

The State (on the application of the Director of Public Prosecutions) v The Chief Justice of the High Court of Malawi)

Summary

Court:	High Court of Malawi
Registry:	Financial Crimes Division
Bench:	Honourable Justice R.E. Kapindu, PhD
Cause Number:	Judicial Review Cause No. 4 of 2025
Date of Judgment:	September 02, 2025
Bar:	Mr. K. Nyasulu, SC & Brig. Gen. G.D. Liwimbi (Rtd), Counsel for the Claimant Absent., Defendant's Counsel.

The Claimant, the Director of Public Prosecutions (DPP), sought permission to apply for judicial review of a decision by the Defendant, the Chief Justice, who had certified a criminal matter, *The Republic v Leston Mulli, Lloyd Muhara and Cliff Chiunda, Criminal Case No. 7 of 2024 in the High Court, Financial Crimes Division*, as one requiring a panel of not less than three judges under section 9(2) of the Courts Act. This certification occurred after the original trial judge had already determined that no constitutional issues were present and refused to

make a referral. The accused persons in the criminal case had applied directly to the Chief Justice for certification without the involvement of the prosecution (DPP).

The Claimant (DPP) contended that the Chief Justice's certification was a procedural irregularity and that the matter was not a pure constitutional issue, but rather a fraudulent debt matter. It was argued that a direct application for certification by a party must follow a judicial process with notice and an opportunity for the other parties to be heard, rather than being an *ex parte* administrative act. The Claimant further submitted that the Chief Justice, a single High Court judge, could not reverse the determination of another High Court judge and that the application was in substance an interlocutory appeal, which is impermissible in criminal cases. The Claimant sought leave to commence judicial review, among other grounds, on whether a direct application for certification requires proper commencement and service, the proceedings the Chief Justice had certified, and what specific constitutional questions were referred.

The application was dismissed by the Court. The Court reasoned that the Chief Justice's act of certifying a matter under section 9(2) of the Courts Act is a judicial, not an administrative, function. As the law vests exclusive and conclusive jurisdiction to make this determination in the Chief Justice, the decision is not amenable to judicial review. An allegation of procedural irregularity, such as the one raised by the Claimant, must be addressed to the very judge who made the decision, not through a parallel judicial review process. The Court thus found that the Claimant had not established an arguable case for judicial review, and accordingly, the application was refused. The Court made no

order as to costs.