



REPUBLIC OF MALAWI

THE JUDICIARY

IN THE SUPREME COURT OF APPEAL

MSCA MISC CIVIL APPLICATION NO. 52 OF 2025

(Before Honorable Mr. Justice D Madise SC JA)

BETWEEN;

NORMAN PAULOSI CHISALE.....1ST APPLICANT

CHIMWEMWE PAULOSI

t/a Namauya Investment.....2ND APPLICANT

DEBORAH ZIMATHA CHISALE.....3RD APPLICANT

ESNART GUGA.....4TH APPLICANT

FLONY GUGA.....5TH APPLICANT

JANET FAITH KAMANGA.....6TH APPLICANT

CHRISTINA MVULA.....7TH APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

(Being High Court of Malawi, Lilongwe District Registry, Financial and Economic Crimes
Division, Civil Cause 75 of 2021)

Coram

Mr C. Gondwe for the applicants.

Mr Partridge for the 1st respondent

Mr Chinkono clerk

RULING.

[Under Section 7 (b) of the Supreme Court of Appeal Act as read with Order I rule 18 of the Supreme Court of Appeal Rules.

1, This matter has come before me as a single member of the Court pursuant to section 7 (b) of the *Supreme Court of Appeal Act* as read with *Order 1 rule 18 of the Supreme Court of Appeal rules*. . Today the applicants and the DPP appeared before me for an interpartes summons for the hearing of a fresh application after the Court below had declined to endorse an agreed order which was initiated by the DPP withdrawing the forfeiture proceedings against the applicants. The parties have filed skeleton arguments and affidavits in support and in response to the application. The State is not opposing the fresh application.

2, This application is made under Section 7 (b) of the Supreme Court of Appeal Act. The section provides for powers of a single member of the Court to exercise any powers vested in the Court in as far as it does not determine the appeal. The provision states as follows:

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

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

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

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

4, This Court has now assumed concurrent jurisdiction of the within matter. The Judge in the Court below refused to endorse the agreed order on the premises that the Financial Crimes Act does not provide for such a procedure. First and far most it is clear that my learned sister did misdirect herself on the difference between civil and criminal proceedings. These forfeiture proceedings are civil proceedings and are

governed by the Civil Procedure Rules 2017. The financial Crimes Act does not have the procedure on how to deal with civil matters. It is the CPR which is the engine of procedure. This is what the law says

Order 12, Rule 42 of the CPR provides: "*The claimant may discontinue his claim at any time.*"

Order 12, Rule 45 (1) provides: "*Subject to sub rule (2), (3) and (4), a claimant may discontinue all or part of a claim at any time.*"

Order 12, Rule 46 (1) provides: "*In order to discontinue a claim or part of a claim, a claimant shall (a) file a notice of discontinuance; and (b) serve a copy of the notice on every other party to the proceeding.*"

5, As was stated in (DPP vs. Norman Paul Chisale & 6 Others, Constitutional Reference No. 1 of 2021), that the DPP has powers to initiate civil forfeiture proceedings under the Financial Crimes Act. The Court came to the conclusion that what was before it were civil proceedings and not criminal. I'm in agreement with counsel for the applicants that the Court below erred in refusing to grant the prayer the parties to the proceedings had agreed in the agreed order.

6, It is our finding that the learned Judge was outside the ambit of the law when she declined to endorse the agreed order. Parties in a civil matter are at liberty to agree amongst themselves how they want the dispute to be resolved. There was no justification whatsoever in law for the Court below to decline to endorse the agreed order. The matter was initiated by the DPP and he wants these proceedings not to continue. Is it the business of Court to force the DPP to proceed with this case? The answer is in the negative. In these premises I grant the application as prayed and the agreed order is here by endorsed and the matter is withdrawn. Cost are for the applicants.

I So Order.

Made at the Supreme Court of Appeal at Blantyre on 8th September 2026.

A handwritten signature in brown ink, consisting of several overlapping loops and lines, appearing to be 'Dingiswayo Madise'.

Dingiswayo Madise SC

Justice of Appeal