



## JW & 4 OTHERS v STATE, MINISTRY OF JUSTICE & CONSTITUTIONAL AFFAIRS

Challenging the refusal to register Nyasa Rainbow Alliance (NRA)

### FACT SHEET

#### BACKGROUND TO THE CASE

On 26 July 2016, the Board of Trustees of Nyasa Rainbow Alliance (NRA) applied for the organisation to be registered as a Trust under the laws of Malawi. On 18 May 2017, the Ministry of Justice's Department of the Registrar General in Malawi sent a letter to the Nyasa Rainbow Alliance (NRA) rejecting the proposed registration.

Nyasa Rainbow Alliance (NRA) advocates for the rights of LGBTI persons in Malawi, including through the provision of support and referral to welfare and HIV services.

#### REASONS BY THE STATE TO REFUSE REGISTRATION

The Registrar General rejected the NRA's application for registration on the basis that the Penal Code criminalises consensual sex between same-sex partners, and that the NRA's membership engages in such unlawful practices. The State did not provide any evidence to support its claims.

#### IMPORTANCE OF ISSUES RAISED IN THE CASE

The case brought before the High Court of Malawi (sitting as a Constitutional Court) is not for the decriminalisation of same-sex sexual conduct but for the registration of the NRA as an organisation that strives to protect the rights and fundamental freedoms of all persons, including LGBTI individuals. The Penal Code prohibits same-sex sexual conduct or acts but does not criminalise individuals based on their sexual orientation.

In its submissions, NRA argues that the refusal to register the organisation violates human rights:

- The Constitution of Malawi protects the human rights of **all persons**, including LGBTI persons.
- The refusal to register NRA violates **the rights of all people to freely associate and express themselves**, including the right to communicate ideas and opinions. It also amounts to an infringement of the applicants' ability to form a legal entity to act collectively in a field of mutual interest.
- The refusal also violates the **right to dignity** and **right to equal treatment**.
- To refuse lesbian, gay, bisexual, and transgender people the opportunity to form an association while allowing other groups that right is to deny the former **equal protection of the law**.
- The refusal to register NRA treats lesbians, gays and bisexuals constitutes inhumane treatment.

#### PROGRESS SO FAR

On 26 July 2017, the applicants filed an application for leave for judicial review proceedings against the decision of the respondents to reject their association/organisation's application to be registered under the Trustees Incorporation Act. The application for leave was granted on 12 September 2017. On 15 March 2018, the Court referred the matter for certification by the Chief Justice as a constitutional matter. After the case was certified as a constitutional matter, a panel of three judges, sitting as a Constitutional Court, had to be constituted. The first panel failed to set a hearing date due to election petitions taking precedence on the court roll. After that, the Covid-19 pandemic further delayed court matters. In November 2021, a new panel of judges were constituted.

The High Court then set dates for the hearing from 26 - 30 September 2022, but the hearing was adjourned on 23 September 2022, citing logistical challenges. A new date is yet to be set by the court.