

*Malawi Judiciary*

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**MISCELLANEOUS CIVIL CAUSE NO. 17 OF 2016**

BETWEEN:

**THE STATE**

**-and-**

**MINISTER OF JUSTICE & CONSTITUTIONAL AFFAIRS**

**-and-**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**-and-**

**MALAWI POLICE SERVICE**

**- AND -**

**CHRISTOPHER KAMMASAMBA**

**-and-**

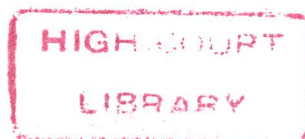
**REVEREND PATRICK BANDA**

**-and-**

**PASTOR TUSALIFYE MBEWE**

**CORAM: HONOURABLE CHIEF JUSTICE A.K.C. NYIRENDA, SC**

Makumba, Counsel for the Applicant  
Kaduya, Counsel for the Applicant  
Apoche Itimu, Counsel for the Respondent  
Soko and Nkhata, Counsel for Amici Curiae  
Mthunzi (Mrs.), Recording Officer  
Mwafulirwa (Mrs.), Principal Personal Secretary



## **RULING**

This matter was placed before me for certification of the proceedings that the business arising thereout expressly and substantively relates to, or concerns the interpretation or application of the provisions of the Constitution. Section 9(2) and (3) of the Courts Act requires that if such be the business in the matter, the High Court shall sit with not less than three judges.


In the submission by Counsels Khumbo Bonzoe Soko for the amici curiae my attention has been drawn to the fact that this matter is on appeal to the Supreme Court against the whole of the decision of the court below which refers the matter to me for certification. The grounds of appeal, as verified with the original court record, include a challenge of the very process of referring the matter to me for certification.

While ordinarily an appeal would not automatically stay further proceedings where such appeal is in the course of a proceeding, it would not be appropriate in my view, in the instant case, to proceed to determine certification of the matter well aware that that aspect of the matter, among others, is on appeal.

I would therefore pend the determination of certification of the matter until the determination of the appeal.

I should however order that the appeal be expedited since it is still very early in the case.

MADE in Chambers this 27<sup>th</sup> day of July, 2016, at Blantyre.

  
Andrew K. C. Nyirenda, SC  
**CHIEF JUSTICE**