



REPUBLIC OF MALAWI
IN THE MALAWI SUPREME COURT OF APPEAL
MSCA CRIMINAL APPEAL No. 5 of 2018
(being High Court of Malawi, Principal Registry, Criminal Appeal No. 26 of 2015)

BETWEEN:

THE REPUBLIC

APPELLANT

AND

MUHAMMAD JAWAD

RESPONDENT

CASE SUMMARY

Republic v Jawad

(Mzikamanda SC CJ, Kapanda SC JA, Potani SC JA, Katsala SC JA, Chatha-Kamanga, SC JA, Mkandawire SC JA, Madise SC JA, Mbvundula SC JA & nyaKaunda Kamanga SC JA)

2nd December 2025

Background

In August 2015, the respondent was arrested at Chileka International Airport while attempting to leave Malawi with USD 269,970 without the required authorization. He pleaded guilty to two Exchange Control offences and was convicted and fined by the Senior Resident Magistrate. The Magistrate also ordered forfeiture of the entire amount under Regulation 36 of the Exchange Control Regulations.

The respondent appealed to the High Court. Although he had withdrawn his constitutional challenge, the High Court nonetheless declared Regulation 36 unconstitutional and further held that the forfeiture was manifestly excessive, ordering that the money be returned to him. The State appealed to the Supreme Court of Appeal.

Issues on Appeal

1. The Supreme Court of Appeal had to determine whether the Judge in the High Court sitting alone had jurisdiction to declare that Regulation 36 of the Exchange Control Regulations was unconstitutional, and
2. Whether the High Court was correct in setting aside the forfeiture order for being manifestly excessive.

Finding

On 2nd December 2025, the Supreme Court of Appeal held that determining whether delegated legislation “substantially and significantly” affects fundamental rights under section 58(2) of the Constitution requires interpretation of the Constitution. A panel of at least three judges must hear constitutional questions in accordance with section 9(2) of the Courts Act. The High Court judge sat alone and without hearing the Attorney General; the declaration of unconstitutionality was therefore procedurally improper and a nullity.

On the forfeiture issue, the Supreme Court of Appeal reaffirmed that appellate courts may intervene with sentencing discretion only if there is a misdirection, an error of principle, or a sentence so excessive as to amount to injustice. The High Court identified no such misdirection. The judgment that the forfeiture was excessive ignored Regulation 36's purpose, the considerable amount involved, and the absence of mitigating factors. The High Court applied the wrong legal principles and standards and substituted the Magistrate's opinion with its own. The Supreme Court of Appeal unanimously allowed the entire appeal and set aside the judgment of the High Court and upheld the decision of the Senior Resident Magistrate.

Order

The Supreme Court, having set aside the High Court's decision, upheld the Senior Resident Magistrate's USD 269,970.00 forfeiture order.

NB: *The Malawi Supreme Court of Appeal and the Honourable Justices are not bound by this explanatory note, which is provided by the Office of the Chief Registrar to facilitate public understanding of this case and to assist the media in reporting on it.* 2 Dec 2025