

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY CRIMINAL CASE NO. 13 OF 2006

THE REPUBLIC

-VS-

**RIGHT HON. DR. CASSIM CHILUMPHA SC.
AND
YUSSUF MATUMULA**

CORAM : HON. NYIRENDA J.

: Mr. Kayira, Kanyuka, PP/CSA/COUNSEL/
STATE ADVOCATE
Mr. Mbendera Mr. Kachule, ... FOR THE STATE.

: Mr. Nyimba, Mr. Kaphale ... FOR THE ACCUSED
Mr. Kalua, Mr. Chokotho,

: Ms Maida ... OFFICIAL
INTERPRETER

RULING

This case was called on the 26th of October 2007 for mention whereat two issues were to be determined, whether disclosure of evidence has been completed and when the case should be set for trial.

Learned Director of Public Prosecutions has confirmed to the satisfaction of the Court that disclosure has been completed and that the matter can be set down for trial. He suggests that trial be set for a date within November next month.

In the meantime the State is yet to approach the Court on the outstanding application on concealment of witnesses. The D.P.P. has also just brought in another request, that he intends to apply to Court to arrange for jurors of a certain level of understanding in view of the complex nature of the case. Finally, it has also been conceded by the D.P.P. that it will soonest be necessary for the State to brief the Court and the defence on what arrangements have been made and how the State intends to go about presenting its case. This is necessitated by the peculiar nature of the proceedings which will involve electronic recordings among other arrangements.

The accused persons with one voice say it is not just being unrealistic to talk about November for trial but more importantly it would be grossly unfair to them to expect that by that time they would have prepared for trial in a case which has taken the state eighteen months to put together. They ask for eighteen months as well on their part or at least ten months before the hearing date.

As for concealment of witnesses it would appear the state slept on this matter until reminded by the Court. Otherwise this is a matter that emerged much earlier in the proceedings and by now should have been

concluded. It is said the application will now be of a limited nature. This is more the reason why it should be disposed off without much ado; in fact it should have been dealt with in the context of this sitting since we are looking at disclosure, including witnesses statements.

I really do not see the point that the Director of Public Prosecution is making when he says he intends to make an application to Court to rule or order that jury for the case should be of a certain level of understanding, whatever the level of understanding will be proposed. My understanding is that this is an exercise that ideally should be left for jury selection during trial from the long jury list that we have. I do not want to pre-empt the application that the D.P.P. intends to make in this regard. It might have dimensions which the Court has not thought about. It is safe therefore to await the application.

The State wishes to move on and have urged the court to take a firm charge of the proceedings. This is quite a legitimate request if this case is to make meaningful progress. But that said the State is not helping the situation. Up until this point it is not clear exactly what kind of trial we should be preparing for. This question was posed to the State by the Court. It became clear that little thought had been given to the exact arrangements that have to be made by the State on how the case would be presented.

The case would not be an ordinary trial that we are used to. It would appear some special facilities would need to be arranged for. It is

absolutely critical, not just for the accused persons, but for the Court as well, to be clear on what special arrangements are being made by the State and what would be the role of the Court in the whole design and the logistics of the trial. Yet what is true is that if the required facilities and the whole design of the trial was not properly prepared for it could result into serious practical hitches in the course of the trial.

Taking charge of proceedings does not mean the Court directing the State or indeed the defence on how to present their respective cases. But if the Court is not clear on how the case would be presented it could be an extremely dangerous leap of faith.

The State must come out clear on what kind of trial we should be preparing for. The Court needs to have this information in good time, so do the accused persons.

I have no doubt we can all see how important it is sort out all these preliminary matters which have a bearing on how soon the trial of this case should be set.

In the circumstances and for the issues discussed, the State is required to finalise all the preliminary applications that are anticipated including furnishing the Court with details of all the logistical

arrangements that are being made for the trial. Immediately thereupon dates for trial will be determined.

Made at Blantyre this 1st day of November, 2007.

A.K.C. Nyirenda
J U D G E