



**JUDICIARY
IN THE HIGH COURT OF MALAWI
CIVIL DIVISION - LILONGWE DISTRICT REGISTRY
JUDICIAL REVIEW CAUSE NO. 26 OF 2026**

BETWEEN

THE STATE (On application of:

**THE MALAWI CONGRESS PARTY 1ST CLAIMANT
HON. EMMANUEL CHAMBULANYINA JERE 2ND CLAIMANT
HON. ABRAHAM MWAKHWAWA 3RD CLAIMANT
HON. DANIEL CHITONYA MWANYONGO 4TH CLAIMANT**

AND

**THE CHIEF SECRETARY TO GOVERNMENT (also
known as THE SECRETARY TO
THE PRESIDENT AND CABINET) 1ST DEFENDANT
THE MINISTER OF LANDS,
HOUSING AND URBAN DEVELOPMENT 2ND DEFENDANT**

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA
Mr. Kadzipatike, Counsel for the Claimants
Mr. Mbeta (Attorney General) and Chisiza (Chief State Advocate),
Counsel for the Defendants
Mrs. Alinafe Mtenje, Court Clerk

RULING

Kenyatta Nyirenda, J.

1. This is the ruling of the Court on an application by the Defendants for an order setting aside the stay of the proceedings herein. The application is premised on the Defendants' intention to discharge permission granted for judicial review and to set aside the stay of implementation of the impugned decisions. The application is made

pursuant to Order 10, rules 1 and 3, of the Courts (High Court) (Civil Procedure) Rules, 2017 (hereinafter referred to as the “CPR”), as read with Order 1, rule 5, of the CPR, and under the Court’s inherent jurisdiction.

2. The application is supported by the following sworn statement made by the Attorney General (the Defendants’ sworn statement):

“2. **THAT** I am the Attorney General of the Republic of Malawi and has conduct of this matter herein, I am duly authorized to swear this Sworn Statement on behalf of the Defendants.

3. **THAT** unless otherwise stated, all matters of fact deponed herein have come to my knowledge through my conduct of this matter, and I verily believe the same to be true to the best of my knowledge and belief.

THE PROCEEDINGS AND THE ORDER STAYING THE SAME

4. **THAT** these proceedings were commenced by the Claimants by way of an application for Judicial Review and Constitutional Review filed in the High Court of Malawi. The application was made without notice to the Defendants.

5. **THAT** the Claimants seek to challenge two decisions:

- (a) the decision of the 1st Defendant dated 27th February 2026 directing, reaffirming, endorsing and/or implementing a purported Executive Order issued by the President of the Republic of Malawi requiring the relocation of the Malawi Electoral Commission from Lilongwe to Blantyre; and
- (b) the decision of the 2nd Defendant dated 15th April 2026 refusing to renew the tenancy of premises occupied by the Malawi Electoral Commission at Plot No. 13/116, Lilongwe, which the Claimants contend was done in furtherance of the said relocation.

6. **THAT** this Honourable Court, heard the Claimants' *ex parte* application and made several orders among others, leave and permission for Judicial Review and Constitutional Review was granted, and a stay of the implementation of the impugned decisions was granted.

7. **THAT** in consequence of the referral the court accordingly stayed these proceedings pending the decision on certification by the Chief Justice, and directed that, should the Chief Justice so certify, the proceedings shall remain stayed pending the determination of the constitutional issues by the High Court panel to be constituted under section 9(3) of the Courts Act.

THE DEFENDANTS' INTENTION AND NEED TO BE HEARD

8. **THAT** the application in this matter was made *ex parte* and without notice to the Defendants. At the time the Court granted permission for judicial review, stayed

the implementation of the impugned decisions, and issued the interlocutory injunction, the Defendants had no opportunity to be heard, and no representations were made on their behalf before those orders were made.

9. **THAT** *the Defendants intend to apply to Court to discharge the leave that has been granted for judicial review and to set aside the interlocutory orders, including the stay of the implementation of the impugned decisions and the interlocutory injunction. I verily believe that the Defendants have a right to be heard before the Court before the said orders continue to bind them, and that it is in the interests of justice that they be afforded that opportunity as soon as practicable.*
10. **THAT** *given that the proceedings are currently stayed by virtue of the Court's ruling, the Defendants are unable to file and pursue their said applications while the stay remains in force. The Defendants therefore apply for the stay of the proceedings to be set aside to enable them to file and prosecute those applications.*

GROUND FOR SETTING ASIDE THE STAY

11. **THAT** *the stay of the proceedings was not sought by any party and was not the subject of any argument before the Honourable Court. It was ordered by the Court of its own motion, and the Defendants had no prior notice and no opportunity to make any representations on whether such a stay was appropriate or necessary.*
12. **THAT** *the orders of stay of execution and interlocutory injunction were granted entirely without notice to the Defendants and on the basis of the Claimants' ex parte evidence alone. The Defendants consider that, had they been heard, the Court would have had the benefit of material information and considerations relevant to the exercise of its discretion. I verily believe that the continued operation of these orders without any opportunity for the Defendants to be heard is inconsistent with the principles of natural justice and procedural fairness.*
13. **THAT** *the impugned decisions of the Defendants have been stayed and their implementation restrained. The Defendants maintain that the decisions in question were made lawfully and within the proper authority of the respective Defendants, and that the implementation of those decisions is being unlawfully obstructed.*
14. **THAT** *I verily believe that the Claimants have no Locus standi that is over and above the common man in the street.*
15. **THAT** *I verily believe that this application was made outside the prescribed three months period in which a decision made can be reviewed by the court.*
16. **THAT** *I verily believe that the Defendants have strong grounds upon which to seek the discharge of the leave granted for judicial review and the setting aside of the interlocutory orders if this application is granted.*

17. *THAT I verily believe that the setting aside of the stay of the proceedings even for the limited purpose of enabling the Defendants to file and pursue their applications will not cause any prejudice to the Claimants. The substantive orders, including the stay of execution of the impugned decisions and the interlocutory injunction, will remain in force until the Court deals with the Defendants' applications on their merits. No harm of any kind will result to the Claimants from the mere lifting of the procedural stay on the proceedings.*
 18. *THAT I verily believe that the overriding objective of achieving a fair and expeditious resolution of this matter requires that all parties be given an opportunity to participate in the proceedings before the referral.*
 19. *THAT for the foregoing reasons, I respectfully pray that this Honourable Court grants an order setting aside the stay of the proceedings herein to enable the Defendants to file and prosecute their applications, including their application to discharge the leave granted for judicial review."*
3. The Defendants also filed with the Court their skeleton arguments (Defendants' skeleton arguments) and the body thereof will be set out in full:

“2. **LAW AND ANALYSIS**

The court's power to set aside or vary a stay of proceedings

- 2.1 My Lord, the High Court possesses inherent jurisdiction to set aside, vary or lift any order it has previously made where justice so requires.
- 2.2 This is buttressed by the overriding objective enshrined in Order 1 rule 5 of the Courts (High Court) (Civil Procedure) Rules 2017 (the CPR, 2017) that requires the Court at all times to deal with cases justly, which necessarily includes ensuring that every party has a meaningful opportunity to participate.
- 2.3 In ***Mpinganjira v Malawi Development Corporation*** (Miscellaneous Civil Cause No. 63 of 2003, unreported), the Court observed that the inherent power to set aside an order obtained *ex parte* flows from the fundamental requirement that orders should not bind parties who have not had their day in court.

The right to be heard: Audi Alteram Partem

- 2.4 My Lord, this principle of *audi alteram partem*, hear the other side, is not a technical rule of procedure. The continued operation of orders that bind the Defendants without any prior hearing violates this right for the Defendants.
- 2.5 The High Court recently gave this principle powerful expression in ***The State v Chief Resident Magistrate's Court, Lilongwe, Ex-parte Shepherd Bushiri and Mary Bushiri***. His Lordship set aside an extradition order and stated that both parties to a proceeding must be heard, even in the context of extradition where urgency is often at its highest. It is clear that the right to be heard is not displaced

by urgency, convenience, or the absence of an express application from the affected party.

- 2.6 *In the matter before the Court, the Defendants were entirely absent from every stage at which the orders against them were made. They had no opportunity to address the court on the application made by the Claimants.*

The provisional and interim character of ex parte orders

- 2.7 *It is settled law here in Malawi that orders obtained on an ex parte basis are by their nature provisional and subject to challenge by the affected party. The Supreme Court of Appeal confirmed this in **Jeffrey and Another v The Anti-Corruption Bureau** [2002–2003] MLR (SC), where the Court observed that the proper course following an ex parte order is for the affected party to apply to the same court to set it aside, with both sides then being heard on the merits of the application. The opportunity to be heard, the Court said, occurs at that inter partes stage. My Lord, the Defendants in the present matter are seeking precisely that opportunity.*
- 2.8 *It is clear that courts discharge leave when it was granted for judicial review. As the Court held in **In re: Ministry of Finance, Ex Parte SGS Malawi Limited** (Civil Application 40 of 2003) [2003] MWHC 41, a respondent against whom leave for judicial review has been granted may apply to the Court to set aside that leave on the ground that there is no arguable case or that the applicant failed to make full and frank disclosure of all material matters.*
- 2.9 *However, my Lord, the procedural difficulty in the present matter is that the stay of proceedings prevents the Defendants from filing their application to discharge leave. The stay must therefore be lifted first, even if only for the limited purpose of enabling that application to be made. This is consistent with the approach approved in **The State v Council of the University of Malawi, Ex-parte Sylvester Ayuba James** (Judicial Review Cause No. 31 of 2016, Justice Kapindu), where His Lordship articulated with approval the practice of inviting a putative respondent to attend and make representations before leave is confirmed where it is not clear whether an arguable case exists. Denying the Defendants even that opportunity is, the Defendants submit, plainly wrong.*

The Defendants have compelling grounds for discharging leave

- 2.10 *My Lord, the Defendants' purpose in seeking the lifting of the stay is not academic. They have specific, well-founded grounds on which to seek the discharge of the leave for judicial review, and those grounds are briefly outlined below.*

Lack of Locus Standi

- 2.10.1 *It is settled law that in judicial review proceedings, it is not enough to have public interest in the subject matter. Order 19 rule 20 of the CPR 2017 requires an applicant to demonstrate a sufficient interest that has been affected by the impugned decision.*

2.10.2 *The Supreme Court of Appeal in **Civil Liberties Committee v Minister of Justice and Registrar General** (Civil Appeal No. 12 of 1999) that section 15(2) of the Constitution requires a prospective litigant to prove that the conduct or decision complained of adversely affects their rights. That standard has been applied and developed by this Court.*

2.10.3 *In **The State (On the Application of the Democratic Progressive Party) v Electoral Commission and Mpesi** (Judicial Review Cause 36 of 2022) [2025] MWHC 19, Justice Mandala Mambulasa held, as recently as 20 August 2025, that a political party that failed to demonstrate how the impugned decision directly infringed on its rights lacked sufficient interest to pursue judicial review. The Court held that "speculative future grievances are non-justiciable" and that an interlocutory injunction falls away where permission is denied.*

2.10.4 *Most pertinently, in **S (On the Application of Abdul Nahimana) and Mkumbira v Minister of Homeland Security** (Judicial Review Cause 18 of 2021) [2022] MWHCCiv 2 (12 August 2022), this Court found that applicants had insufficient locus standi to maintain their judicial review proceedings and stated that, had the point been properly argued, the Court would have removed permission and set aside the stay order. That is precisely the outcome the Defendants seek to argue for in this matter, once the stay of proceedings is set aside, my Lord.*

2.10.5 *It is therefore submitted that the Defendants will demonstrate that the connection between the Claimants and the impugned decisions is not obvious on the face of the papers. The question of locus standi deserves to be examined at an inter partes hearing, not assumed in favour of the Claimants on the basis of one-sided ex parte evidence.*

Failure to bring the application within the prescribed time

2.10.6 *My Lord, the first of the two impugned decisions was made on 27th February 2026. The time limit for judicial review is three months from the date of the decision. It is clear that the present proceedings were commenced outside that three-month window, and no application for an extension of time has been made or granted.*

2.10.7 *The three-month limit in Order 19 rule 20 (5) of the CPR 2017 exists to protect public administration from being disrupted by stale challenges. In **Ex Parte SGS Malawi Limited**, (Supra), the Court recognised that where an applicant does not make full and frank disclosure, leave may be set aside. It is our argument that a delay that has not been disclosed to the Court and not justified is equally a ground for setting aside leave, since the grant of leave operates on the premise that the application is being made within the prescribed time.*

The decisions were made lawfully

2.10.8 *The Defendants maintain that both the directive of 27th February 2026 and the decision of 15th April 2026 to decline to renew the tenancy of the Malawi Electoral Commission's premises in Lilongwe were made lawfully, within*

the proper authority of the respective Defendants, and in furtherance of a legitimate executive policy. The continued restraint of those decisions by the interlocutory orders is, in the Defendants' submission, without legal justification.

2.10.9 *In determining whether to maintain or discharge a stay of execution, the Court must weigh the balance of convenience and the strength of the parties' respective cases. The Defendants are being prevented from giving effect to decisions that fall squarely within their executive functions. That is a serious form of prejudice that the Court ought to be permitted to evaluate in the context of an inter partes hearing.*

No prejudice to the Claimants

2.10.10 *My Lord, it is our argument that setting aside the stay of proceedings for the limited and defined purpose sought will cause no prejudice to the Claimants.*

2.11 *In Attorney General vs. Malawi Congress Party, L.J. Chimango and H.M. Ntaba (MSCA Civil Appeal No. 22 of 1996), the court held that the constitutional adjudication, particularly where matters of genuine public importance are engaged, demands that both sides be given a full and fair opportunity to present their case. The present application is nothing more or less than an insistence on that basic entitlement.*

3. CONCLUSION AND PRAYER

3.1 *For all of the foregoing reasons, the Defendants respectfully pray that this Honourable Court grants the following orders:*

3.1.1 *An order setting aside the stay of the proceedings imposed by the Court's ruling dated 5th June 2026, for the limited purpose of enabling the Defendants to file and prosecute their applications.*

3.1.2 *An order enabling the Defendants to file and prosecute their application to discharge the leave granted for judicial review and to set aside the interlocutory orders, including the stay of execution of the impugned decisions and the interlocutory injunction."*

4. The application is opposed by the Claimants and they filed with the Court a sworn statement (Claimants' sworn statement) and skeleton arguments (Claimants' skeleton arguments).

5. The Claimants' sworn statement was made by Counsel George Kadzipatike and it is couched in the following terms:

- "1. **THAT** *I am National Director of Legal Affairs/ Legal Advisor for the 1st Claimant and I make this sworn statement in that official capacity although I am also counsel for all the Claimants in this matter, who have authorized me to make the sworn statement in this matter.*
2. **THAT** *the matters of facts to which I depone have come to me while so acting and I verily believe the same to be true unless deposed otherwise.*
3. **THAT** *I have gone through the Defendants' application for an Order discharging leave for Judicial Review and the Order referring the matter to the Honourable the Chief Justice of the Republic of Malawi for certification as a Constitutional matter and I hereby respond to the application as follows.*

THE ATTORNEY GENERAL IS NOT A PARTY TO THE PRESENT JUDICIAL REVIEW AND HAS NO CAPACITY TO SEEK FINAL RELIEFS IN THE MATTER

4. **THAT** *for starters, the present application which is seeking final reliefs has been filed and lodged by an office which is not a party to the substantive Judicial Review.*
5. **THAT** *the Attorney General is only a party to substantive Judicial Review proceedings and with locus standi to challenge an Order granting leave for Judicial review if what is in question is an Act of Parliament or administrative decisions made by his office.*
6. **THAT** *in this matter, the correct parties who were supposed to make the present application are the Defendants themselves against whom the substantive Judicial review proceedings were commenced and not the Attorney General.*
7. **THAT** *I repeat the contents of paragraphs 4 to 6 above and state that the application is incurably defective and should be dismissed on this ground alone.*

THE ISSUES RAISED IN THE CLAIMANTS' FORM 86A ARE MERITORIOUS AND AMENABLE TO JUDICIAL REVIEW

8. **THAT** *as this Honourable Court already noted and held in its order granting leave for Judicial Review, the issues raised by the Claimants in their Form 86A are meritorious and they demonstrate prima facie illegal, invalid, unreasonable constitutional exercise of public functions.*

A. THE CLAIMANTS HAVE A RIGHT TO AND LEGITIMATE EXPECTATION OF TAKING PART IN ELECTORAL PROCESSES PRESIDED OVER BY AN INDEPENDENT REFEREE

9. **THAT** as submitted in the Form 86A, the 1st Claimant states that it is a key stakeholder in all the electoral processes presided over by the Commission including the Presidential, Parliamentary and Local Government Elections as well as all by-elections.
10. **THAT** the 2nd to 4th Claimants state that they are stakeholders too in the electoral processes conducted by the Commission, particularly the oncoming 2030 Presidential, Parliamentary and Local Government Elections in which they are determined to contest as Members of Parliaments for the 1st Claimant and have already started preparing for.
11. **THAT** as a key stakeholder in electoral processes in the Republic of Malawi, the 1st Claimant states that it has a right to and a legitimate expectation of participating in electoral processes or elections which are managed by an independent referee, the Malawi Electoral Commission, in this case.
12. **THAT** similarly, the 2nd to 4th Claimants state that it is their right and legitimate expectation that the oncoming 2030 Presidential, Parliamentary and Local Government Elections which they are determined to contest in shall at all material times be managed by an independent referee: the Malawi Electoral Commission.
13. **THAT** further, it is the 1st Claimant's legitimate expectation that its candidates in the pending by-elections as well as the oncoming 2030 Presidential, Parliamentary and Local Government Elections, the candidates which include the 2nd to 4th Claimants, shall not be placed at any disadvantage unlike their contenders from other political parties or from different affiliations by the Commission acting through itself or through the directions or orders of any third party including the Defendants herein.

B. THE CLAIMANTS HAVE A RIGHT TO CHALLENGE THIRD PARTIES' INFLUENCE ON THE INDEPENDENCE OF THE MALAWI ELECTORAL COMMISSION

14. **THAT** I repeat the foregoing and state that any decision by any third party which materially affects the independence of the Commission negatively affects the Claimants' aforesaid rights and legitimate expectations directly.
15. **THAT** likewise, the Claimants have sufficient interest and are entitled at law to challenge such violations of their rights and legitimate expectations before this Honourable Court by way of Judicial Review (or through an ordinary suit) as aggrieved parties.

PART A:

ILLEGALITY OF THE 1ST DEFENDANTS' IMPUGNED DECISION

16. **THAT** in relation to the 1st Defendant's impugned decision, the Claimants state that the decision is illegal and it in effect compromises the independence of the Commission in its day to day performance of duties which is jealously guarded by the Constitution of the Republic of Malawi.
17. **THAT** the Claimants state that no third party including the 1st Defendant (and the 2nd Defendant) has the authority to dictate where the Commission, an independent body corporate, should be operating from (in particular, or how it should be running its affairs, in general).
18. **THAT** I repeat the foregoing and further state that according to the Claimants, the 1st Defendant breached the law by reaffirming an illegal Executive Order which compels the Commission to relocate to Blantyre.
19. **THAT** further, the Claimants also state that the 1st Defendant as a public officer is at all material times duty bound to ensure that he is always upholding the Constitution to which he owes his full allegiance and not endorsing or reaffirming illegal acts, decisions or Orders by his fellow public officers including the President of the Republic of Malawi.

**UNREASONABLENESS OF THE 1ST DEFENDANT'S IMPUGNED DECISION:
FAILURE TO TAKE INTO ACCOUNT RELEVANT CONSIDERATIONS BY THE 1ST DEFENDANT**

20. **THAT** further to the foregoing, the Claimants also state that the 1st Defendant's impugned decision is unreasonable in Wednesbury sense and it demonstrates failure to take into account relevant considerations on the part of the 1st Defendant.
21. **THAT** according to the Claimants, a reasonable Chief Secretary to the Malawi Government would have quickly remembered that no third party including the President of the Republic of Malawi has the authority or power or mandate to dictate how or where the Commission, an independent body corporate, should be operating from.
22. **THAT** the 1st Defendant clearly acted unreasonably in Wednesbury sense in his failure to take into account the relevant factor of independence of the Commission before making the impugned decision,
23. **THAT** similarly, the 1st Defendant acted unreasonably in Wednesbury sense in not first checking whether his reaffirmation of the Executive Order by the President of the Republic of Malawi that the Commission should relocate to Blantyre is in line with the Constitution, specifically on the point of the independence of the Commission, to which he owes his full allegiance.
24. **THAT** the Claimants state that as a result of the foregoing, their rights to and legitimate expectation of participating in electoral processes or elections presided over by an independent referee have been substantially and negatively affected.

PART B:

**UNREASONABLENESS OF THE 2ND DEFENDANT'S IMPUGNED DECISION:
FAILURE TO TAKE INTO ACCOUNT RELEVANT CONSIDERATIONS BY THE
2ND DEFENDANT**

25. **THAT** further to the above, the Claimants state that the 2nd Defendant's impugned decision too wholly unreasonable and that the shows failure to take into account relevant considerations.
26. **THAT** firstly, the Claimants state that the Commission's centralized geographical positioning is a relevant factor which the 2nd Defendant was supposed to consider before making the impugned decision.
27. **THAT** a centralized geographical positioning of the Commission benefits all stakeholders in the electoral process in all the regions in the Republic of Malawi.
28. **THAT** on the contrary, the 2nd to 4th Claimants state that the Defendant's impugned decision only discriminates, prejudices and places undue logistical burden on them in accessing the services from the Commission in Blantyre, which is far away from their constituencies located in the northern part of Malawi, in their continued preparation for the oncoming 2030 Presidential, Parliamentary and Local Government Elections.
29. **THAT** the Claimants state that this is unlike the current situation where the Commission is housed in Lilongwe which is the center and a convenient place for candidates from both the northern and southern part of Malawi willing to contest in the oncoming 2030 Presidential, Parliamentary and Local Government Elections.
30. **THAT** the Claimants repeat the foregoing and emphatically state that all stakeholders in the electoral process are at law supposed to be put on equal footing, with no stakeholder seemingly being placed at an advantage.

**THE 2ND DEFENDANT'S IMPUGNED DECISION IS MARRED WITH BAD
FAITH**

31. **THAT** further to the above, the Claimants state that the 2nd Defendant's decision is marred with bad faith and aimed at prejudicing the Claimants herein.
32. **THAT** this Honourable Court shall notice from the impugned letter from the 2nd Defendant that the 2nd Defendant has not provided any valid reasons in writing for its decision not to renew the tenancy for capital Development Limited premises rented for the Commission on Plot No. 13/116, despite knowing that the Commission's relocation to Blantyre was to obviously prejudice the Claimants' rights and legitimate expectations as highlighted.
33. **THAT** secondly, the Claimants state that the 2nd Defendant's impugned decision only achieves destabilizing the independence Commission and prejudicing opposition stakeholders including the Claimants herein who are preparing for the pending by-

elections as well as the oncoming 2030 Presidential, Parliamentary and Local Government Elections.

34. **THAT** *similarly, the Claimants state that the 2nd Defendant's impugned decision clearly runs afoul the Constitutional principle of good governance on the part of the 2nd Defendant.*

NO ALTERNATIVE REMEDY ON THE PART OF THE CLAIMANTS

35. **THAT** *the Claimants repeat the foregoing and state that only this Honourable Court can review the propriety and legality of the Defendant's impugned decision through the sought Judicial Review.*
36. **THAT** *I repeat the foregoing and state that the Attorney General is misled at law in submitting that the Claimants' claims herein are frivolous and not amenable to Judicial Review.*
37. **THAT** *likewise, the Defendants' decisions herein are inseparable from the impugned Executive Order by the President of the Republic of Malawi. The Attorney General is clearly misled in submitting that the decisions herein are not related to or do not emanate from the impugned Executive Order.*

NO VALID REASON FOR STAY OF THE DECISION OF THE ORDER FOR CERTIFICATION

38. **THAT** *further to the above, the Claimants state that the Attorney General has failed to show cause as to why the Order that the proceedings herein be referred to the Honourable the Chief Justice for certification be halted.*
39. **THAT** *as displayed above, the substantive issues herein strictly and expressly relate to and concern the interpretation of the Constitution of Malawi.*
40. **THAT** *I repeat the foregoing and state that there is no need that the Order for certification be halted. Either way, the matters remain justiciable before the High Court of Malawi sitting as a Constitutional Court.*

WHEREFORE *I humbly pray for an Order dismissing the application for an Order discharging leave for Judicial Review and halting the Order for referral to the Honourable the Chief Justice of the Republic of Malawi with costs."*

6. The skeleton arguments of the Claimants are as quoted below:

"3. THE LAW AND ITS APPLICATION TO THE FACTS

3.1 THE APPLICATION FOR AN ORDER SETTING ASIDE ORDER OF STAY OF PROCEEDINGS HAS BEEN MADE UNDER WRONG PROVISIONS OF THE LAW:

- 3.1.1 *The Supreme Court of Appeal in **Nansongole v National Bank of Malawi Plc Miscellaneous Civil Application No. 1 of 2020** authoritatively held as below:*

‘The point at which parties must strive to convince the Court that it has jurisdiction over the matter they have brought to it is on the face of the application as they present it, not at the point of arguing the application whether orally or through skeleton arguments.’

- 3.1.2 In **The State (On application by National Oil Company of Malawi Limited and Hellen Buluma) v The Ombudsman Judicial Review No. 9 of 2023**, it was equally held as below:

"Pausing here and before concluding, this Court wishes to state that a Court of law considers an application and indeed any other Court process before it on its merits, only if the said application or other Court process is properly before the Court."

- 3.1.3. **George Kainja and Another v Attorney General and Another Judicial Review Number 48 of 2022** wherein Justice Kenyatta Nyirenda held that:

"It is commonplace that a party who seeks to move the Court has to cite the specific provision (s) of the law that clothe the Court with the jurisdiction that the party seeks to invoke. An application that does not cite the law under which it has been brought is as good as an application grounded on a wrong legal provision. Both are bound to fail, that is, the applications will be dismissed in limine."

- 3.1.4. In the present matter, the Claimants state that the Defendants have failed to cite the correct law for their application for an order setting aside the order of stay of proceedings.
- 3.1.5. The application is on this ground alone dead on arrival and it is only right that it should be dismissed with costs!

3.2 **ORDER 10 RULE 1 AND RULE 3 OF THE COURTS (HIGH COURT) (CIVIL PROCEDURE) RULES, 2017 IS AN OMNIBUS PROVISION**

- 3.2.1 Honourable Justice Kenyatta Nyirenda in **George Kainja vs Director of the Anti-Corruption Bureau and Others, Judicial Review Cause No. 48 of 2022** had the following to say:

“Order 10 of the CPR contains rules of procedure in respect of applications in proceedings and interlocutory orders in all civil proceedings in the High Court. Other rules of practice and procedure only apply when it is so provided by an Act of Parliament or any other written law: see Order 1, rule 3(2), of the CPR..... Even if the Court was to give the 1st Defendant the benefit of doubt by assuming that the Application for Recusal has been brought by invoking Order 10, rule 1, the CPR, as was the case with Notice of Motion for Preliminary Objections, the said provision is an "omnibus" provision, providing for the mode of making any application which the law gives a party a right to make. Order 10, rule 1, of the CPR does not provide for the making of an application for recusal of a judge. The right of a party to apply for recusal of a judge has to be found

elsewhere. On that score alone, the Application for Recusal lacks legal basis. This is the second reason why the Application for Recusal has to be dismissed." (Emphasis supplied)

3.2.2 Honourable Justice Chanza in **Ramuzani Juma Mahommed vs Malawi Electoral Commission and Another, Election Case No. 70 of 2025** had the following to say:

"This Court agrees with Counsel for the Petitioner's submissions in this respect in their entirety. While the High Court and Supreme Court have concurrent jurisdiction on matters of stay or suspension of a judgement of the High Court, the applicable rules of practice when the application is being heard in the High Court are the Courts (High Court) (Civil Procedure) Rules 2017 and not the Supreme Court of Appeal Rules. This Court also notes that while Order 10 Rules 1 and 3 of the CPR generally allow any party to apply during a proceeding for an interlocutory order at any stage of the proceedings, Order 10 of the CPR has provisions pertaining to the various specific interlocutory proceedings over and above the general provision under Order 10 of the CPR, and suspension or stay of judgement is not amongst those interlocutory applications provided for under this Order." Emphasis supplied

3.2.3 In the present matter, the Claimants state that the Defendants have not only failed to cite the correct legal provision for their application seeking an order setting aside the stay of proceedings but have instead relied on an "omnibus" provision, which merely provides for the mode of making applications where a party has a right to do so. The said provision does not provide for the making of an application to set aside an order of stay of proceedings.

3.2.4 Without prejudice to the foregoing, Parliament has not legislated on interlocutory applications in proceedings which have been referred to the Honourable the Chief Justice for certification. What this means is that Parliament did not intend that referrals from the High Court to the Chief Justice of Malawi for Certification should not be interrupted.

3.2.5 If it were the intention of Parliament that there be provisions for interruption of referral and certification processes through interlocutory applications in the original Court, Parliament would have clearly provided so in the legislation, particularly under Section 9 of the Courts Act and Order 10 or Order 19 Rule 7 or indeed any other Order of the Courts (High Court) (Civil Procedure) Rules 2017: **Nseula v Attorney-General and another [1999] MLR 313.**

3.2.6 On that basis alone, the Application herein lacks legal basis and should be dismissed with costs.

3.3 **NO LEGAL REQUIREMENT THAT THE COURT CAN ONLY ORDER CERTIFICATION BY THE CHIEF JUSTICE AFTER AN INTER PARTES HEARING**

3.3.1 **Section 9 of the Courts Act** provides as follows:

“(1) Save as otherwise provided by this Act, or by any other Act for the time being in force, every proceeding in the High Court and all business arising thereout shall be heard and disposed of by or before a single Judge.

(2) Every proceeding in the High Court and all business arising thereout, if it expressly and substantively relates to, or concerns the interpretation or application of the provisions of the Constitution, shall be heard and disposed of by or before not less than three judges.

(3) The Chief Justice shall certify that a proceeding is one which comes within the ambit of subsection (2), and the certification by the Chief Justice shall be conclusive evidence of that fact.”

3.3.2 **Order 19, Rule 7(1) of the Courts (High Court) (Civil Procedure) Rules, 2017** provides as follows:

“(1) Where a referral to the Court in relation to any matter on the interpretation or application of the Constitution is necessary as determined by an original court, the Judge, magistrate or chairperson of the original court shall, within 7 days from the date of the determination, submit the referral in Form 20 to the Chief Justice for certification under rule 2. ”

3.3.3 The Apex Court had the following to say **in Nseula v Attorney General and Another [1999] MLR 313** regarding the elementary principle of statutory interpretation:

“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. The loss of seat on appointment as minister or deputy minister is excluded from the expressed intention in section 63 of the Constitution. Something which is excluded cannot be implied into an express provision.”

3.3.4 The *aforecited* provisions of the law expressly set out, *inter alia*, the requirements for the certification of constitutional issues, but they do not require an *inter partes* hearing before the Court makes a referral. Accordingly, as an *inter partes* hearing is not provided for, such a requirement cannot be implied in the circumstances.

3.3.5 Having said that, the Claimants pray that, on this ground also, the application herein be dismissed with costs!

3.4 **AN ORDER OF STAY OF PROCEEDINGS PENDING CERTIFICATION BY THE HONOURABLE THE CHIEF JUSTICE IS BY OPERATION OF LAW**

3.4.1 **Order 19, Rule 7(2) of the Courts (High Court) (Civil Procedure) Rules, 2017** provides as follows:

“(2) Where the original court has made a referral under sub rule (1), the proceeding in the original court shall be stayed pending a decision of the Court.”

3.4.2 *In the present matter, the Claimants state that once a referral is made by the Court, there is no need to pray for a stay of proceedings, as the same is stayed by operation of law. This Honourable Court therefore just followed the law by staying the proceedings. There was no need for specific application such stay order.*

3.5 **NO LEGAL REQUIREMENT THAT LEAVE FOR JUDICIAL REVIEW AND REFERRAL FOR CERTIFICATION CAN ONLY BE GRANTED POST AN INTER PARTES HEARING**

3.5.1 **Order 19, Rule 20(3) (4) of the Courts (High Court) (Civil Procedure) Rules, 2017** provides as follows:

“3. Subject to sub-rule (3), an application for judicial review shall be commenced ex parte with the permission of the Court”.

“4. The Court may, upon hearing an ex parte hearing, direct an inter partes hearing”.

3.5.2 Honourable Justice Kapindu in **The State (on application by Dr. B. Usi) and The Acting Director of the Anti-Corruption Bureau, Judicial Review Cause No. 5 of 2025**, had the following to say regarding the application for permission for judicial review:

“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.”

3.5.3 *In the matter herein, there is nothing unlawful in making an application for permission for judicial review without notice, as the same is provided for by law, and this Honourable Court properly and justly exercised its discretion in granting the same after being satisfied that there is an arguable case raising serious issues fit for further investigation at a full hearing of judicial review.*

3.5.4 *On this ground too, the Claimants pray that the Application herein be dismissed with costs!*

3.6 **THE DEFENDANTS' FAILURE TO DEMONSTRATE THAT LEAVE FOR JUDICIAL REVIEW AND REFERRAL WERE GRANTED IRREGULARLY**

3.6.1 **In Commercial Bank of Malawi v Mhango [2002–2003] MLR 43 (SCA)**, the Honourable the apex Court also held as below:

‘Ordinarily, the law is that the burden of proof lies on a party who substantially asserts the affirmative of the issue. The principle was stated in the case of Robins v National Trust Co [1927] AC 515 that the burden of proof in any particular case depends on the circumstances in which the claim arises. In general, the rule is Ei qui affirmat non qui negat incumbit probatio which means the burden of proof lies on him who alleges, and not him who denies.’

‘Lord Megham, again, in Constantine Line v Imperial Smelting Corporation [1943] AC 154, 174 stated that it is an ancient rule founded on considerations of good sense and should not be departed from without strong reasons. The judge said that the rule is adopted principally because it is but just that he who invokes the aid of the law should be the first to prove his case because in the nature of things, a negative is more difficult to establish than an affirmative.’

3.6.2 *In the case of **Gondwe and Another v Gotani-Nyahara [2005] MLR 121 (SCA) at p.131** the apex Court also stated as below-*

“The burden would be on the respondent as petitioner to establish that the alleged irregularity affected the election result, especially, as happened in this case the irregularity could not be blamed on the 1st appellant. That burden has not been discharged by the respondent.’

3.6.3 *In **Mponda v Air Malawi Ltd and Another [1997] 2 MLR 131 (HC)**, the High Court equally opined as above in the following terms:*

‘The crucial issue I have to determine in this case is whose negligence caused the accident? In doing so, I bear in mind the evidential rule that he who asserts must prove the claims and not he who denies. This rule, therefore, places the obligation of satisfying the court, on any issue, upon the party who asserts the affirmative of the issue.’

‘On the standard of proof required, Mr Mponda should be entitled to the verdict if his evidence establishes a preponderance of probability in his favour, that is to say, if he persuades the court of the fact that his version of the facts is more probable than that of Air Malawi and Commercial Union Assurance Company, in respect of any or all of the claims which Mponda has made against them.’

- 3.6.4 **In Nkuluzado v Malawi Housing Corporation [1999] MLR 302 (HC)** a similar holding was made:

‘In civil claims, the plaintiff is always under a burden to establish his case on a balance of probabilities.’

- 3.6.5 **In Registered Trustees of African International Church v Registered Trustees of African Church [1994] MLR 271 (HC)**, it was also stated as below:

‘.... the claim cannot succeed, since the plaintiffs have failed to prove their case on each and every limb pleaded in this action.’

- 3.6.6 Tembo AJ [as His Lordship then was] stated as below in **Sivaswamy v Agason Motors Ltd [1995] 1 MLR 274 HC:**

‘I remind myself of the evidential rule that he who asserts must prove the claims and not he who denies. The effect of that rule is that the obligation of satisfying the court on an issue rests upon the party who asserts the affirmative of the issue.’

‘ On the standard of proof required for that purpose, the plaintiff should be entitled to the verdict if his evidence establishes a preponderance of probability in his favour, that is to say that, if he persuades me of the fact that his version of the facts is more probable than that of the defendant in respect of any or all of the claims he has made against the defendant or indeed in respect of the counterclaim made against him by the defendant.’

- 3.6.7 **In the present, it was incumbent upon the Defendants to particularize how or demonstrate that leave for Judicial review and the ancillary Order for referral were granted irregularly and unlawful.**

- 3.6.8 **The burden, however, has not been discharged. As this Honourable Court will appreciate below, the said Orders are regular and they speak to the Claimants’s filed Form 86A.**

3.7 **THE DEFENDANTS' EXERCISE OF PUBLIC POWER IS ALWAYS
REGULATED BY THE CONSTITUTION OF THE REPUBLIC OF MALAWI
(AND ALL LAWS MADE THEREUNDER):**

3.7.1 *The 1st Defendant's office is as created under **Section 92 (4) of the Constitution of the Republic of Malawi** which reads as below:*

There shall be a Secretary to the Cabinet who shall be appointed by the President and whose office shall be a public office and who shall—

- (a) have charge of the Cabinet office;*
- (b) be responsible, subject to the directions of the Cabinet, for arranging the business, and keeping the minutes of the Cabinet;*

3.7.2 *The 2nd Defendant's office on the other hand is as created under **Section 93 of the same Constitution** which provides as follows:*

- (1) There shall be Ministers and Deputy Ministers who shall exercise such powers and functions, including the running of Government departments, as may be prescribed by the President subject to this Constitution.*

3.7.3 *The Defendants who are as shown public officers are always bound to abide by the provisions of the Constitution. This is as provides for under **Section 12 (1) of the same Constitution which reads as below:***

(1) This Constitution is founded upon the following underlying principles—

(a) all legal and political authority of the State derives from the people of Malaŵi and shall be exercised in accordance with this Constitution solely to serve and protect their interests;

(B) all persons responsible for the exercise of powers of State do so on trust and shall only exercise such power to the extent of their lawful authority and in accordance with their responsibilities to the people of Malaŵi;

3.7.4 *Likewise, the Defendants are always bound to only execute or re-affirm lawful orders from the President of the Republic of Malawi who heads the branch their public offices fall under.*

3.7.5 *This is as enshrined under **Section 88 of the same Constitution which reads as follows:***

- (1) The President shall be responsible for the observance of the provisions of this Constitution by the executive and shall, as Head of State, defend and uphold the Constitution as the supreme law of the Republic.*

(2) The President shall provide executive leadership in the interest of national unity

- 3.7.6 *It follows that any unlawful Orders or decisions executed by the Defendants at their own instance or as ordered or directed by the President of the Republic of Malawi are to the extent of such unlawfulness invalid and void. This is in terms of **Section 5 of the same Constitution** which reads as follows:*

Any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to the extent of such inconsistency, be invalid.

3.8 ILLEGAL AND UNREASONABLE EXERCISE OF PUBLIC POWER BY A PUBLIC OFFICER IS ACTIONABLE IN JUDICIAL REVIEW:

- 3.8.1 *In **The State vs. The Registrar General ex. parte Msenga Mulunqu & Others [2010] MWHC 6**, it was held as below:*

“... a decision of a public authority may be quashed where the authority acted without jurisdiction or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable, or where there is an error of law on the face of the record or the decision is unreasonable. The function of the courts, including this Court, therefore is not to act as an appellate tribunal in relation to decisions complained against. It is also not to interfere in any way with a public officer’s/ office’s exercise of any power or discretion conferred on it. Unless of course the same has been exercised beyond the respondent’s jurisdiction or unreasonably. In other words, the Courts must not do that which the public authority whose decision is the subject of review is by law mandated to do. If the Court did that, they would under the thin guise of preventing the abuse of power be themselves guilty of exercising powers they do not have. The court’s function in judicial review proceedings therefore is merely to see to it that lawful authority is not abused by unfair treatment.”

- 3.8.2 *In **Makono v Lilongwe City Council and Another [1999] MLR 147 (HC)**, it was similarly held as below:*

‘Judicial review is concerned with reviewing not the merits of the decision, but the decision-making process through which that decision was reached. It is not intended to take away from those authorities the powers and directions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner. The purpose of judicial review is therefore to protect the individual against the abuse of power by a wide range of authorities.’

- 3.8.3 *In the case of **The State v The Speaker of the National Assembly Exparte Honourable J.Z.U. Tembo Misc. Civil Cause No. 565 of 2009**, it was also held as follows:*

‘This is a Judicial Review. Case authority abounds on what Judicial Review is about. The remedy of judicial review is discretionary and is concerned with reviewing, not the merits of the decision in respect of which the application for Judicial Review is made, but with the decision-making process itself. A Judicial Review is done to ensure that the individual is given fair treatment by the authority to which he has been subjected. It is

not intended to substitute the opinion of the judiciary or of individual judges for that of body constituted by law to decide on the matters in question. A seriously flawed decision-making process has consequences on the decision made as a result of it. As Judicial Review is a discretionary remedy, relief may be granted or refused depending on circumstances (see White and Another V Attorney General and Another 16 (2) MLR 903)’

- 3.8.4 As it shall be shown and particularized in the subsequent paragraphs, the Claimant states that the Defendants decisions herein are grossly unreasonable and made in clear defiance of logic. This Honourable Court thus has jurisdiction to review the decisions as mandated by the Constitution of the Republic of Malawi under its **Section 108 (2)**.

3.9 **THE SANCTITY OF THE INDEPENDENCE OF THE MALAWI ELECTORAL COMMISSION:**

- 3.9.1 For starters, the Constitution of the Republic of Malawi creates the Malawi Electoral Commission as the sole office responsible for conducting, managing and exclusive oversight of all electoral process in the Republic. This is in terms of **Section 75 (1) of the Constitution** which reads as below:

(1) There shall be a commission known as Malawi Electoral Commission which shall consist of a Chairperson who shall be a Judge, nominated in that behalf by the Judicial Service Commission and appointed by the President, and such other members, not being less than four and not more than six, as may be appointed in accordance with an Act of Parliament.

- 3.9.2 In particular is **Section 76 (1) of the same Constitution** which provides as follows:
(1) The Malawi Electoral Commission shall exercise such functions in relation to elections as are conferred upon it by this Constitution or by an Act of Parliament.

- 3.9.3 **Section 8 (1) of the Malawi Electoral Commission** provides likewise:

In addition to the broad functions and powers conferred on the Commission by the Constitution and, subject to the Constitution, the Commission shall exercise general direction and supervision over the conduct of every election.....

- 3.9.4 In its exercise of duties and functions, the Commission is at all material times supposed to be independent from any interference by any third party or authority.

This is as provides under **Section 76 (4) of the same Constitution** which reads as follows:

4) The Malawi Electoral Commission shall exercise its powers, functions and duties under this section independent of any direction or interference by other authority or any person.

3.9.5 Your Lordship, the basic literal interpretation of the phrase ‘other authority or person’ under the cited **Section 76 (4) of the Constitution** above includes the Defendants, the President of the Republic of Malawi and other person, legal or natural.

3.9.6 It again naturally follows that any decision by the Government or any private or public officer including the Defendants which prima facie interferes with the sanctity of the independence of the Commission is to such extent illegal, null and void: Section 5 of the Constitution of the Republic of Malawi.

3.10 **ILLEGALITY OF THE 1ST DEFENDANT’S AFFIRMATION OF THE EXECUTIVE ORDER BY THE PRESIDENT OF THE REPUBLIC OF 10TH OCTOBER, 2026 THAT THE MALAWI ELECTORAL COMMISSION SHOULD RELOCATE FROM LILONGWE TO BLANTYRE:**

3.10.1 As indicated hereinabove, the Defendants herein owe their highest allegiance to the Constitution of the Republic of Malawi: **Section 12 (1) of the Constitution of the Republic of Malawi.**

3.10.2 The Defendants are thus bound to always abide by the dictates of the Constitution of the Republic of Malawi in their day to day discharge of public duties: **Section 5 of the Constitution of the Republic of Malawi.**

3.10.3 Likewise, the Defendants have an inherent obligation to turn down unlawful directions or Orders from any third party, including the President of the Republic of Malawi, pertaining to their exercise of public functions. As their allegiance is only to the Constitution (and all laws made thereunder).

3.10.4 It follows that the Defendants are at liberty of turning down illegal Orders or directions from the President of the Republic of Malawi who heads Executive arm of Government to which the Defendants belong.

3.10.5 As also indicated hereinabove, the Commission is 100% immune from any directions or Orders or whatever influence from third parties, including the 1st Defendant: **Section 76 (4) of the Constitution.**

3.10.6 Any decision by a third party which interferes with the general performance of duties by the Commission is to such an extent, unlawful. Such interference includes the decision by the 1st Defendant, reaffirming the Executive Order of 10th October, 2026 by the President of the Republic of Malawi that the Commission should relocate to Blantyre from Lilongwe.

3.10.7 Similarly, the 1st Defendant's failure disregard the Executive Order referred to hereinbefore also smells illegality. As a public officer whose highest allegiance is to the Constitution of the Republic of Malawi, the 1st Defendant was not supposed to reaffirm the Order but to disregard it, and not enforce it against the Commission.

3.10.8 This position is premised on two chief grounds. Firstly, the ground of independence of the Commission already explained hereinabove. Secondly, on the ground that the President of the Republic of Malawi has no authority or power under the Constitution of the Republic of Malawi to issue Executive Orders.

3.10.9 For context sake, below are the only powers and functions which the President of the Republic of Malawi can exercise under **Section 89 of the Constitution:**

(1) The President shall have the following powers and duties—

(a) to assent to Bills and promulgate Bills duly passed by Parliament;

(b) to convene and preside over meetings of the Cabinet;

(c) to confer honours;

(d) to make such appointments as may be necessary in accordance with powers conferred upon him or her by this Constitution or an Act of Parliament;

(e) subject to this Constitution, to appoint, accredit, receive and recognize ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

(f) to negotiate, sign, enter into and accede to international agreements or to delegate such power to ministers, ambassadors and high commissioners;

(g) to appoint commissions of inquiry;

(h) to refer disputes of a constitutional nature to the High Court; and

(i) to proclaim referenda and plebiscites in accordance with this Constitution or an Act of Parliament.

(2) The President may pardon convicted offenders, grant stays of execution of sentence, reduce sentences, or remit sentences:

3.10.10 It is against this background that the Claimants maintain that the 1st Defendant acted illegally by endorsing and affirming an illegal Order. Just like he acted illegally by abdicating from his Constitutional duty of only turning down illegal Orders by his overall boss and the Head of the Executive branch of Government to which he belongs – the President of the Republic of Malawi!

3.10.11 Under Section **108 (2) of the Constitution as read together with Order 19 Rule 20 of the Courts (High Court) (Civil Procedure) Rules (2017)**, this Honourable Court thus has the necessarily jurisdiction to review the legality or the Constitutionality of the 1st Defendant's decision herein and to quash the same for being unconstitutional.

3.11 UNREASONABLENESS OF THE DEFENDANTS DECISIONS:

3.11.1 *Further to ground of illegality, the Claimants state that the Defendants' decisions herein are so unreasonable in Wednesbury sense and they squarely demonstrate unjustifiable failure to take into account relevant considerations.*

3.11.2 *In **Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1947] 2 All ER 680**, it was held as follows:*

“For instance a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting ‘unreasonably’. Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority.”

3.11.3 *In **Taulo and Others v The Attorney General [1994] 328**, it was held as follows:*

I would agree with Mr Mhango when he submits that it is the basic principle of administrative law that the decisions involving public elements are susceptible to be challenged in courts on the basis of impropriety arising from unreasonableness, irrationality and illegality.

3.11.4 *According to the Claimants, a reasonable Chief Secretary to the Malawi Government would have quickly remembered that no third party including the President of the Republic of Malawi has the authority or power or mandate to dictate how or where the Commission, an independent body corporate, should be operating from.*

3.11.5 *In the circumstances, the 1st Defendant clearly acted unreasonably in Wednesbury sense in his failure to take into account the relevant factor of independence of the Commission before making the impugned decision.*

3.11.6 *Similarly, the 1st Defendant acted unreasonably in Wednesbury sense in not first checking whether his reaffirmation of the Executive Order by the President of the Republic of Malawi that the Commission should relocate to Blantyre is in line with the Constitution, specifically on the point of the independence of the Commission, to which he owes his full allegiance.*

3.11.7 *The Claimants thus argue and submit that as a result of the 1st Defendant's demonstrated unreasonableness, their rights to and legitimate expectation of participating in electoral processes or elections presided over by an independent referee have been substantially and negatively affected.*

3.11.8 *In the same fashion, the Claimants state that the 2nd Defendant's impugned decision is unreasonable and made in clear disregard of relevant factors.*

3.11.9 Firstly, the Claimants state that the Commission's centralized geographical positioning is a relevant factor which the 2nd Defendant was supposed to consider before making the impugned decision.

3.11.10 Clearly, a centralized geographical positioning of the Commission benefits all stakeholders in the electoral process in all the regions in the Republic of Malawi.

3.11.11 On the contrary, the 2nd to 4th Claimants state that the Defendant's impugned decision only discriminates, prejudices and places undue logistical burden on them in accessing the services from the Commission in Blantyre, which is far away from their constituencies located in the northern part of Malawi, in their continued preparation for the oncoming 2030 Presidential, Parliamentary and Local Government Elections.

3.11.12 According to the Claimants state that this is unlike the current situation where the Commission is housed in Lilongwe which is the center and a convenient place for candidates from both the northern and southern part of Malawi willing to contest in the oncoming 2030 Presidential, Parliamentary and Local Government Elections.

3.11.13 The Claimants repeat the foregoing and emphatically state that all stakeholders in the electoral process are at law supposed to be put on equal footing, with no stakeholder seemingly being placed at an advantage.

3.12 **THE DEFENDANTS' IMPUGNED DECISIONS ARE MARRED WITH BAD FAITH:**

3.12.1 Further to the above, the Claimants state that the Defendants' decision are marred with bad faith and aimed at prejudicing the Claimants herein: **Short v Poole Corp [1926] Ch 66.**

3.12.2 In the Taulo case cited above, the Court went further to hold as follows:

‘courts are also entitled to review the decision of administrative bodies where there has been an abuse of power such as bad faith or procedural irregularity.’

3.12.3 In **Zaibula v Council of the University of Malawi [1997] 1 MLR 356**, it was similarly held as follows:

Where the exercise of power by a statutory body is on irrelevant or extraneous grounds, or is in bad faith, it is susceptible to judicial review.

3.12.4 This Honourable Court shall notice from the letter exhibited as GJK 3 hereinabove that the 2nd Defendant that the 2nd Defendant has not provided any valid reasons in writing for its decision not to renew the tenancy for capital Development Limited premises rented for the Commission on Plot No. 13/116, despite knowing that the Commission's relocation to Blantyre was to obviously prejudice the Claimants' rights and legitimate expectations as highlighted.

3.12.5 *Secondly, the Claimants state that the Defendants' impugned decisions only achieve destabilization of the independence of the Malawi Electoral Commission and prejudicing opposition stakeholders including the Claimants herein who are preparing for the pending by-elections as well as the oncoming 2030 Presidential, Parliamentary and Local Government Elections: **Ridqe v Baldwin [1964] AC 40***

3.12.6 *Last but not least, the Claimants state that the Defendants' impugned decisions clearly runs afoul the Constitutional principle of good governance on the part of the 2nd Defendant.*

3.13 **NO ALTERNATIVE REMEDY ON THE PART OF THE CLAIMANTS**

3.13.1 *The Claimants repeat the foregoing and state that only this Honourable Court can review the propriety and legality of the Defendant's impugned decision through the sought Judicial Review.*

3.13.2 *The bases of the Claimants position are, firstly, **Section 9 of the Constitution** which reads as below:*

The judiciary shall have the responsibility of interpreting, protecting and enforcing this Constitution and all laws and in accordance with this Constitution in an independent and impartial manner with regard only to legally relevant facts and the prescriptions of law.

3.13.3 *The second point of authority is **Section 108 (2) of the same Constitution** whose content is as reproduced below:*

The High Court shall have original jurisdiction to review any law, and any action or decision of the Government, for conformity with this Constitution, save as otherwise provided by this Constitution and shall have such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.

3.13.4 *The third authority is **Order 19 Rule 20 (1) of the Courts (High Court) Civil Procedure Rules (2017)** whose are as also reproduced below:*

Judicial review shall cover the review of __

(a) a law, an action or a decision of the Government or a public officer for conformity with the Constitution; or

(b) a decision, action or failure to act in relation to the exercise of a public function in order to determine __

(i) its lawfulness;

(ii) its procedural fairness;

(iii) its justification of the reasons provided, if any; or

(iv) bad faith, if any, where a right, freedom, interests or legitimate expectation of the applicant is affected or threatened.

3.13.5 *In view of the law above, the circumstances herein are fit and proper for Judicial Review. Likewise, the Claimants submit that the decisions herein are supposed to be quashed for being illegal, unconstitutional and invalid.*

3.14 **THE ORIGINATING PROCESS RAISES ISSUES WHICH EXPRESSLY AND SUBSTANTIVELY RELATE TO OR CONCERNS THE INTERPRETATION OR APPLICATION OF THE PROVISIONS OF THE CONSTITUTION**

3.14.1 *Section 9 of the Courts Act provides as follows:*

“... [Text as set out above]”

3.14.2 *In the case of the **State and another; Ex Parte Dr Bakili Muluzi and John ZU Tembo II [2007] MLR 310, at 313 (HC)**, Kalaile, AgCJ made a very apt statement of the law on this issue, stating that:*

“Application of section 9(2) of the Act and the certification implies a finding by the Chief Justice that the matter cannot be determined without the necessity of interpretation or application of a Constitutional provision. The Constitutional provision under consideration must be a core issue to the determination of the case.”

3.14.3 *In **The State (on the application of the Director of Public Prosecution) vs The Chief Justice of the High Court of Malawi Judicial Review Cause No. 4 of 2025**, Honourable Justice Kapindu held as follows:*

“The decision of the Court in Malaya shows that the certification inquiry is directed at the proceeding as a whole. The Court in Malaya asked whether the proceeding itself, in its entirety, was of a constitutional character such as to warrant treatment under section 9(2). Secondly, by holding that a case 'loaded with constitutional provisions' may still fail the certification test as a constitutional proceeding, the Court was essentially confirming that the act of certification attaches to the nature of the action, that is to say the proceeding, in its entirety, and not simply to itemised questions within it. It is this Court's considered view, that the effect of the Malaya case is to confirm that the task of the Chief Justice in the certification process is to identify whether the entire proceeding, when viewed in its overall character, purpose, and essential subject matter, meets the threshold prescribed under section 9(2) of the Courts Act. Further, the same understanding is reflected in the decision of the Supreme Court of Appeal in Mutharika Another v Chilima Another, MSCA Constitutional Appeal 1 of 2020; 2020 MWSC 1(8 May 2020). The Supreme Court of Appeal stated in that case, that:

'Upon further scrutiny of what the Court was being called upon to deal with, the Court, at the onset, found that the consolidated petitions expressly and substantially related to, or concerned the interpretation or application of the provisions of the Constitution.

Upon that finding the Court referred the matter to the Chief Justice, for certification, in accordance with section 9 (2) and (3) of the Courts Act...The consolidated matter was indeed certified by the Chief Justice as a constitutional matter...Upon certification of the matter as constitutional, the petition procedure, as a process, ceased to exist, but the issues that were raised in the petitions survived, which issues would give context and form the basis of the issues that would further assist in the interpretation and application of the constitutional questions raised in the referral. It is apparent to us that all the parties acknowledged that the matter would proceed as a constitutional referral and, therefore, that the petition procedure was no longer the modus operandi. Upon that acknowledgment, the parties proceeded to a scheduling conference where a number of directions, including directions for discovery, were given. The parties also proceeded to file sworn statements, in which further issues were introduced. Therefore, the subject matter and the issues for determination by the Court below and which must be before us, are circumscribed by the petitions and the constitutional questions that were identified by the Court below. This has been the practice in constitutional referrals (see: The Attorney General Ex- Parte Abdul Pillane, Constitutional Case No. 6 of 2005 (Unreported) and Lisineti Gremu and Davie Charles Kanyoza, Constitutional Case No 1 of 2012 (unreported). ”

3.13.4 *In the present matter, the Claimants state that the matter, as indicated in Form 86A, raises issues which expressly and substantively relate to, or concern, the interpretation or application of the provisions of the Constitution, thereby meeting the requirements under section 9(2) of the Courts Act.*

3.13.5 *In view of the foregoing, the Claimants state that the Defendants have failed to discharge their burden of proof by demonstrating that the leave for judicial review and the referral order were granted irregularly.*

4. **PRAYER AND CONCLUSION**

In full view of the foregoing, the Claimants thus humbly pray for an Order dismissing the Defendants’ application for an Order setting aside the order of stay of proceedings with costs!”

7. Having considered all the documents on the Court file, including the sworn statements and skeleton arguments filed by the parties, and having heard the oral submissions of counsel, I am satisfied that the present application is devoid of merit. I agree with and fully endorse the reasons advanced by the Claimants, and, in addition, for the following reasons.

8. Firstly, the application is incompetent in law. As stated already in paragraph 1 of this Ruling, the application has been brought under Order 10, rules 1 and 3, of the CPR as read with Order 1, rule 5, of the CPR, and under the Court's inherent jurisdiction.

9. Order 10, rules 1 and 3 of the CPR provides as follows:

"1. A party may apply during a proceeding for an interlocutory order or an interlocutory direction of the Court by filing an application in a proceeding in Form 4.

2. ...

3. A party may apply for an interlocutory order at any stage, namely, before a proceeding has started, during a proceeding, or after a proceeding has been dealt with, and whether or not the party mentioned the particular relief being sought in his summons or counterclaim."

10. It is now well settled that Order 10, rule 1, the CPR, is an "omnibus" provision, providing for the mode of making any application which the law gives a party a right to make: see **Savari Energy DMCC v. Stanley Onjezani Kenani**, HC/LDR Civil Cause 36 of 2026 **George Kainja v. Director of the Anti-Corruption Bureau & Another**, HC/LDR Judicial Review Cause No. 48 of 2022 and **Olive Matipwiri v. Malawi Airlines Limited**, HC/Civil Division/LDR Civil Cause 16 of 2022.

11. Order 1, rule 5, of the CPR provides that the overriding objective of CPR is to deal with proceedings justly. It is patently clear that this provision does not and it was not meant to confer jurisdiction for entertaining applications to set aside an order staying proceedings or at all.

12. The Defendants also seek to rely on inherent jurisdiction. The doctrine of inherent jurisdiction helps the Court to achieve justice where it would not have been possible to do so: See **Grobbelaar v. News Group Newspapers Ltd** [2002] WLR 3024 wherein the House of Lords adopted the definition by Jacob in his article "The Inherent Jurisdiction of the Court (1970) 23 CLP 23" which state as follows:

"The inherent jurisdiction of the court may be defined as being the reserve or fund of power, residual source of powers, which the court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them."

13. Another way of putting it is that inherent jurisdiction remains the means by which Courts deal with circumstances not proscribed or specifically addressed by rule or statute, but which must be addressed to promote the just, speedy, and inexpensive determination of an action: see the Canadian case of **College Housing Co-operative Ltd. v. Baxter Student Housing Ltd.** [1976] 2 S.C.R. 475 wherein the Supreme Court of Canada observed thus:

“Inherent jurisdiction cannot, of course, be exercised so as to conflict with statute or rule. Moreover, because it is a special and extraordinary power, it should be exercised only sparingly and in a clear case.”

14. The case of **The State (on the application of Esther Kathumba & Others) v. The President** Judicial Review Cause No. 22 of 2020 stands for the proposition that an application based on the Court’s inherent jurisdiction cannot be granted as a matter of right. Further, the Court’s inherent jurisdiction only comes into play where there is a provision giving the court jurisdiction to deal with a particular application but that the same is in some way incomplete to fulfil the court’s mandate: see **Banda v. Satemwa Tea Estate Company (Order)** (Personal Injury Case No. 219 of 2016) [2018] MWHC 781 (18 June 2018) N’riva, J made the following observation:

“I believe that Courts have to exercise powers according to the statutes and rules. Inherent jurisdiction is only exercisable for the Courts to take certain steps with regard to the conduct of proceedings.

Inherent jurisdiction represents a body of default powers which enables a court to fulfil, suitably and efficiently, its procedures as a court of law. Inherent jurisdiction applies to the facilitation of the Court to exercise its full judicial power in all matters concerning the general administration of justice as a part of the procedural law of the court and not as a matter of gaining jurisdiction.” – Emphasis by underlining supplied

15. It is also trite that inherent jurisdiction should not be called upon just to serve the convenience of a party but to serve the interests of justice. As was aptly stated by the Supreme Court of Appeal in the case of **Parliamentary Service Commission v. SJR Catering Services** [2018] MLR 198 at p221 par.e:

“Now I tend to think that when jurisdiction of this Court is being called upon to serve the convenience of a party, and not necessarily to serve the interests of justice this court should, on the spot, put its foot down and say rules are rules and they must be obeyed.”

16. Similar sentiments are echoed by the Supreme Court of Appeal in the case of in **Malawi Law Society v. Registrar of Financial Institutions** MSCA Civ. App. No. 9 of 2021 wherein it quotes with approval the following dictum by Botha J in

Moulded Components and Rotomoulding South Africa (Pty) Ltd v. Counceraakis & another:

I would sound a word of caution generally in regard to the exercise of the Court's inherent power to regulate procedure. Obviously, I think, such inherent power will not be exercised as a matter of course. The Rules are there to regulate the practice and procedure of the Court in general terms and strong grounds would have to be advanced, in my view, to persuade the Court to act outside the powers provided for specifically in the Rules. Its inherent power, in other words, is something that will be exercised sparingly. As has been

said in the cases quoted earlier, I think that the Court will exercise an inherent jurisdiction whenever justice requires that it should do so. I shall not attempt a definition of the concept of justice in this context. I shall simply say that, as I see the position, the Court will only come to the assistance of an applicant outside the provisions of the Rules when the Court can be satisfied that justice cannot be properly done unless relief is granted to the Applicant.” – Emphasis by underlining supplied

17. In the present matter, the Defendants cannot invoke the Court's inherent jurisdiction as a means of conferring jurisdiction where none exists. Considering the circumstances of this case, including the fact that the case raises very weighty issues of national interests, I am not at all persuaded that this is the type of “clear case” warranting recourse to inherent jurisdiction. In truth, the application appears directed solely at serving the convenience of the Defendants. Accordingly, the attempt by the Defendants to place reliance on the Court's inherent jurisdiction is untenable.

18. Having established that the provisions under which the application has been purportedly brought, that is, Order 10, rules 1 and 3, of the CPR as read with Order 1, rule 5, of the CPR, and the Court's inherent jurisdiction, are inapplicable, it is my holding that the application is incompetent in law.

19. Secondly, the Defendants argue that the stay of proceedings was neither requested by any party nor addressed before the Honourable Court, as noted in paragraph 11 of the Defendants' sworn statement. With all due respect, the High Court is obligated to stay proceedings once it decides to refer the matter to the Chief Justice for certification, pursuant to Order 19, rule 7(2) of the CPR. In fact, the Court's statement on this was unnecessary, as the stay of proceedings is automatically triggered by operation of law.

20. Thirdly, it is important to note that under section 9 of the Courts Act, a High Court Judge is required to refer any case to the Chief Justice for certification if the Judge is satisfied that the case “expressly and substantively relates to, or concerns the interpretation or application of the provisions of the Constitution,” as outlined in section 9(2) of the Courts Act. This obligation applies regardless of the type of case or the manner in which it was initiated. Understanding this requirement fully

requires an appreciation of the hierarchy of laws in Malawi, where the Constitution holds the highest authority, followed by Acts of Parliament, and then subsidiary legislation: see sections 48(2) and 58 of the Constitution.

21. Being subsidiary legislation, nothing in CPR can have the effect of amending the provisions of section 9 of the Courts Act: see s.58 of the Constitution, **Leonard Dickson Chiutsi v. National Bank of Malawi**, HC/PR Land Cause No. 119 of 2016 (unreported) and **Leonard Yankho Phiri & Others v. Lilongwe City Council & 2 Others**, HC/LLR Judicial Review Cause No. 682 of 2017. The following dicta in the case of **Leonard Dickson Chiutsi v. National Bank of Malawi, HC/PR Land Cause No. 119 of 2016 (unreported)** is both instructive and illustrative:

“..., the Court wishes to observe that the Amendment Act [The Courts (Amendment) Act, 2016, Act No. 23 of 2016] goes a long way to address a few questions that have vexed the legal fraternity over the last nine years, that is, whether (a) Divisions of the High Court could be established and (b) the jurisdiction of the (other Divisions of) the High Court could be whittled down by means of subsidiary legislation.

It will be recalled that Order 1, r.4 (3) of the Rules purported (the past tense is used advisedly as the Rules are no longer in operation) to confer on the Commercial Division exclusive jurisdiction over commercial matters. To my mind, being part of subsidiary legislation, the Order could not have such legal effect. In this regard, in so far as the Rules sought to limit the jurisdiction of (other Divisions of) the High Court, the Rules were misconceived and were not worth the paper they were written on. This is precisely the point the Supreme Court makes in Liquidator of Finance Bank Ltd (in voluntary liquidation) v. Kadri Ejaz Ahmed and Sheith Azizi Bhai Issa, MSCA Civil Appeal No. 39 of 2008 (Unreported) [Hereinafter referred to as the "Aziz Case"] at page:

"The unlimited first instance jurisdiction of the High Court general division, as provided in section 108 of the Constitution, remains unaffected by Order I rule 4(3) and Order I rule 6 of the High Court (Commercial Division) Rules.

It would seem that the jurisdiction conferred by Order I rule 4 (3) and Order I rule 6 are only for the purpose of promoting good case management practice; but those rules have no capacity to oust the jurisdiction conferred on the general division of the High Court by s108 of the supreme law of the land.

The Court believes that the scheme of section 108 of the Constitution was to give unlimited power to every Judge of the High Court to hear and determine any case. This Court takes the position that Order I rule 4 (3) has a tendency to undermine the basic principle and values of our Constitution. We find that approach unacceptable." - Emphasis by underlining supplied

22. In short, the provisions of section 9 of the Courts Act cannot be undermined or limited by subsidiary legislation, whether it be Order 19 of the CPR or any other rule or regulation. No authority has been, or can be, cited to support this novel and unfounded proposition.

23. Fourthly, the Defendants’ contention that orders for stay of execution and interlocutory injunctions must always be granted on notice is plainly misconceived. Judicial review proceedings are governed by Order 19, rule 20, which expressly provides that such applications are commenced *ex parte* with the Court’s permission. While the Court retains discretion to direct an *inter partes* hearing, this is a procedural safeguard reserved for cases where the arguability of the claim is in doubt. The very authority relied upon by the Defendants, that is, **The State v. Council of the University of Malawi, Ex parte Sylvester Ayuba James**, Judicial Review Cause No. 31 of 2016), confirms this principle, noting that respondents may be invited to be heard only “*where it is not clear whether an arguable case exists*” In the present matter, however, the Claimants’ application demonstrated far more than a merely arguable case; it revealed a compelling basis for judicial review. Faced with such evidence, the Court was entirely justified in dispensing with an *inter partes* hearing. To suggest otherwise is to misstate both the law and the clear reasoning of the Court.

24. Fifthly, the Defendants vigorously contended in their oral submissions that the present matter has been wrongly commenced as a judicial review when, in their view, it ought to have been initiated by summons under Order 19, rule 3 of the CPR. With respect, this argument is untenable. It is now firmly settled that Part I of Order 19 of the CPR does not prescribe originating proceedings; rather, it governs certification and post-certification procedure. The High Court, sitting as a Constitutional Court, clarified this point in **The Democratic Progressive Party v The Attorney General (on behalf of the Office of the President of the Republic of Malawi)**, Constitutional Referral No. 3 of 2021. In that case, the Court stated:

“123. ... Order 19, rule 1 of the CPR provides that Part 1 thereof shall apply to proceedings on the interpretation or application of the Constitution which are certified by the Chief Justice under rule 2 and shall be dealt with in the manner specified under section 9 (2) of the Courts Act. Order 19, rule 3 (1) provides that subject to sub rule (2), proceedings under Part 1 (of Order 19) shall be commenced by summons under Order 5.

124. A reading of these provisions shows that the scheme envisaged by the law for matters relating to the interpretation of the Constitution is that such matters will first be commenced as any other ordinary proceedings, and then certified by the Chief Justice as being a constitutional matter, if deemed so. In our considered view, contrary to the Claimant’s assertion, the CPR do not permit that a constitutional matter should be commenced under Order 19, even where the Claimant intends ultimately to have it certified as such. It is imperative that it be commenced under Order 5 as any other ordinary civil proceeding.

125. *The Claimant commenced this action in the original Court by way of a summons under Order 5 of the CPR and then applied to the said Court to refer it to the Chief Justice for certification under section 9 (3) of the Courts Act. The original Court proceeded to refer it to the Chief Justice for certification under Order 19 rule 7 of the CPR. Indeed, this was the right procedure as Order 19 rule 3 (1) provides that matters under the constitution must be commenced under Order 5. A reading of Order 19 rule 3(1) and Order 19 rule 7 clearly shows that for matters referred from Page 67 of 94 other courts there has to be a proceeding before referral and certification. Therefore, Order 19 Part 1 does not provide for originating proceedings, but for certification and post-certification procedure.” – Emphasis by underlining supplied*

25. This authoritative pronouncement leaves no doubt that judicial review is the proper procedural avenue in circumstances such as the present. The Defendants’ reliance on Order 19, rule 3, of the CPR is therefore misplaced and does not undermine the propriety of these proceedings.

26. Sixthly, by granting the Claimants permission to commence judicial review of the impugned decision and referring this matter to the Chief Justice for certification, the Court is faithfully giving effect to the principle that constitutional adjudication, particularly where questions of genuine public importance are engaged, demands that both sides be afforded a full and fair opportunity to present their case. Such an approach resonates deeply with Malawi’s constitutional jurisprudence, which is anchored in the values of access to justice, fair trial, and the rule of law. The Constitution enshrines the right of every person to seek redress before the courts, and it obliges the judiciary to ensure that disputes of constitutional significance are resolved transparently and substantively. To deny the Claimants the opportunity to ventilate their grievances through judicial review on a matter of public importance would not only undermine these values but also erode public confidence in the courts as guardians of constitutionalism. Contrary to the Defendants’ assertions, it is they (and not this Court) who seek to obstruct the full and fair adjudication of constitutional questions by attempting to reduce them to procedural skirmishes. By giving permission to the Claimants to commence substantive judicial review proceedings and referring the matter to the Chief Justice for certification, the Court has acted consistently with Malawi’s constitutional commitment to justice, fairness, and the supremacy of the Constitution.

27. Seventhly, the well-established legal position is that the power to discharge permission to commence judicial review proceedings must be exercised sparingly. This is as it ought to be. In **R v. Customs and Excise Commissioners ex parte Eurotunnel PLC** [1995] CLC 392, the Court observed:

“It is obvious that the whole purpose of the leave stage would be violated if the grant of leave were to be regularly followed by an application to set aside.”

28. This Court therefore reaffirms that the power to discharge permission to commence judicial review proceedings is exceptional, not routine, and its misuse erodes both the fairness owed to litigants and the constitutional values of access to justice and rule of law which judicial review exists to protect.

29. On a related note, this Court cannot ignore the troubling trend that is taking root in our jurisdiction, whereby the grant of permission to commence judicial review is almost invariably met with an application to discharge that permission. Even more concerning is the manner in which such applications are sometimes pursued: pronouncements are made, even before the ruling or order has been formally served, that an application to discharge permission to commence judicial review proceedings will be lodged. Such conduct is not only premature but borders on contemptuous of the judicial process. It undermines the integrity of the permission stage, trivializes the Court's considered decision and risks reducing judicial review into a procedural battlefield rather than a substantive mechanism for administrative and/or constitutional accountability.

30. In conclusion on this issue, the Court stresses that procedural devices must not be abused to stifle constitutional litigation, particularly where issues of public importance are at stake. The Court also wishes to reaffirm that permission once granted should not lightly be disturbed, and that attempts to discharge permission must be scrutinized with the utmost care to prevent abuse of process.

31. Eighthly, and perhaps more importantly, this Court is inclined to believe that the present application was made either before the Defendants had properly considered my Ruling of 7th June 2026, or without due regard to its reasoning. That Ruling comprehensively addressed all essential matters relevant to an application for permission to commence judicial review, including the issues of locus standi, time limitation, and the rationale for staying proceedings pending certification by the Chief Justice. While I do not wish to unduly lengthen this Ruling by reproducing extensive passages from my earlier decision, there are certain portions of that Ruling which merit reiteration, as they directly dispose of the concerns now raised.

32. In paragraphs 11, 12 and 13 of the Ruling of 7th June 2026, the Court considers the issue of locus standi and concludes that the Claimants have locus standi:

11. *The next thing to look at, in terms of Order 19, rule 20(2), is whether or not the Claimants have sufficient interest in the matter to which the application relates. Notably, the CPR does not define 'sufficient interest'. In such circumstances, the Court has to resort to caselaw.*

12. *The cases of **Professor Peter Mutharika and Justice Lloyd Muhara v. Human Rights Defenders Coalition and Others**, MSCA Civil Appeal No. 05 of 2022 and **Longwe v. Council of the University of Malawi** [2011] MLR 149 are authorities for the proposition that a person will only have locus standi under section 15(2) of the Constitution or generally for judicial review if he or she shows that it is his or her right or freedom that has been violated as a basis of taking an action.*
13. *In the present application, I fully agree that the reasons given in paragraphs 16 to 37 of the sworn statement by the 2nd Claimant and the legal arguments in paragraphs 2.7.1, 2.7.2 and 2.7.3 of the skeleton arguments have demonstrated that the Claimants have legal and/or substantial rights which are over and above that which the general public may have in the subject matter under consideration. In short, the Claimants are directly affected by the decisions being challenged. It is, accordingly my finding and holding that the Claimants have sufficient interest to commence the present matter.”*

33. In paragraph 14 of the Ruling of 7th June 2026, the Court explains why it is satisfied that the requirement of Order 19, rule 20(5), of the CPR has been met:

- “14. *Time to turn to Order 19, rule 20(5), of the CPR, which requires an application for judicial to be filed promptly and made not later than three months of the decision being challenged. In the present case the challenged decisions were made on 27th February 2026 and 15th April 2026 respectively. Upon studying the two decisions, I am satisfied that they are interlinked and have to be treated as such. Accordingly, the three months will be taken to have started running from the latter date, that is, 15th April 2026. In the circumstances, it is my holding that the application has been brought within time.”*

34. In paragraphs 15 to 18 of the Ruling of 7th June 2026, this Court addressed the question whether the Claimants had disclosed a case fit for judicial review. The Court began by recalling the purpose of the requirement of permission to commence judicial review proceedings, that is, to eliminate at an early stage applications that are frivolous, vexatious, or hopeless, and to ensure that only matters warranting further consideration proceed to a substantive hearing. The Court then examined the relevant authorities, including **Honourable Dr. George Chaponda and the State President of Malawi ex parte Mr. Charles Kajoloweka and Others**, MSCA Civil Appeal No. 5 of 2017. Having done so, the Court concluded that an arguable case had indeed been made out, fit for judicial review, with the principal issues for determination being whether or not:

- (a) the President possesses constitutional authority to relocate an independent constitutional commission by Executive Order?

- (b) Executive Orders constitute a recognised source of executive power under the Constitution;
- (c) the executive branch of Government may lawfully direct where the Malawi Electoral Commission shall maintain its headquarters?
- (d) implementation of the Executive Order violates sections 75 and 76 of the Constitution?
- (e) the Defendants were constitutionally obliged to refuse implementation of an unconstitutional directive?
- (f) the impugned decisions violate sections 5, 12, 20, 32, 35, 38, 40, 75 and 76 of the Constitution?
- (g) the impugned decisions satisfy constitutional standards of legality, rationality, proportionality and procedural fairness?"

35. To my mind, the issues identified above are of fundamental constitutional significance. They demand resolution through the structured process of judicial review proceedings, which alone provide the necessary framework for full ventilation of constitutional questions. Such matters cannot properly be disposed of by way of affidavit evidence or summary adjudication, as the Defendants urge. To do so would risk trivializing issues of genuine constitutional importance and undermining the integrity of constitutional adjudication. Judicial review is the only appropriate avenue through which these questions can be examined substantively, transparently, and in accordance with constitutional principles.

36. In conclusion, the Court is satisfied that ample and compelling reasons have been advanced to warrant dismissal of the Defendants' application for an order setting aside the stay of proceedings. The application accordingly fails. It is so ordered. Costs are awarded to the Claimants in any event.

Pronounced in Chambers this 20th day of August 2026 at Lilongwe in the Republic of Malawi.

Kenyatta Nyirenda
JUDGE