

AC (A Minor) acting through Litigation Guardian Mr CJ v Mr Jenala Solomon and 4 Others

Summary

Court:	High Court of Malawi
Registry:	Principal Registry
Bench:	Justice M.A. Tembo
Cause Number:	Civil Cause Number 162 of 2023
Date of Judgment:	October 28, 2025
Bar:	Mlauzi, Mathanga and Chibwente, counsel for the claimant Chiume and Kunje, counsel for the 1st, 2nd and 3rd defendant, Namonde and Madukani, counsel for the 4th defendant, Soko and Nnleremba, counsel for amicus curiae

The Claimant sought declarations and damages in the High Court, Principal Registry, against the healthcare provider, his employer, the government minister responsible for health, and the national human rights body, for being denied safe pregnancy termination services. The Claimant, a minor who was 13 years old and

in standard 5, became pregnant following defilement, which led to her attacker being convicted and sentenced to 14 years imprisonment. The Claimant subsequently experienced debilitating health problems, psychological distress, and profound stigmatisation due to the pregnancy, prompting her family to seek a safe termination at the Chileka Health Centre One Stop Clinic. However, the First Defendant, a clinician at the centre, refused the request, stating he was afraid to terminate the pregnancy as it was deemed illegal, and instead planned for "counseling her to accept the pregnancy". After this denial, the Claimant's family sought a second opinion from a specialist at Queen Elizabeth Central Hospital, who, in accordance with the Standards and Guidelines for Post Abortion Care, recommended and safely performed the termination due to the risk to the Claimant's health and life.

The Claimant instituted proceedings for declarations that the First Defendant's refusal to terminate the pregnancy breached sections 19(1)(a), 19(2), and 20(1)(d) of the Gender Equality Act, and that the Second, Third, and Fourth Defendants also breached their respective statutory duties. The Court found the Claimant had made out her case and was entitled to all the declarations and reliefs sought. The Court held that the First Defendant's unlawful denial of access to a safe abortion was a breach of his statutory duties, compelling the Claimant to carry the unwanted pregnancy longer than necessary. The Court further found that the Third Defendant failed in its mandate by not ensuring clear guidelines and training for health providers on the legal provision of termination services to child victims, and the Fourth Defendant breached its duty by failing to enforce and recommend necessary amendments to legislation and guidelines.

The court made a landmark decision in sexual health and reproductive rights law stating that a girl victim of a sexual offence who is pregnant as a result of such an offence definitely has a right to seek an abortion automatically upon

indication that she had become pregnant as a result of a sexual offence being perpetrated on her.