then proceeds to state that on 12<sup>th</sup> March 2026, following revelations from the Public Accounts Committee’s ongoing hearing of the purchase of Amaryllis Hotel, he indeed reopened the investigation.

124. The 2<sup>nd</sup> Respondent states that the ACB investigated the matter, and discovered that between 12<sup>th</sup> and 22<sup>nd</sup> January 2026, Amaryllis Hotel received MK90,125,000,000.00 through account number 1010354548 held at National Bank of Malaŵi Plc, in respect of the sale of Amaryllis Hotel to PSPTF. He further states that the ACB further found that on 13<sup>th</sup> February 2026, Amaryllis Hotel transferred MK7,500,000,000.00 to Yusuf Investments Limited’s account number 1001565717 held at National Bank of Malaŵi Plc; that on 16<sup>th</sup> February 2026, Amaryllis Hotel transferred MK8,150,000,000.00 to Yusuf Investments Limited’s account number 1001565717 held at National Bank of Malaŵi Plc; that on 4<sup>th</sup> March 2026, Amaryllis Hotel transferred MK4,500,000,000.00 to

Yusuf Investments Limited's account number 1001565717 held at National Bank of Malaŵi Plc; that between 23<sup>rd</sup> January and 6<sup>th</sup> March 2026, a total of MK5,386,175,000.00 was withdrawn from Yusuf Investments Limited's account number 1001565717 through cheque numbers: 004509, 04517, 004511, 4522, 4524, 004513, 004527, 004533, 4535, 004534, 004543, 004542, 004541, 4544, and 004548; and that to avoid further dissipation of the funds, the 2<sup>nd</sup> Respondent issued a Restriction Notice against the Applicant's bank account held with National Bank of Malaŵi Plc. Attached hereto is a copy of the Restriction Notice marked and exhibited as **"IN/01"**.

125. The 2<sup>nd</sup> Respondent, through Mr. Isaac Nkhoma's Sworn Statement of 16<sup>th</sup> April, 2026, refers to paragraph 4.8 of the Sworn Statement of Mr. Yusuf Shiraz Yusuf, the Applicant herein, where the latter avers that the Restriction Notices herein are unnecessary because the transaction herein represents a lawful, negotiated, willing buyer and willing seller agreement.

126. The 2<sup>nd</sup> Respondent states that he is indeed aware of the nature of the transaction, but proceeds to state that he is also cognizant of the possibility that corrupt practices or other crimes can be committed in the course of an apparent lawful sale or contractual arrangements. The 2<sup>nd</sup> Respondent then asserts that the purchase of Amaryllis Hotel herein raises such suspicions, and that Section 23(1) of the CPA clearly empowers him to restrict contractual arrangements implicated in corrupt practices.

127. The purpose of the Section 23 of the CPA procedure, as already shown above, is the preservation of assets pending investigation. When a party approaches this Court for discharge of the Restriction Notice imposed, the aim of the proceeding should not be to prematurely invite the Court to engage in summary adjudication of the merits and prematurely indirectly determine guilt or innocence of the person or entity being investigated. The purpose should more relate to the

process rather than the merits, unless it can be shown that the allegations being made by the competent authority are so patently absurd and/or so inherently improbable so that no prudent person can ever reach such a conclusion, or where there is clear evidence of abuse of power or abuse of discretion.

128. Otherwise, an advance finding by this Court at this stage that the Restriction Notices, which have not even fallen due for renewal, must be discharged because the underlying transaction herein was a clean commercial transaction, lawful, at arms-length, and above board and that there was nothing irregular with it, would, effectively upend the 2<sup>nd</sup> Respondent's investigation process, rendering any further investigation or inquiry into the matter effectively nugatory. The Court must guard against such premature determination on substantive matters which should properly be reserved for trial or full hearing after full investigation.

129. This Court has, time and time again, emphasised its reluctance to interfere with legitimate, good faith investigations by lawful enforcement agencies. See, for instance, the Court's decision in *The State (on the application of Xelite Strips Ltd & Others) v Director General of the Anti-Corruption Bureau*, Judicial Review Cause No. 1 of 2023 (HC, Financial Crimes Division, Lilongwe Registry) (unreported), decision of 14<sup>th</sup> February 2023, among other things, the Court stated the following at paragraph 78:

*“The Court further adopts, with approval, the reasoning in the above-stated Kenyan case of Republic v. Director of Criminal Investigations & 2 others; Resilient Investments Limited & 3 others (Interested parties), where the Court, at paragraph 30, stated that: “The power to stop or quash police investigations on a suspected offender must be exercised sparingly and with circumspection and in the rarest of rare cases, and the court cannot be justified in*

*embarking upon an inquiry as to the reliability or otherwise of allegations made in the complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the court do not confer an arbitrary jurisdiction on the court to act according to its whims or caprice. The power to quash investigations is immense since it amounts to exonerating a suspect before trial. Such power must be exercised with extreme care and caution. It is a power, which the court exercises only in exceptional cases where there is clear evidence of abuse of powers, abuse of discretion or absence of factual basis to mount the prosecution.”*” [Emphasis supplied by the Court]

130. The rule of law will not thrive in this Country if courts are all too eager to quickly stop investigative agencies in their investigative tracks, or to impede their efforts in setting up measures to ensure real, practical and meaningful fruits in the event of a successful investigation, well before such agencies can make any meaningful investigative headway. At the same time, the rule of law will likewise suffer great damage if, upon being moved, the courts choose to sit idly by in indifference, and fail intervene in cases where signs are evident of abuse of power or process, malicious or capricious conduct, or bad faith in the investigative or other legal process by the investigative agencies.

131. In the instant matter, it is my firm view that with the Restriction Notices on the operational accounts having been withdrawn by mutual consent between the Applicant and the Respondents herein, the appropriate balance that ensures that the objectives of recoverable asset preservation under Section 23 of the CPA are met, whilst at the same time ensuring that the Applicant is not effectively

paralysed in its operations and that the Applicant's legitimate trade activities are not unduly hindered, lies in maintaining the Restriction Notice(s) on the Remainder of the restricted Accounts. I should add that had the parties herein not reached settlement by mutual consent on the two operational accounts herein, the Court would actually have been inclined to lift the restrictions thereon as it formed the view that completely paralysing the operations of the Hotel business in that manner and in the specific circumstances of the present case, would have constituted investigative overkill. Accordingly, the Restriction Notices shall remain in force in respect of the following accounts:

- (a) account number 1010354548;
- (b) account number 1001565717;
- (c) account number 1009612021;
- (d) account number 1009612037;

and it is so ordered.

132. For the sake of clarity, the Restriction Notices in respect of the following accounts, namely:

- (a) account number 1005511212; and
- (b) account number 1005511239;

have been withdrawn by mutual consent of the parties. As such, they are no longer the subject of any operative application in the present matter, and hence the Court makes no further Order in that respect.

133. It should be emphasised that this Ruling has no effect, and should not be understood as having any effect, on the merits of the underlying investigation or on the legality or the lack thereof, of the transaction under investigation.

134. The application herein therefore totally fails, save for the part that relates to the accounts which have been unfrozen by reason of the withdrawal of Freezing Directives and Restriction Notices by the mutual consent of the parties.

135. Finally, the proceedings herein being civil in nature, the general rule is that costs follow the event. At the same time, costs also lie in the discretion of the Court.

136. In the present circumstances, I make the following order as to costs:

(a) In respect of the part of the application relating to the Freezing Directives and Restriction Notices on National Bank of Malaŵi Account numbers 1005511239 and 1005511212, which Freezing Directives and Restriction Notices were subsequently withdrawn by mutual consent of the parties, each party shall bear own costs.

(b) In respect of the remainder of the accounts to which the Restriction Notices herein relate, and in respect of which the application to have the Restrictions thereon discharged or varied has been dismissed, the Court hereby awards the costs thereof to the Respondent.

138. It is so ordered

Delivered in Chambers at Lilongwe this 4<sup>th</sup> day of May 2026.

R.E. Kapindu, PhD

JUDGE