

The State (On Application by Dr. Michael B. Usi) v The Acting Director of the Anti-Corruption Bureau

Judgment

Court:	High Court of Malawi
Registry:	Financial Crimes Division
Bench:	Honourable Justice R.E. Kapindu, PhD
Cause Number:	Judicial Review Cause No. 5 of 2025
Date of Judgment:	August 31, 2025
Bar:	Mr. Chokotho, for the Applicant respondent unrepresented

1. This is the Court's Ruling following a without notice Application by the Claimant herein, the Right Honourable Dr Michael B. Usi, for permission to apply for judicial review against the decision of the Acting Director of the Anti-Corruption Bureau (ACB) inviting him for questioning and requiring him to produce or furnish some documents. The Application is brought under Order 19 Rule 20 (3) of the Courts (High Court) (Civil Procedure) Rules, 2017 (the CPR, 2017).

2. The Claimant herein is no ordinary man. He is the current Vice President of the Republic of Malawi. As they say, at any given time of his life whilst occupying that office, he is, constitutionally, only a heartbeat away from occupying the office of the President of the Country. In other words, in the event of a vacancy arising in the office of the President, he would, constitutionally, automatically assume that office for the remainder of the term, under section 83(4) of the Constitution.

3. Further, under Section 87(1) of the Constitution, in the event of the President becoming so incapacitated as to be unable to discharge the powers and duties of that office, the Claimant would act as President, until such time, in the President's term of office, as the President is able to resume his functions.

4. In addition, under section 92(1) of the Constitution, the Claimant, as Vice President, is automatically a member of Cabinet. In terms of Section 92(3)(b) of the Constitution, he is constitutionally vested with the responsibility of presiding over Cabinet meetings in the temporary absence of the President. Pursuant to Section 79 of the Constitution, the specific constitutional responsibilities outlined above are in addition to any powers and functions that may be conferred on him by the Constitution, or by an Act of Parliament, and by the President. Simply put, he is the second most senior and most important Government official after the State President.

5. In addition to his role as the incumbent Vice President of the Republic and therefore, in that regard, also the deputy Head of the Executive Branch of the

Malawi Government, he is also the President of a duly registered political party called *Odya Zake Alibe Mlandu*. In his capacity as President of *Odya Zake Alibe Mlandu*, he is currently a presidential candidate in the forthcoming general elections scheduled to be held on the 16th of September, 2025.

6. I have specifically outlined the important roles occupied by the Claimant as an official in the Government of the Republic of Malawi on purpose, which purpose will become clearer in subsequent pages of this Ruling. In short however, the point to be borne in mind is that the principle that to whom much is given, much is required; becomes in law to whom much power and privilege is given, much responsibility and accountability is required. The foregoing outline speaks to the heavy weight of responsibility that the holder of the office of the Vice President carries.

7. By his own admission in his application, as a political candidate in the forthcoming general elections, the Claimant has been engaged in an electoral campaign throughout the country, and during his campaign speeches and public engagements, he has been making repeated statements drawing public attention to what he has characterised as endemic corruption and large-scale theft of Government resources by senior public officers. He states, at paragraph 7 of his Sworn Statement in support of the application herein, that: “*As part of my campaign, I have criticized the deep rooted corruption and theft in the government without specifying the names of the corrupt individuals.*”

8. The Defendant is the Deputy Director of the Anti-Corruption Bureau (ACB), currently operating in the capacity of Acting Director of the same. The action herein has been brought against him in his latter role. The ACB is a Government Department established under Section 4(1) of the Corrupt Practices Act (Cap. 7:04 of the Laws of Malawi), tasked with the mandate to, among others, investigate and prevent or combat corruption. It is the principal law enforcement agency in the Executive, in respect of handling corruption matters in the country.

9. According to the Claimant, the Defendant herein assumed the office of Acting Director of the ACB on or about the 5th of June, 2024, following the expiry of the contract of the former substantive Director.

10. The Claimant states that according to Section 6B(7) of the Corrupt Practices Act, in the event of a vacancy arising in the office of Director, the Deputy Director may act in that capacity but for a period not exceeding six months. The Claimant thus avers that the Defendant's acting tenure was limited by this provision and that, as such, by 29th August 2025, the lawful period of his acting appointment had expired.

11. The date of 29th August 2025 is significant because that is the date when the Defendant, in the capacity of Acting Director of the Bureau, issued a formal *Notice to Answer Questions and to Produce or Furnish Documents* addressed to the Claimant pursuant to sections 11(1)(b) and 11(1)(c), read together with section 49A, of the Corrupt Practices Act. The Notice is couched in the following

terms:

“NOTICE TO ANSWER QUESTIONS AND TO PRODUCE OR FURNISH DOCUMENTS

(Section 11 (1) (b) and 11 (1) (c) of the Corrupt Practices Act, as read with Section 49A of the Corrupt Practices Act)

TO: Right Honourable Dr Michael B. Usi

Office of the Vice President

Private Bag 301

LILONGWE 3

WHEREAS you are the Vice President in the, Office of the Vice President of the Republic of Malawi.

TAKE NOTICE that I require you to avail yourself before Officers of the Anti- Corruption Bureau at the Anti-Corruption Bureau offices

in Lilongwe on 1st September 2025 at 14 hours to answer questions in connection with an investigation which is being conducted by

the said Anti-Corruption Bureau. The questions will focus on allegations of corruption by Senior Public Officers that you have been making

in public. I further require you to produce or furnish me within 24 hours of service of this Notice on you with all the original documents or

certified true copies of all documents in relation to the said allegations of corruption by Senior Public Officers that you have been making

in public which are in your possession or under your control and which the Anti-Corruption Bureau considers necessary for the conduct of

an investigation into an alleged or suspected offence under the Corrupt Practices Act."

12. As is apparent from this Notice, it requires the Claimant to attend at the ACB offices in Lilongwe on Monday, 1st September, 2025 at 14:00 hours, to answer questions in relation to allegations of corruption by senior public officers which the Claimant has been making publicly during his political campaign.

13. Again, it is clear that the same Notice further requires the Claimant to, within 24 hours of its service, produce or furnish to the ACB "*all the original documents or certified true copies of all documents in relation to the said allegations of corruption by Senior Public Officers*" that the Claimant has been making in public, which are in his possession or under his control, and which the Bureau considers necessary for the conduct of its investigations into alleged or suspected offences under the Corrupt Practices Act.

14. The said Notice also contains an express warning that non-compliance with its terms would amount to an offence under section 49A of the Corrupt Practices Act. A copy of the notice has been exhibited to the Claimant's sworn statement marked as Exhibit "MB1".

15. It is the Claimant's contention that the Defendant has acted without lawful authority in issuing the said notice, his acting tenure having expired under section 6B(7) of the Corrupt Practices Act. On that basis alone, the Claimant argues, the Notice herein is unlawful and *void ab initio*.

16. Further, the Claimant contends that the Notice has not been issued based on his official duties as the Vice President, but rather based on statements that he has been making in the course of political campaign as a presidential candidate representing the *Odya Zake Alibe Mlandu* political party. It is his contention that such statements fall squarely within the bounds of his freedom of expression guaranteed under Section 35 of the Constitution of the Republic of Malawi (the Constitution), as read with Section 59 of the Presidential and Parliamentary Elections Act, which, he claims, safeguards campaigning rights during the election period. I must immediately point out here that it would appear that Counsel is citing repealed law. Section 59 of the repealed Parliamentary and Presidential Elections Act (PPEA) indeed provided for freedom of expression and information. However, Section 59 of the current Presidential, Parliamentary and Local Government Elections Act which he cites is, by contrast, on a different issue of campaign financing. The correct provision for Counsel to have cited should be Section 53 of the Presidential, Parliamentary and Local Government Elections Act, 2023.

17. Moving on, the Claimant contends that the decision by the Defendant to compel him, as the Vice President, to produce and furnish original or certified copies of documents from various government departments or agencies in relation to the allegations of corruption by Senior Officers within a period of only 24 hours is manifestly unreasonable and made in bad faith. The Claimant adds that he is neither an investigator nor a custodian of departmental records, and that compliance with such a demand would be practically impossible.

18. The Claimant asserts that the timing of the Notice herein, coming in the midst of his presidential campaign, and the impracticable demands that are contained therein, all indicate that the Notice herein had been issued with the ulterior purpose of frustrating his political campaign and intimidating him in the exercise of his constitutional rights. He avers that the requirement to attend at the ACB and to answer questions concerning generalised campaign statements, as though they were official reports or duties of office, amounts to a misuse of statutory powers.

19. The Claimant argues that the ACB's powers, as provided for under Section 11 of the Corrupt Practices Act, are intended to be exercised in relation to specific duties of public officers, or in relation to particular documents under the control of an office, agency, or institution. They are not, he says, designed to be used to compel political candidates to substantiate political campaign messages or rhetoric.

20. The Claimant therefore, under these circumstances, seeks permission to commence judicial review proceedings. The reliefs he intends to pursue in the proceedings include declarations that:

- (i) the respondent was not lawfully authorised to discharge duties as Acting Director of the Bureau at the material time;
- (ii) the Notice of 29th August 2025 is unlawful, unconstitutional, and void;
- (iii) the requirement to produce documents within 24 hours is unreasonable and made in bad faith; and
- (iv) the notice infringes his constitutional right to freedom of expression and his statutory rights under electoral law.

21. In addition, the Claimant seeks an interim Order staying the effect of the impugned Notice, so as to relieve him of the obligation to attend the Bureau or to produce documents, pending the determination of the substantive judicial review proceedings.

22. The application for permission to apply for judicial review has been brought ex parte (without notice), pursuant to the provisions of Order 19, Rule 20(3) of the Courts (High Court)(Civil Procedure Rules), 2017 (the CPR, 2017).

23. The Court is mindful that the purpose of a permission application is, primarily, to eliminate at an early stage, applications which are either frivolous,

vexatious or hopeless and secondly to ensure that an application is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration. See **State and Governor of the Reserve Bank of Malawi Ex parte Finance Bank of Malawi**, Miscellaneous Civil cause number 127 of 2005 (High Court) (unreported); **Ombudsman v Malawi Broadcasting Corporation** [1999] MLR 329 and **Inland Revenue Commissioners v National Federation of Self Employed and Small Businesses Limited** [1981] 2 All ER 93. Permission to apply for judicial review is granted if the Court is satisfied that there is an arguable case, raising serious issues that are fit for further investigation at a full hearing of judicial review.

24. Further, in arriving at its decision, the Court is mindful of the overriding objective under Order 1 Rule 5 of the CPR, 2017 which is to deal with proceedings justly, and in particular, the need for the Court to engage in active case management. Under Order 1 Rule 5(5)(c) of the CPR, 2017, active case management includes deciding promptly issues that need full investigation and trial, and accordingly disposing summarily of the others.

25. In this regard, the Court wishes to first deal with the issue of the authority of the Acting Director of the ACB which is a matter that, in the Court's view, pursuant to Order 1 Rule 5(5)(c) of the CPR, 2017, ought to be settled summarily rather than further investigated at a full hearing of judicial review. In the Court's view, on a fuller reading of the Corrupt Practices Act, whether or not the tenure of the Defendant as Acting Director of the ACB has expired by effluxion of time under the law is neither here nor there. Information is in the public domain that he was confirmed as substantive Deputy Director of the ACB by the Public

Appointments Committee of Parliament in January, 2023, for a three-year term.

26. Whilst indeed Section 6B(7), on its face, seems to limit the total period within which the Deputy Director may act as Director, it is important, firstly to note that under Section 6B(8) of the same Act, in the event of incapacity of the Director and Deputy Director or if the offices of the Director and Deputy Director are vacant, the President is required to appoint a suitably qualified person to act as Director for a period not exceeding six months or for such longer duration until the vacancy is filled. It would therefore appear that if a narrow interpretation of Section 6B(7) of the Act is adopted, it would suggest that an Acting Director appointed under subsection (8), who may only be appointed if the ACB does not have both a Director and Deputy Director, may serve for a longer duration than a situation where there is a Deputy Director, who acts as Director simply by virtue of holding the office of Deputy Director, in which case the acting Directorship may last for a duration limited only to six months. However, the beauty with canons of statutory interpretation is that one of the essential interpretive cannons is that a Statute must be read as a whole.

27. In this regard, whilst the Corrupt Practices (Amendment) Act, being Act No. 1 of 2019 brought in a number of changes affecting the offices of the Director and Deputy Director of the Bureau, these, notably, did not affect another important provision, namely Section 8 of the Corrupt Practices Act. Section 8(1) of the Act provides that: *"If the office of the Director is vacant or the Director is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Director shall act as Director."* It does not prescribe a temporal limit. It is perhaps not an ideal scenario. But it is the law. Further, the Court must adopt an

interpretive approach that avoids absurdity. It would be absurd, in the Court's view, to conclude that Parliament intended that where a person appointed as an Acting Director of the ACB is a person other than a Deputy Director, such person can act in the position until the vacancy is filled, as is clear from the letter and spirit of Section 6B(8) of the Act, but that if the Acting Director happens to be the Deputy Director of the Bureau, then he or she may only act as Director, in the absence of the Director, for a maximum of six months, after which Parliament intended for a paralysis of the Bureau's functions until the vacancy is filled. The Court is clear that by not repealing or amending Section 8(1) of the Corrupt Practices Act, Parliament intended to preserve it, rather than to create the above envisaged scenario. Thus, the letter and spirit of Section 8(1) of the Act must be upheld, notwithstanding the provisions of Section 6B(7) of the Act. Needless to mention though that the Legislature needs to revisit the Act and clean up some of these seemingly overlapping provisions under the Act.

28. Thus, with regard to the argument that the Defendant herein lacked or lacks the authority to issue a Notice under the Act, this Court is of the view that the letter and spirit of Section 8 is clear, that for as long as the Defendant holds the substantive position of Deputy Director, he has the requisite authority, in any event, to issue such notices and indeed exercise any other functions and duties that a Director must perform. On this basis, therefore, the Court does not find that there is a real triable issue meriting a full investigation at a full hearing of judicial review.

29. The second issue relates to the claim that the requirement that the Claimant produces original or certified copies of the original documents based on which he

has been making corruption allegations against unnamed senior public officers to the ACB within 24 hours, is unreasonable.

30. The Court again takes the view that this is an issue that requires a summary determination and does not require a full judicial review hearing, even a with notice hearing, to dispose of. On its face, the requirement that the Claimant must furnish such documents within 24 hours to the ACB, failing which he is to be found liable of committing an offence for failing to comply with that requirement was and is, in the specific circumstances of he present case, unreasonable. This is so even though the language of the Notice suggests that he is only being asked to produce or furnish documents which are in his possession or under his control. He is therefore not being asked under this Notice, and contrary to what he suggests in his application documents, to go out hunting for documents that are neither in his possession or under his control. The scope of the Notice is limited and narrow. The Defendant is simply saying:, in effect: *"Produce or furnish to us the documents relating to the allegations you have been making, which are in your possession or under your control."*

31. Be that as it may, the documents may as well be in his possession or under his control but he could be away from his office or official residence as the case may be. In any event, it is common knowledge that he is a candidate who is officially running for the office of President of the country, and that he is doing so within the statutory official campaign period as lawfully declared by the Malawi Electoral Commission. Necessarily, he must have a national campaign schedule. The Defendant should not act as if what the Claimant has allegedly been saying about corruption in Government on the campaign trail has given rise to a sudden

emergency which they have to address within 24 hours, and seek to make a criminal out of a sitting Vice President of the Republic for failure to honour that unusual request. The Court says: give him reasonable notice, in any event.

32. The last issue is even more fundamental, and to this Court's mind, it is fit for further investigation at a full hearing of judicial review. This is the question of his freedom of expression as a political (presidential) candidate campaigning during the official campaign period. He cites, in support of his proposition, section 35 of the Constitution, which guarantees the broad right of freedom of expression, as read with what he erroneously referred to as Section 59, which is in fact Section 53 of the Presidential, Parliamentary and Local Government Elections Act. Section 35 of the Constitution provides that: "*Every person shall have the right to freedom of expression.*" This right is subject to the limitation clause under Section 44(1) of the Constitution which provides that:

"No restrictions or limitations may be placed on the exercise of any rights and freedoms provided for in this Constitution other than those

prescribed by law, which are reasonable, recognised by international human rights standards and necessary in an open and democratic

society."

33. Section 53 of the Presidential, Parliamentary and Local Government Elections Act on the other hand provides that:

"Subject to any applicable law, a political party and person campaigning in an election shall enjoy complete and unhindered freedom of

expression and information in the exercise of the right to campaign under this Act."

34. Section 55(1) of the Act however goes on to provide that:

"Notwithstanding the guarantees of freedom of expression, information and assembly under this Act, no person shall, in campaigning in an election, use language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrection, hate, violence or war."

35. Pausing here, the Court notes that among the functions of the ACB, are to receive any complaints, reports or other information of any alleged or suspected corrupt practice or offence under the Corrupt Practices Act, pursuant to Section 10(1)(b) of the Act, and to investigate any such complaints, reports or other information as received under Section 10(1)(b), pursuant to Section 10(1)(c) of the Act. Further to Sections 10(1)(b) & (c) of the Act, Section 11 further provides for powers of the ACB which include, under Sections 11(1)(b) & 11(1)(c), the power to:

"(b) require any public officer or other person to answer questions concerning the duties of that public officer or any other public officer or other person, and order the production for inspection of any standing orders, directives or office instructions relating to the duties of the public officer

or such other public officer or other person; (c) require any person in charge of any office or establishment of the Government, or the head,

chairman, manager or chief executive officer of any public or private body [sic] or produce or furnish within such time as may be specified by the

Bureau, any document or a certified true copy of any document which is in possession or under his control and which the Bureau considers

necessary for the conduct of investigation into any alleged or suspected offence under this Act."

36. It seems to this Court that there is again a real case to be made that these provisions, among others, provide the ACB with broad powers to pursue, by way of investigation, any information that it receives concerning corrupt practices in the country. A serious case may be made that if the ACB becomes aware of serious corruption allegations being made by anyone at all, and more so by the second most powerful citizen in the country as in the present case, one who assumes very important and highly weighty Government responsibilities as earlier spelt out at the beginning of this Ruling, it would be careless for the Bureau to simply sit back, ignore the serious allegations and do nothing about them because the statements have been made during the official campaign period. One may say that an analogous example in relation to another type of offence may provide a more vivid illustration of how problematic such an approach on the part of law enforcement might be. If for instance, a political candidate, who happens to be a very senior official serving in Government in a similar position to that of the Claimant herein, goes around during the official campaign period, stating that he or she knows of senior officials in Government

who are committing serial murders in the City of Lilongwe but that he or she will not name them, and the Police invites such a candidate to answer questions relating to the allegations made, should the candidate be permitted to simply cry out and say *“No, my freedom of expression during campaign period entitles me to say those things without being queried by law enforcement authorities”*? At this stage, that question is up for a more thoroughgoing thought experiment. All the Court concludes at this stage is that there is here, a serious question to be examined and explored at a full hearing of judicial review.

37. At the same time however, as stated earlier, Section 53 of the Presidential, Parliamentary and Local Government Elections Act is clear and categorical that, *“subject to any applicable law”*, a candidate for political office has *“unhindered freedom of expression and information in the exercise of the right to campaign”* during the official campaign period. There is therefore, again, a serious issue to be tried as to whether the ACB may or may not use expressions made by a political candidate during his or her campaign in a manner that would effectively hinder his or her complete and unhindered freedom of expression during official campaign period. The issue needs further investigation at a full hearing of judicial review.

38. Noting that the Claimant has reportedly been making allegations against nameless senior Government officials for corruption, the question as to whether such language may, in terms of Section 55(1) of the Presidential, Parliamentary and Local Government Elections constitute language which is inflammatory, defamatory or insulting or which constitutes incitement to public disorder, insurrection, hate, violence or war is again a serious issue to be tried.

39. The Court, on weighing the scales of justice, concludes that justice and fairness demands that permission to apply for judicial review on that score be granted, which I hereby grant.

40. Considering that the issue relates to nameless rather than specifically mentioned individuals, weighing the scales of justice and the balance of convenience, I also find that a concomitant Order of stay restraining the Defendant or any other law enforcement agency from compelling the Claimant to provide the information, documents or details outlined in the **Notice to Answer Questions and to Produce or Furnish Documents** to the ACB within the official campaign period, or from effectively gagging the Claimant from responsibly expressing himself on such issues during his campaign through threats of commission of an offence for non-compliance with the said Notice being issued during the said official campaign period, is merited and is hereby granted. The Court emphasises, though, that in making this Order, it expects the Claimant to make any such statements, should he be minded to, in a responsible manner and not carelessly both like any other person in the country would be expected to, but more particularly so given the important and weighty office of Vice President of the Republic that he holds. The stay Order in this regard, shall only last for the duration of the official campaign period.

41. All in all, the Court has made the following findings and Orders:

(a) That the Deputy Director of the Bureau, who is at present the Acting Director of the ACB, has had and has the requisite authority to issue the **Notice to**

Answer Questions and to Produce or Furnish Documents, upon a fuller and contextual reading of Sections 6B(7) & (8) as read with Section 8(1) of the

Corrupt Practices Act. The Court therefore finds that there is no serious issue to be tried on this point, and permission to apply for judicial review based

on this ground has therefore been refused.

(b) That the Order of the Defendant by way of the **Notice to Answer Questions and to Produce or Furnish Documents** herein, requiring the Claimant to

furnish “*original or certified copies*” to the Defendant within 24 hours at the pain of committing an offence under Section 49A of the Corrupt Practices

Act for non-compliance, is, under the specific circumstances of the present case, unreasonable. The decision of the Defendant that the information

required herein be produced or furnished within 24 hours is hereby stayed for the duration of the official campaign period as prescribed under the

Presidential, Parliamentary and Local Government Elections Act. The Court further directs that, in any event, should the Defendant seek to pursue the

Notice herein upon expiry of the period of stay granted herein, the Claimant should still be given a reasonable notice period.

(c) That there is a serious issue to be tried, warranting further investigation at a full hearing of judicial review, on the question as to whether, by invoking its

powers under Sections 10 and 11 of the Corrupt Practices Act in order to compel the giving of answers or production/furnishing of documents, based on

statements made during campaign within the period of official campaign, the ACB would be undermining the right to *"complete and unhindered"* freedom

of expression guaranteed during the campaign period as provided for under Section 35 of the Constitution as read with Sections 53 and 55 of the

Presidential, Parliamentary and Local Government Elections Act. Permission to apply for judicial review is therefore granted on the issue, as it raises the

need for examining how or whether an appropriate balance is to be struck between the right of freedom of expression during the campaign period on the

one hand, with the exercise of the functions and powers of the ACB to prevent and combat corruption in the country on the other.

(d) That upon a careful balance of the issues and circumstances of the case, the Defendant, or any other law enforcement agency, is further restrained from

gagging the Claimant from expressing himself on the subject matter contained in the said Notice through threats of commission of an offence for

non-compliance with the said Notice being issued during the said official campaign period, and from compelling the Claimant to provide information,

details or documents pursuant to the said Notice within the campaign period.

(e) That in summary, implementation of the **Notice to Answer Questions and to Produce or Furnish Documents** herein, albeit with reasonable Notice being

issued, is only stayed for the duration of the official campaign period as prescribed under the Presidential, Parliamentary and Local Government Elections

Act, but the threat of criminal prosecution for non-compliance with the abovesaid Notice, in terms of Section 49A of the Corrupt Practices Act, is stayed

until final determination of the judicial review herein.

42. The Court makes no order as to costs.

43. It is so ordered.

Made in Chambers at Lilongwe this 31st Day
of August, 2025