

Draft Case: The State (on the application of Dalitso Dawn Chimbe) v The Officer in Charge (Fiscal Police) and Others

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Allan Hans Muhome
Cause Number:	Judicial Review Case Number 8 of 2024
Date of Judgment:	December 11, 2025

Summary

The Claimant, a legal practitioner, sought judicial review in the High Court, Principal Registry, challenging the decisions of the Defendants to arrest, detain, question, or prosecute him. The Claimant contended that the decisions were unlawful, procedurally unfair, and unjustifiable, primarily because the actions stemmed from his commencement of civil proceedings (the Midima Matters) on behalf of clients against the Fifth Defendant, the Registered Trustees of Family Health Services (FHS). These civil claims alleged that FHS had circumcised over 336 minors without the lawful consent of their parents or guardians. The Claimant further challenged the Fiscal Police's demand for confidential attorney-client information and the bail condition prohibiting him from communicating with his clients.

The Fifth Defendant, FHS, had engaged a private investigator after receiving over 312 suspicious claims from the Claimant. The investigation confirmed fraudulent activities and fabrication of evidence, which led FHS to lodge a formal complaint with the Fiscal Police. The First Defendant, Fiscal Police, conducted a thorough, independent investigation, which allegedly established a conspiracy to defraud FHS. The principal legal questions before the Court were whether the Defendants' decisions were unlawful or procedurally unfair and whether the Claimant's alleged conduct should have been exclusively dealt with as a disciplinary matter by the Malawi Law Society.

The application for judicial review was dismissed. The Court found that the Defendants correctly and appropriately considered and discharged their administrative or constitutional duties. The decisive rationale was that while the Claimant's conduct arose in the course of his legal practice, the facts alleged a criminal offence, conspiracy to defraud, which falls squarely within the purview of the Director of Public Prosecutions, not solely the Malawi Law Society. The Court further held that judicial review concerns the decision-making process, which was found to be sound, as the Fiscal Police launched their investigation only after receiving a credible report and conducting their own thorough checks. Moreover, the claims in the Midima Matters were deemed tainted with illegality (*ex turpi causa non oritur action*) and could not proceed. The Court ordered that the criminal proceedings against the Claimant proceed within 60 days. Considering the professional rights of the Claimant and the public nature of the proceedings, the Court ordered that each party was to bear their own costs.

Legislation Construed

N/A

Judgment

N/A