

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

Summary

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

The Claimant [Applicant], sitting Vice President of the Republic of Malawi and a presidential candidate in the 16th of September, 2025 general elections, brought a without notice application to the High Court for permission to apply for judicial review of a notice issued by the Acting Director of the Anti-Corruption Bureau (ACB). The notice required the Claimant to attend for questioning and to produce documents related to public statements he made during his electoral campaign regarding alleged corruption by senior public officers. The Respondent's notice

required the Applicant to attend for questioning and to produce all documents related to his allegations within 24 hours. The Claimant contended that the notice was unlawful because the Respondent's tenure as Acting Director had expired per the six-month limit provided under **section 6B(7) of the Corrupt Practices Act**, the notice infringed his constitutional right to freedom of expression, and the requirement to produce documents within 24 hours was unreasonable and in bad faith. He argued that the notice was issued with the ulterior motive of frustrating his political campaign.

The principal issues for the Court to decide was whether there were real triable issues meriting a full investigation at a full hearing of judicial review. Further, related to the principal issue, was the question as to whether the Court should grant an interim Order staying the effect of the Notice herein, pending the determination of the substantive judicial review proceedings.

The Court, while exercising its powers of active case management under the **Courts (High Court) (Civil Procedure) Rules, 2017**, proceeded to summarily determine the issue of the Respondent's authority to act and the issue of unreasonableness of the 24-hours requirement under the notice herein. The Court held that while **section 6B (7) of the Corrupt Practices Act appears** to limit an acting tenure to six months, a holistic interpretation of the Act reveals that "a fuller and contextual reading of **Sections 6B (7) & (8)** as read with **Section 8(1) of the Corrupt Practices Act**" provides that the Deputy Director shall act as Director whenever the office of Director is vacant, without prescribing a temporal limit. Therefore, it was held that there was no serious issue to be tried on this point, hence, permission to apply for judicial review based on this ground

was refused. On the issue of 24-hour deadline to produce documents, the Court held that, it was *prima facie*, unreasonable in the specific circumstances of the case and stayed the implementation of the notice until the official campaign period concludes.

Despite the above findings, the Court proceeded to grant permission for a judicial review on a separate issue. The Court found a serious question to be tried regarding whether compelling a person to provide answers and documents based on statements made during a political campaign period would violate the constitutional right to unhindered freedom of expression. The court recognised the need for examination of how an appropriate balance is to be struck between the right of freedom of expression during the campaign period and the exercise of the functions and powers of the ACB. Further, the threat of criminal prosecution for non-compliance with the notice was stayed until the final determination of the judicial review herein. The Court made no order as to costs.