

Republic v Rt. Hon. Saulos Klaus Chilima

Criminal Case No. 10 of 2023

Summary

Court:	High Court of Malawi
Registry:	Financial Crimes Division
Bench:	Honourable Justice R.E. Kapindu, PhD
Cause Number:	Criminal Case No. 10 of 2023
Date of Judgment:	August 01, 2023
Bar:	Messrs Khunga, Chiwala, Saidi, Likwanya, Counsel for the State Messrs Kaphale, SC, Soko & Theu, Counsel for the Defendant

The Applicant sought variation of bail conditions in the High Court, Financial Crimes Division, after being released on bail by the Chief Resident Magistrate's Court following his arrest on allegations of corrupt practices. The Accused Person, a sitting Vice President of the Republic of Malawi, challenged two main conditions: reporting to the Anti-Corruption Bureau (ACB) once every three months, and the surrender of his Passport to the Court. The Applicant argued that his high office meant his whereabouts were publicly known and he was

perpetually under the custody and surveillance of the State's security machinery, rendering the reporting condition unnecessary and serving no practical purpose for ensuring his attendance at trial. Furthermore, he contended that any travel outside the jurisdiction was subject to government protocol requiring leave and approval from the State President, making the surrender of his passport an excessive and unreasonable restriction on his liberty.

The State, through the ACB, vigorously opposed the application, arguing that the Bureau could not rely on unverified government protocols or public schedules to ascertain his movements, and that it would be impractical to assign officers to track him. The Prosecution contended that bail conditions, by their nature, restrain liberty and should not be varied merely because they cause inconvenience, especially since the lower court had already considered the Applicant's high status when setting the conditions. The Court, relying on its power under section 118(3) of the Criminal Procedure and Evidence Code, reminded itself that the constitutional right to liberty dictates that a person be released with or without conditions unless the interests of justice require otherwise, which is primarily assessed by the risk of non-attendance at trial. The Court observed that bail conditions must be fact-sensitive and not subject to a 'one size fits all' approach. Applying the proportionality test, the Court found the reporting condition to be redundant and the passport surrender to be an unnecessary restraint given the State security surrounding the Applicant. The application was allowed, and the Court directed the removal of the requirement to report and the immediate release of the Applicant's Passport.