

# Republic v Henry Mathanga & Others

## Summary

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Financial Crimes Division
<b>Bench:</b>	Honourable Justice R.E. Kapindu, PhD
<b>Cause Number:</b>	Criminal Case Number 19 of 2023
<b>Date of Judgment:</b>	May 08, 2025
<b>Bar:</b>	For the State: Counsel Nyasulu, Liwimbi, Chibwana, and Patridge For 1st Accused: Counsel Nkhutabasa, For 2nd Accused: Counsel Maele, For 3rd and 4th Accused: Dr. Kalekeni Kaphale SC

The 4th Accused Person challenged new charges for the continuation of the criminal proceedings, arising from the same factual matrix on which he had previously been discharged by the Court in January 2024. Initially, the State had conceded it lacked evidence to justify prosecution and did not contest the Court's discharge under section 247(1) of the Criminal Procedure and Evidence Code (CP & EC). However, two months later, the Director of Public Prosecutions initiated fresh charges based on the same disclosures.

The fresh charges were objected to, the 4th Accused Person contended that the renewed prosecution was unconstitutional and an abuse of the Court's process. The Court had earlier directed the State to justify its renewed charges through an affidavit and skeleton arguments. The State failed to comply promptly, citing internal miscommunication. Even after a belated affidavit, the Court found the affidavit poorly drafted and unhelpful in addressing the evidentiary nexus required to connect the 4th Accused person to the new charges drawn.

The legal question that the Court grappled with was whether, in the circumstances, section 247(2) of the CP & EC would permit a fresh prosecution after a discharge, even when no new evidence was provided and prior admissions negated any realistic prospect of conviction. The Court held that constitutional fair trial rights override bare statutory allowances, and that prosecutorial misuse of section 247(1) of the CP & EC to discontinue and reinitiate charges on unchanged facts constituted an abuse of the Court's process.

The Court held that the State had failed to meet the evidentiary threshold necessary to justify the renewed charges, and accordingly refused to permit further prosecution. The proceedings against the 4th Accused Person were permanently stayed and barred.