IN THE HIGH COURT OF MALAWI

FINANCIAL CRIMES DIVISION

CRIMINAL CASE NO. 5 OF 2025

REPUBLIC

VS

LIN YUNHUA

CORAM: HON. JUSTICE R.E. KAPINDU

Mr.Peter Sambani, Counsel for the State/Applicant

Mr. Frank Dzikanyanga, Court Interpreter/Clerk

RULING

KAPINDU, J

1. Mr. Lin Yunhua, the accused person in the instant case, is facing several charges on serious financial crimes. The charges include corrupt practices with public officers, contrary to Section 24(2) as read with Section 34 of the Corrupt Practices Act (Cap. 7:04 of the Laws of Malawi) (the CPA); abuse of office, contrary to Section 25(2) as read with Section 34 of the CPA; and abuse of public office, contrary to Section 25B(2) as read with Section 34 of the CPA.

2. Mr. Yunhua has a history of criminality. He is a convict. He was, in 2019, found guilty of a number of serious wildlife-trafficking and financial crime offences, and was duly sentenced in respect thereof. Evidence was led during his trial showing that he was part of a wider inter-country wildlife trafficking syndicate. The current charges emanate from his alleged conduct in prison following the abovesaid conviction.

3. The most serious of the offences with which he is charged is that of corrupt practices with a public officer under Counts 1 and 2 of the Charge Sheet. In Count 1, the accused person is charged with the offence of corrupt practices with a public officer, contrary to Section 24(2) of the CPA, as read with Section 34 of the same. The particulars of the charge are that Lin Yunhua, in the year 2019, while on remand at Lilongwe (Maula) Prison in Lilongwe District, in the Republic of Malawi, corruptly offered money in the sum of MK30 million for the benefit of one Aaron Ganyavu Kaunda, a public officer by virtue of his position as Officer in Charge of Maula Prison, as an inducement for the said Aaron Ganyavu Kaunda to engage Her Worship Violet Chipao, being the judicial officer presiding over his case in Criminal Case Number 797 of 2019, to give the said Lin Yunhua a lesser sentence upon conviction.

4. In Count 2, Lin Yunhua is charged with Corrupt practices with a public officer, contrary to Section 24(2) of the CPA as read with Section 34 thereof. The particulars are that Lin Yunhua, in the year 2019, while on remand at Maula Prison in Lilongwe, Malawi, corruptly offered the completion of the construction of Aaron Ganyavu Kaunda's house in Area 49 in Lilongwe for the benefit of Aaron Ganyavu Kaunda, a public officer by virtue of his position as Officer in

Charge of Maula Prison, as an inducement for the said Aaron Ganyavu Kaunda to engage Her Worship Violet Chipao being the judicial officer presiding over his case, in Criminal Case Number 797 of 2019, to give the said Lin Yunhua a lesser sentence upon conviction.

5. These, along with the other financial crime charges that he is facing, are very serious charges. The Court wishes to emphasise here that attempting to influence the outcome of a judicial proceeding by offering bribes or other inducements to a judicial officer is a grave corrupt practice. Such conduct constitutes a brazen attack not only upon the integrity and independence of the particular judicial officer concerned, but also on the very institution that is ultimately entrusted with dispensing justice, and indeed curbing illegality and injustice in society. It is conduct that amounts to an attack on the administration of justice itself. Courts, as the ultimate adjudicative authority on matters of lawfulness and unlawfulness, including matters of criminality, are, in that respect, the ultimate institutional safeguard in any democratic society against unlawful conduct, including corrupt practices. Thus, an attempt to corrupt a judicial officer also constitutes a flagrant and audacious attack on organised and orderly society, as it is an attempt to compromise the ultimate societal institutional mechanism put in place to remedy or otherwise deal with instances of illegality, wrongdoing and injustice in society.

6. I am highlighting here the nature or character of the offences in respect of which the accused person herein has been charged, in order to emphasise the seriousness or gravity of the charges that he is facing. I should also emphasise, in this regard, that at this stage of the proceedings, the nature of the offences that he is charged with notwithstanding, the accused person herein still enjoys the right to be presumed innocent until proven guilty by a competent Court as guaranteed under

Section 42(2)(f)(iii) of the Constitution, and that presumption therefore prevails at this stage.

7. Coming to the brief history of how the present proceedings have progressed since the accused person herein was committed to this Court, the accused person herein took plea on the 12th of January, 2026. He pleaded not guilty on all counts. Consequently, the matter was set down for trial. Trial commenced on the 13th of May, 2026, and so far two witnesses, both officers of the Malawi Prisons Service, have testified.

8. Following the commencement of trial, the Anti-Corruption Bureau (ACB), that is prosecuting the present matter, on the 9th of June, 2026, filed an *ex-parte* application styled *"Notice of Motion for An Application for Leave to Withdraw Criminal Proceedings."* In the said application, the ACB (also alternatively referred to as the Applicant or the State in the present decision), prays that:

> *"The State, having received explicit instructions from the DPP [Director of Public Prosecutions], [sic.] the State prays for leave of this Honourable Court to withdraw the proceedings against the accused person and an Order discharging the accused person pursuant to Section 81(1) of the Criminal Procedure and Evidence Code."*

9. It is germane to set out, at this juncture, the provisions of Section 81 of the CP & EC. There is no Section 81(1) of the CP & EC as stated by the Applicant. Section 81 of the CP & EC provides as follows:

*"In **any trial before a subordinate court** any public prosecutor may, with the consent of the court or on the instruction of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person; and upon such withdrawal—*

(a) if it is made before the accused is called upon to make his defence, he shall be discharged, but such discharge of an accused shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(b) if it is made after the accused is called upon to make his defence, he shall be acquitted." [The Court's emphasis]

10. It is clear from the language of this Section, as highlighted in the above provision, that its application is confined to trials before subordinate Courts. This provision falls under Part IV of the CP & EC. Trials before the High Court, on the other hand, are explicitly provided for under Part X of the CP & EC. A careful reading of the Code shows that where the CP & EC envisages that the procedure to be followed in the High Court is to be the same as that followed in subordinate Courts, it states so very clearly, such as under Section 294(2) of the Code to which I revert shortly below.

11. As I state this, I am mindful that Part IV of the CP & EC under which Section 81 falls, contains *"Provisions Relating to all Criminal Proceedings."* However, it is also clear that the text of Section 81 of the Code is very subordinate-Court specific. Any faithful reading of the provision leaves no doubt that it was designed to apply to proceedings in subordinate courts and not in the High Court.

12. As I have stated earlier, the procedure for trials before the High Court is provided for under Part X of the CP & EC and where it is intended that provisions specifically applicable to subordinate Courts are to also apply in the High Court, the law specifically says so. Thus, in providing for *"Trial before the High Court"*, Section 294 of the CP & EC provides that:

> *"(1) Subject to subsection (2) all criminal trials before the High Court shall be by jury. A jury shall, except where otherwise specially provided, consist of twelve persons.*
> *(2) The Minister may, by Order published in the Gazette direct that any case or class of cases shall be triable by the High Court without a jury, and in any such case or class of case* ***instead of the procedure set out in this Part the High Court shall, with any necessary modifications, follow the procedure set out in Part VII for trials before subordinate courts****."* [Emphasis by the Court]

13. This Section makes clear two legal positions. Firstly, that as a general rule, trial in the High Court must be by jury. This is what Section 294(1) essentially provides, subject to the qualifications in subsection (2) thereof. Secondly, where, under Section 294(2) of the Code, the Minister directs that a case or class of case be tried without a jury, then the procedure set out for holding trials before subordinate Courts under Part VII of the CP & EC is to be followed in the High Court, with necessary modifications.

14. It is therefore clear that the specific procedure before subordinate Courts that may be followed is that provided for under Part VII of the CP & EC. Part VII of the

CP & EC runs from Section 246 to Section 261A of the CP & EC. Thus, the procedure prescribed under Part IV of the Code is not covered and hence, there is no legal justification for the High Court to follow a specific subordinate Court procedure prescribed under Section 81 of the CP & EC.

15. In the Skeleton Arguments, the Applicant prays in aid Section 5A of the Courts Act which provides that:

> *"Every Judge shall, in addition to such other powers as may be conferred upon him, have all the powers conferred on any subordinate court by any written law."*

16. Counsel for the Applicant argues, in the Skeleton Arguments, that: *"Section 5A of the Courts Act fully clothes a High Court Judge with all the powers of a subordinate Court, including those under Section 81 of the CP & EC."*

17. However, in the circumstances of the present matter, I hold the firm view that the rule *expressio unius est exclusio alterius*, which is a settled canon of statutory interpretation, must apply to exclude the application of Section 5A of the Courts Act in this specific context. Basically, the *expressio unius est exclusio alterius* rule states that where, in a situation where the law could have specifically mentioned a specific set of things or items, but it only mentions one, or a limited specific number of things or items, then the express mention of some things, necessarily implies the exclusion of the others not mentioned. This rule, it should be pointed out, should be contrasted with the *ejusdem generis* rule. The *ejusdem generis* rule is basically to the effect that where a provision in a statute lists specific things or items, followed by general words, the general words are

interpreted as including only things of the same type or class as the specific items.Thus, for instance, if a provision in an Act that deals with domestic animals is stated to apply to “dogs, cats, horses and other animals”, application of the *ejusdem generis* rule would entail that the term “other animals” would mean domesticated animals similar to those listed and not including wild animals such as lions and hyenas. This rule however is clearly not applicable because Section 81 simply mentions subordinate courts without having additional general words. Thus, it is the *expressio unius est exclusio alterius* rule that applies.

18. Ruth Sullivan, in her book *Statutory Interpretation*, 2nd Edition, Irwin Law Inc., 2007, states, at page 192, in relation to the *expressio unius est exclusio alterius* rule, that:

> *“An intention to exclude may legitimately be implied whenever a thing is not mentioned in a context where, if it were meant to be included, one would have expected it to be expressly mentioned. Given an expectation of express mention, the silence of the legislature becomes meaningful. An expectation of express reference legitimately arises whenever a pattern or practice of express reference is discernible.”*

19. In the case of ***Nseula v Attorney-General and another*** [1999] MLR 313, Banda CJ, delivering judgment on behalf of a unanimous Supreme Court of Appeal, stated at page 328 that:

> *“Indeed it is an elementary principle of interpretation which is encapsulated in the maxim expressio unius est exclusio alterius*

– the expression of one thing implies exclusion of other things or person…Something which is excluded cannot be implied into an express provision."

20. Ordinarily, in the absence of an express provision that conveys a contrary intention, Counsel Sambani's argument would be sustainable. It is true that, in terms of Section 5A of the Courts Act, this Court is empowered to exercise all powers that a Magistrate Court, or indeed any subordinate Court, possesses. However, this cannot be so in the instant case where the law, and this in the same piece of legislation, namely the CP & EC in this case, has expressly delineated the procedure to be followed in trials before subordinate Courts, as clearly distinct from trials before the High Court. It defeats the intention of the legislature to say that where Parliament specifically prescribed a withdrawal procedure in subordinate Courts, in a Chapter that generally applies to all proceedings, but clearly excluded the High Court from such procedure, then such procedure should still be imputed upon the High Court on the purported invocation of Section 5A of the Courts Act. I am fully convinced that this is not what Section 5A of the Courts Act was designed for.

21. Further, if the Legislature had intended that where a trial in the High Court is not by jury, then the full procedure applicable in trials before subordinate Courts should also apply in the High Court, the Legislature could have said so. But the Legislature chose a narrower path. The relevant part under Section 294(2) provides that: *"instead of the procedure set out in this Part the High Court shall, with any necessary modifications, follow the procedure set out in Part VII for trials before subordinate courts."* If Parliament intended a holistic application of the procedure for trials in subordinate Courts in the High Court in cases of non-

jury trials, Parliament could simply have legislated that *"instead of the procedure set out in this Part the High Court shall, with any necessary modifications, follow the procedure for trials before subordinate courts."*

22. The express mention of *"the procedure set out in Part VII for trials before subordinate courts"* was meant to exclude other procedures for subordinate court trials as set out in other parts of the Code, so that instead, it is the procedure for trials in the High Court as set out in Part X of the Code and other parts thereof that must apply. That is the very essence of the *expressio unius est exclusio alterius* rule.

23. It follows, therefore, that in so far as the application is founded upon the provisions of Section 81 of the CP & EC, it is misconceived in point of law, being based on a procedure that is not applicable before this Court. The application is therefore incompetent on that basis and falls to be dismissed on that ground alone.

24. But there is more. The Court notes that the State has opted for the procedure of making an application before this Court for permission to withdraw the case. It is one of those surprising prosecutorial decisions. By making an application before the Court, the State invites the Court to exercise its discretion. The Court is duty bound to consider the reasons and making its reasoned decision based thereon. This procedure is very different from entering a discontinuance – referred to in other common law jurisdictions as entering a *nolle prosequi*.

25. Under the discontinuance procedure, the DPP has power to discontinue, at any stage before final judgment is delivered, any criminal proceedings instituted or undertaken by himself or herself or any other person or authority, in terms of Section 99(2)(c) of the Constitution as read with Section 77 of the CP & EC.

When exercising such power, the DPP does not need to seek the permission of the Court. Of course, Section 99(3) of the Constitution requires that he or she must furnish reasons for exercising such power within 10 days from the date of entering the discontinuance. Further, in exceptional cases, such as where bad faith for entering the discontinuance is demonstrable, the exercise of such power may be amenable to a judicial review challenge.

26. The difference between making an application for withdrawal and entering a discontinuance (elsewhere referred to as a *nolle prosequi*) has been appreciated in comparable common law jurisdictions, such as the United Kingdom. The *Crown Prosecution Service* (CPS), discussing *"Termination of Proceedings (Including Discontinuance)"* in the *"Prosecution Guidance Court Processes and Case Management"* of 5th November 2019 as updated on 15th October 2024, accessible on https://www.cps.gov.uk/prosecution-guidance/termination-proceedings-including-discontinuance, explains as follows:

> *"**Discontinuance***
>
> ***The Power to Discontinue***
>
> *Timely termination of proceedings is in the interests of justice. Sections 23 and 23A of the Prosecution of Offences Act 1985 ("the POA") give prosecutors the power to discontinue proceedings without the need to obtain the leave of the court. Discontinuance avoids the need for a court hearing and the unnecessary attendance of the parties. It enables a defendant in custody to be released immediately without the need to wait until the next hearing. For these reasons, and particularly where it is intended to discontinue the entire proceedings, the*

preferred method of termination is discontinuance whenever possible.

If it is intended to terminate some charges and not others, discontinuance may not be the most appropriate option. Indeed partial discontinuance can sometimes cause confusion and uncertainty, particularly if alternative charges are to be preferred. The defendant will have to attend court on the outstanding charges in any event.

Where a prosecutor decides to replace one charge with another charge then offering no evidence on the first will not give rise to autrefois acquit. The plea of autrefois acquit or convict is only available where the same offence is charged on the same facts: R v JFJ [2013] EWCA Crim 569."

*"**Withdrawal of Proceedings***

Offences can be withdrawn by the prosecutor in the magistrates' court (only) at any time before adjudication by the court. If proceedings are withdrawn in anticipation that they may be re-instituted if additional evidence comes to light, this should be made clear in court.

Leave to withdraw is required. The court has complete discretion whether to grant leave. ***The prosecuting advocate will need to give sufficient reasons to satisfy the court that the application is a proper one.*** *The defendant is entitled to make representations as to whether they should be entitled to an acquittal.*

If proceedings are withdrawn, there is no technical bar to instituting further proceedings for the same offence at a later

> *date. CPS policy on the re-institution of proceedings will apply to any such decision. Refer to the legal guidance on Reconsidering a Prosecution Decision elsewhere in the Legal Guidance.*
>
> *The court may refuse leave to withdraw the proceedings. If this occurs, and the prosecuting advocate is still of the view that the matter should be abandoned, then no evidence should be offered. This will result in the dismissal of the charge which should be regarded as final as any attempt to re-instate the charge is likely to fail due to the rule against double jeopardy.*
>
> *In all cases when termination of proceedings takes place at court, a full note should be made of what was said by each of the parties and the court."* [the Court's emphasis]

27. According to this write-up, two things are worth pointing out from the practice in the United Kingdom. First, just like under the CP & EC, as this Court has already found above, an application to withdraw proceedings, or indeed of leave to withdraw proceedings, is only tenable before a subordinate court. It is not a practice provided for in trials before the High Court. Secondly, that on an application by the prosecution to withdraw criminal proceedings before a Magistrates Court, the Court requires sufficient reasons to satisfy the Court that the application is a proper one, failing which the application falls to be dismissed.

28. As stated earlier, in the present case, the State has opted not to enter a discontinuance. Instead, it has brought an application to withdraw criminal proceedings, hence triggering the exercise of discretion by this Court. Considering that the State is completely at liberty to discontinue this matter if the

State is so minded, it appears to this Court that for some reason, the State finds that avenue rather inconvenient, and instead wants this Court to make a decision, effectively on the State's behalf. The reason behind the ACB's application is clearly stated in paragraph 7 of Counsel Peter Sambani's affidavit in support of the application, where he states that:

> *"I am advised that the Director of Public Prosecutions (DPP), in consultation with other relevant authorities, has, in exercise of his powers, instructed the Director of Anti-Corruption Bureau through a letter dated 19th May 2026, Reference No. DPP/ACB/29V heading "WITHDRAWAL FROM PROSECUTION: REPUBLIC VS LIN YUN HUA, LILONGWE HIGH COURT, FINANCIAL CRIMES DIVISION, CRIMINAL CASE NO. 5 OF 2025", received by the Anti-Corruption Bureau on 21st May 2026, to withdraw these proceedings so that the misconduct of the involved prison officials should be handled administratively."*

29. As I have stated before, I am at a loss as to why the State has opted to bring this application to Court instead of simply entering a discontinuance. The case at hand is ***Republic vs Lin Yunhua***, Criminal Case No. 5 of 2025. There is no other accused person in this matter other than Mr. Yunhua. There is no prison official who is being prosecuted. Before this Court, in the present proceeding, the issue of *"the misconduct of the involved prison officials"* does not arise. For all the Court knows, as per the information availed to it, prison officers have only been lined up to testify as State witnesses. These include the two witnesses who testified on 13th May 2026. It is therefore unclear to this Court how the issue of

"the misconduct of the involved prison officials" should affect the trial of Mr. Yunhua when such alleged misconduct does not fall for determination in the case.

30. The impression that this Court seems to get from Counsel Peter Sambani's affidavit in support of the application is that somehow, the Malawi Prisons Service takes the view that it cannot administratively handle issues of the alleged misconduct of prison officers who may have been involved in connection with this matter for as long as the accused person herein, who incidentally does not work with the Malawi Prisons Service, is still facing trial. In other words, one can glean from the affidavit, and invitation to develop a general principle that administrative disciplinary measures against prison officers, in so far as some other person whose conduct is implicated in the matter is or still facing trial, cannot be effectively undertaken.

31. This reasoning is, to my mind, falls short of being persuasive to the Court in order for the Court, assuming it had the requisite jurisdiction under Section 81 of the CP & EC, to grant permission for the State to withdraw the prosecution. If the Court is to grant such permission (leave), it should be prepared to justify its own decision by providing at least rational reasons. Going through the ACB's application and affidavit in support, as well as Skeleton Arguments in support, the Court cannot find even a shred of a proper justification for granting such leave. The prison officers are not facing trial. They are not co-accused persons in this matter. They can, as far as the Court can see, be dealt with administratively by the prison authorities notwithstanding that the current proceedings are ongoing. To suggest that the Court should authorise that the criminal proceedings against Mr. Lin Yunhua herein be terminated in order to pave way for administrative measures against witnesses, who are in fact not co-accused

persons, and whose alleged misconduct has not been presented as an issue before this Court, does not come out as persuasive at all.

32. In the case of ***Republic vs Mwanamvekha & Others***, Criminal Case No. 19 of 2023, Ruling of 9th January, 2024, this Court had to grapple with the issue of the DPP shirking his responsibility to discontinue a criminal case even though the State had provided a clear and unequivocal statement under oath that it did not have any evidentiary basis for pursuing the prosecution of Hon. Mwanamvekha at the time. The difference with the present matter is that in that case, it was the accused person, Hon. Mwanamvekha, who applied for a discharge based on the ground that there was no evidence against him whatsoever in the disclosures, and that his prosecution was therefore being pursued in bad faith, and that it amounted to an abuse of the Court process. The State opted not to contest the application during that proceeding, and instead filed the statement admitting the unavailability of evidence against the accused person as stated above.

33. Notably, the State decided to reinstitute the charges which the Court subsequently, once again, quashed. However, the Court does not wish to delve much further into that discussion as the same is not necessary for the present purposes.

34. Another notable thing is that in the present case, it is not the accused person who has brought the application, but the State itself, and the State is not, as in Hon. Mwanamvekha's case, saying that there is no evidence against the accused person. Rather, the State is saying it wants to discipline the prison officials involved, who are witnesses in the case, administratively for misconduct.

35. In ***Republic vs Mwanamvekha & Others*** (above), the Court made the following observations:

> *"25. The State however maintained that entering a discontinuance was not an option that they were considering as a route to the discharge of the 1st Accused person under the circumstances, and that they would rather let the Court to decide the matter based on the 1st Accused person's own application.*
>
> *…*
>
> *27. Under section 77(1) of the CP & EC, which gives effect to the DDP's constitutional power of discontinuance, once the DPP exercises the power of discontinuance, the Court is obligated to immediately discharge the accused person under subsection 77(1)(a) of the CP & EC, in an instance such as the present one where the accused person is yet to be called upon to enter his defence. Where the accused has already entered a defence, then the Court is obligated to acquit the accused person under subsection 77(1)(b) of the CP & EC.*
>
> *…*
>
> *35. It follows that in a case such as the instant one, where the State realises, as stated under paragraph 7 of Counsel Sakanda's affidavit in response, that "the prospect of obtaining a conviction against the 1st Accused person is unrealistic", the State is under an obligation to terminate the prosecutorial process which the State itself commenced. It only makes good legal logic to do so, this Court would think. Indeed, such duty,*

this Court opines, is juristically correlative to a panoply of constitutional individual human rights including the broad rights to personal liberty under section 18 of the Constitution, and freedom and security of the person under section 19(6) of the Constitution, among others."

36. In the ***Mwanamvekha case***, noting that the State had not only admitted under oath that it had no evidence against the accused person, but that indeed an examination of the disclosures showed no apparent nexus between the evidence disclosed and the accused person, the Court proceeded to grant the applicant in that case, who was the first accused person, a discharge as he had sought on the grounds that proceeding with a prosecution under such circumstances would amount to an abuse of the Court process.

37. In the instant case, it is the State bringing the application, and yet the State has power to terminate the proceedings by itself by simply entering a discontinuance. The reasons given in support of the already unnecessary application, are themselves not at all plausible. I see no reason why this application for leave to withdraw the matter was ever brought before this Court. The Court gets the distinct impression that the State wants the Court to exercise the DPP's power of discontinuance through the back door, under the guise of, by way of application, inviting this Court to grant them leave to withdraw the prosecution, an application which is wholly unnecessary under the circumstances. The Court is mindful that it has already stated that an application brought under Section 81 of the CP & EC before this Court, as the ACB has done herein, is incompetent, the same being an exclusively subordinate Court procedure. But even if the application was a

competent one, for the reasons given herein, the Court would refuse to accede to that invitation.

38. This application, in this Court's considered view, is not only a wastage of time and other resources by the State, but also emerges as a form of abuse of the process of the Court. The State has both Constitutional and Statutory power to terminate the criminal proceedings herein without the leave of this Court through the discontinuance procedure, and to thereafter provide and explain the reasons therefor to the Legal Affairs Committee of Parliament as required by the Constitution. Purporting to ask the Court for permission to achieve exactly the same outcome of a discharge which can be achieved by the State by invoking its own powers without such seeking such permission, strikes this Court as an abuse of the process of the Court.

39. For the foregoing reasons, the Court declines to grant the leave sought, and the application herein must fail.

40. The application is therefore dismissed.

41. It is so ordered.

Made in Chambers at Lilongwe this 13th day of July, 2026.

R.E. KAPINDU, PhD

JUDGE