



**IN THE HIGH COURT OF MALAWI
FINANCIAL CRIMES DIVISION
CRIMINAL CASE NO. 5 OF 2025**

**REPUBLIC
VS
LIN YUNHUA**

13TH JULY 2026

RULING SUMMARY

KAPINDU J

The accused person is being tried in the High Court, Financial Crimes Division, on several charges relating to serious financial crimes, including corrupt practices with a public officer, abuse of office and abuse of public office. Two of the charges allege that, while on remand in connection with earlier criminal proceedings, the accused offered substantial financial and other benefits to the officer in charge of Lilongwe (Maula) prison as an inducement for him to approach the judicial officer presiding over the accused person's criminal case with a view to securing a lesser sentence upon conviction. The accused pleaded not guilty and the trial commenced, and two prosecution witnesses already testified.

Thereafter, the prosecuting authority filed an *ex parte* application seeking leave of the High Court to withdraw the criminal proceedings and an order a discharge of the accused person, purportedly pursuant to Section 81 of the Criminal Procedure and Evidence Code (the CP & EC). The application was made following instructions from the Director of Public Prosecutions (the DPP) that the proceedings should be withdrawn so that the alleged misconduct of prison officials involved in the matter may be dealt with administratively.

Section 81 of the CP & EC provides that, in any trial before a subordinate court, a public prosecutor may, with the consent of the court or on the instructions of the DPP, withdraw from the prosecution at any time before judgment. Section 5A of the Courts Act provides that every judge has, in addition to such other powers as may be conferred upon him or her, all the powers conferred on any subordinate court by any written law. The prosecution contended that Section 5A therefore clothes a High Court Judge with the powers of a subordinate court under Section 81 of the Code.

The CP & EC separately regulates trials before the High Court. Section 294(2) thereof provides that, where a case or class of cases is directed to be tried by the High Court without a jury, the High Court is, with necessary modifications, to follow the procedure set out in Part VII of the CP & EC for trials before subordinate courts. Section 81, however, is contained in Part IV and is expressly framed as applying to a ‘trial before a subordinate court’.

Separately, Section 99(2)(c) of the Constitution, as read with Section 77 of the CP & EC, empowers the DPP to discontinue criminal proceedings before final judgment without obtaining the leave of the court, subject to the constitutional requirement that reasons for the exercise of that power be furnished to the Legal Affairs Committee of Parliament within 10 days. The prosecution opted not exercise that power of discontinuance but instead invited the High Court, Financial Crimes Division, to grant leave to withdraw the proceedings.

Held – dismissing the application –

(1) Section 81 of the CP & EC is confined to trials before subordinate courts and does not provide a procedure for the withdrawal of criminal proceedings in the High Court. Although Part IV of the Code contains provisions relating to criminal proceedings generally, the language of Section 81 under which the application has been brought is expressly and specifically directed to trials before subordinate courts. The CP & EC draws a deliberate distinction between the procedures governing subordinate-court trials and those governing trials before the High Court. Where the legislature intends a subordinate-court procedure to apply in the High Court, it says so expressly.

(2) Section 294(2) of the CP & EC does not import into non-jury trials before the High Court the entirety of the procedural regime applicable in subordinate courts. Its express incorporation is confined to the procedure contained in Part VII of the Code. Since Section 81 is contained in Part IV, it does not fall within the procedure incorporated by Section 294(2). Applying the principle *expressio unius est exclusio alterius*, the express reference to the procedure set out in Part VII implies the exclusion of subordinate-court procedures contained elsewhere in the Code.

(3) Section 5A of the Courts Act, which generally confers upon a High Court judge the powers conferred upon subordinate courts by written law, cannot be invoked so as to override or circumvent the specific procedural scheme deliberately established by the CP & EC. Although, in the absence of a contrary legislative intention, Section 5A may permit a High Court Judge to exercise powers possessed by a subordinate court, it cannot properly be used to import into High Court proceedings a procedure which the Code expressly confines to subordinate courts and which the legislature has not included among the subordinate-court procedures expressly made applicable to the High Court. Therefore, the application, in so far as it is founded on Section 81 of the CP & EC, is misconceived and incompetent.

Nseula v Attorney-General and another [1999] MLR 313 applied.

(4) An application by the prosecution for leave to withdraw criminal proceedings is legally and conceptually distinct from the exercise by the Director of Public Prosecutions (DPP) of the power to discontinue proceedings. Where an application for leave to withdraw is properly available, the prosecution invokes the judicial discretion of the court and is required to provide sufficient reasons to satisfy the court that the withdrawal is proper. The court is not bound to accede to such an application. By contrast, the DPP’s constitutional and statutory power of

discontinuance under Section 99(2)(c) of the Constitution and Section 77 of the Code does not depend upon obtaining the court's permission. Upon a valid discontinuance, the consequences prescribed by law follow, subject to any exceptional public-law challenge to the exercise of the power, including on grounds such as demonstrable bad faith.

(5) The reasons advanced by the prosecution are, in any event, insufficient to justify the grant of leave to withdraw, even if the court were to possess jurisdiction to entertain the application under Section 81. The accused person herein is the sole accused person in the proceedings. The prison officials whose alleged misconduct is said to require administrative handling are not co-accused persons but prosecution witnesses, and their alleged misconduct is not itself an issue that falls for determination in the criminal proceedings. No persuasive reason has been shown why administrative disciplinary proceedings against those officers cannot be undertaken independently of the criminal trial of the accused person. The proposed administrative handling of the witnesses' alleged misconduct therefore affords no rational or proper justification for terminating the prosecution of the accused.

(6) The DPP already possesses constitutional and statutory power to terminate the proceedings by entering a discontinuance without seeking the court's leave. Having elected not to exercise that power, the prosecution cannot properly seek to have the court achieve, through an application for leave to withdraw, substantially the same result which the DPP is legally empowered to achieve directly. The application appears to invite the court, in substance, to exercise the DPP's power of discontinuance indirectly and on the prosecution's behalf. The application is therefore unnecessary, a wastage of time and resources and amounts to an abuse of the process of the court.

Accordingly, the application for leave to withdraw the criminal proceedings herein is dismissed.

Application dismissed.

Cases referred to in the judgment

Nseula v Attorney-General and another [1999] MLR 313.

Republic v Mwanamvekha and Others, High Court of Malawi, Criminal Case No 19 of 2023, Ruling of 9 January 2024.

Legislation referred to

Constitution of the Republic of Malawi, ss 42(2)(f)(iii), 99(2)(c), 99(3).

Corrupt Practices Act (Cap 7:04), ss 24(2), 25(2), 25B(2), 34.

Courts Act, s 5A.

Criminal Procedure and Evidence Code, ss 77, 81, 294(2).

Peter Sambani for the State/applicant.