



## **DECISION ALERT:**

**High Court Of Malawi Affirms  
Access To Safe Termination  
As A Legal Right For Minor  
Survivors Of Sexual Violence**

28th October 2025

## Case:

# **Ac (A Minor Acting Through Litigation Guardian Cj) V Mr Jenala Solomon, Blantyre District Council (One Stop Centre, Chileka Health Centre), Attorney General (Minister Of Health) & Human Rights Commission.**



**Court:** High Court Of Malawi – Principal Registry (Civil Division)



**Judge:** Justice M.a. Tembo



**Date:** 28th October 2025

## Issue

Whether The Refusal To Provide A 14-Year-Old Survivor Of Defilement Access To Safe Termination Of Pregnancy Contravened The Rights Guaranteed Under The Gender Equality Act, And Whether The State And Its Agents Could Be Held Legally Accountable For The Denial.

## Decision Summary

The High Court Delivered A Landmark Judgment Holding That Denying A Minor Survivor Of Sexual Violence Access To Safe Termination Of Pregnancy Constitutes A Violation Of Reproductive-Health Rights Protected Under Sections 19(1)(A), 19(2), And 20(1)(D) Of The *Gender Equality Act*. Critically, The Court Clarified That Section 243 Of The Penal Code's Exception For "Preservation Of The Mother's Life" Must Be Interpreted To Include Both Mental And Physical Health, Not Merely Immediate Physical Danger To Life.

Justice Tembo Found That Mr. Jenala Solomon, A Clinician At The Chileka One Stop Centre, Breached His Statutory Duty By Refusing To Provide Safe Termination Services To The Claimant. The Clinician Focused Exclusively On Physical Health While Failing To Adequately Assess The Claimant's Mental Health Despite Visible Signs Of Emotional Distress, Depression, And Anxiety. This Failure Violated The Claimant's Reproductive-Health Rights And Breached Section 20(1)(D) Of The *Gender Equality Act*, Which Requires Health Officers To Impart All Necessary Information For Informed Decision-Making Regarding Reproductive Health Services.

The Blantyre District Council Was Held Vicariously Liable For The First Defendant's Actions. Both The Council And The Attorney General Were Found Jointly Liable For Damages Of K50,000,000.00 For Breach Of Reproductive-Health Rights, Pain And Suffering, And Loss Of Amenities Of Life, With Assessment To Be Conducted By The Registrar If Not Agreed Within 14 Days.

The Court Held That **Minor Survivors Of Sexual Violence Possess An Automatic Entitlement To Safe Termination Of Pregnancy Once It Is Established That Conception Resulted From A Sexual Offense.** The Judgment Dismissed Any Requirement For Additional Proof Of Physical Risk Beyond The Inherent Medical, Psychological, And Social Harm Associated With Forced Continuation Of Such A Pregnancy. **Compelling A Child To Carry An Unwanted Pregnancy Conceived Through Violence Amounts To Cruel, Inhuman, And Degrading Treatment.** The Court Directed The **Minister Of Health** To Amend The *Standards And Guidelines For Post-Abortion Care (2020)* Within **180 Days**, Inserting Explicit Provisions That Health Providers Must Offer Lawful Termination To **Children And Survivors Of Sexual And Gender-Based Violence**, And Mandating Comprehensive Training For All Designated Practitioners To Ensure Consistent And Rights-Based Implementation.

## ➤ Significance

- This Ruling Defines A New Threshold For Reproductive-Rights Protection In Malawi. It Situates Safe Abortion Within The Enforceable Framework Of The Gender Equality Act And Affirms That The State Carries An Affirmative Duty To Make Reproductive-Health Services Accessible, Lawful, And Responsive To The Circumstances Of Sexual-Violence Survivors.
- The Judgment Establishes That Pregnancy Resulting From Sexual Assault And The Age Of The Survivor Inherently Create Medical And Psychosocial Risk, Qualifying Such Pregnancies For Lawful Termination. It Dismantles Administrative Hesitation Rooted In Fear Of Criminal Liability And Reframes Reproductive-Health Access As A Matter Of Right Rather Than Discretion.
- The Decision Consolidates Malawi's Obligations Under Domestic And International Law, Closes The Gap Between Restrictive Colonial-Era Criminal Provisions And Contemporary Human-Rights Guarantees, Advancing A Jurisprudence Of Reproductive Justice That Recognizes Access To Safe Abortion As An Enforceable Legal Right Rather Than A Matter Of Medical Discretion Or Prosecutorial Forbearance.

We appreciate our partners **Nyale Institute** and the **Center for Human Rights and Rehabilitation (CHRR)** for leading this landmark litigation under the LIRA Programme and standing up for justice and dignity for girls in Malawi.