

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CONFIRMATION CRIMINAL CASE NO.1049 OF 2007**

BETWEEN

STELLA MWANZA AND 12 OTHERS APPLICANTS

AND

REPUBLIC RESPONDENT

CORAM : HON. JUSTICE NYIRENDA

Counsel for the Applicants, Unrepresented
Counsel for the Respondent, Miss G. Kalebe
Court Reporter, Mrs. M. Kabaghe
Court Interpreter, Mr. E. Kafotokoza

JUDGMENT

Stella Mwanza and twelve others were each charged with and convicted of being a rogue and vagabond contrary to Section 184(1)(c) of the Penal Code. The convictions were upon pleas of guilty and admission of facts as presented by the prosecution in open court.

The particulars of the charge were that all the accused persons who are young girls aged between sixteen years and twenty six years of age. On the 23rd August 2007 at 3.00 hours at Mchinji Trading Centre were found in such circumstances as to lead to the conclusion that they were there for a disorderly purpose. It is to these particulars that the convicts pleaded guilty.

The summary of the facts was that during the night of the 22nd to 23rd August 2007 police officers from Mchinji Police Station went of a clean up exercise around town searching for possible criminal activities. In particular it was as a result of reports that some women had turned certain rest houses into brothels. As a result of that search the 13 convicted persons were found in the rooms at some of the rest houses.

The facts say the convicts were there without specific purposes. Police then concluded that they were there for disorderly purposes. It is further said the convicts had nothing to do at the trading centre and had no means of subsistence.

These are the facts that were admitted by all the accused upon which they were convicted. They were each fined K2,000.00 in default two

months imprisonment with hard labour. Section 184 (1)(c) states as follows:

“... Every person found in or upon or near any premises or in any road or highway or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose shall be deemed to be a rogue and vagabond”.

The ordinary English definition of a rogue is a dishonest or unscrupulous person. A vagabond is someone with no fixed home who lives an unsettled wondering life. But surely the law could not have intended to criminalize mere poverty and homelessness more especially in a free and open society. It could never be crime for a person to be destitute and homeless. And if a person is homeless he or she is bound to roam around aimlessly. One would have thought it becomes state responsibility to shelter and provide for such people than condemn them merely on account of their lack of means. It was in such instance that Tambala J. in *Republic v Balala* [1997] (2) MLR 67 expressed concern that the charge of rogue and vagabond could be used to oppress needy persons who are not criminals and that if that were the

case then mere poverty, homelessness and unemployment would land a person in prison.

Similarly on the case of Republic vs Lawanja and others [1995] 1MLR 217 the court observed that a person might be poor, with holes in his pocket; but this unfortunate state of affairs and often without choice, does not make them criminals.

In the present case the ladies were found occupying rest houses and nothing more to it. There was virtually nothing more to their circumstances on the facts. Perhaps they were hoping for some stray and weak-minded men to come around and spend a night with them. But what offence would that be on their part? As a matter of fact this was invasion of privacy on part of the police officers.

I am afraid the convictions hereat were all misconceived. What was also most misconceived was the sentence. It is stated in the facts that the accused were persons without means. How on earth could such persons then be required to pay any fine yet this is exactly what the trial magistrate did. He imposed a fine of K2,000.00 on each of the convicts.

It is the judgment of this court that the convictions in this case cannot stand and they are all quashed. The sentences are set aside. The fines paid shall be refunded.

PRONOUNCED in Open Court at Lilongwe this day of May 2008.

A.K.C. Nyirenda
JUDGE