

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. JUSTICE NYIRENDA, J.

Kayira, Director of Public Prosecution .. for the State
Mrs Kanyuka, Chief State Advocate..... for the State
Mr. Liabunya, State Advocate for the State
Mr. Kaluwa Representing the First Accused

RULING

HON. NYIRENDA J.

On the 7th of June 2007, this court varied conditions upon which the first accused was granted bail. Before the variation on of the conditions required the accused to inform the Regional Commissioner of Police each and every time he intended to leave Blantyre for any destination within Malawi. For the record let me set out the condition as it appeared on the bail bond as condition number six:

“That I am free to travel within Malawi and whenever I intend to leave Blantyre for any destination I must first inform in writing the Regional Commissioner for Police South as to my intended destination and the likely duration of stay.”

This condition was removed because the court’s view was that it was an unnecessary strain on the accused who is already under police guard all the time while he is in the country. In any case, as I observed in the ruling, the state did not

seem to dwell much on this condition which in the opinion of the court was basically complimentary to the other conditions which now require the accused to report to police once every week and also when he intends to go outside Malawi.

The Director of Public Prosecution has come back to court and applies to have the requirement of reporting to police each time the accused wants to leave Blantyre to be re-introduced in the conditions for bail.

The main reason advanced by the State for urging the court to bring back condition number six is that it has become very difficult for the police to monitor the movement of the first accused since they do not want to be seen as if they are spying on the accused. It is submitted further that at the moment police are kept guessing where the first accused is going which is making it very difficult for them to provide further protection on account of the case against him.

It seems to me the real issue that concerns the State is that the Security provided to the first accused as the First Vice President although provided by the Police, to a large extent takes instructions from the accused himself especially when it comes to when and where the accused wants to go. For these reasons the State seeks that condition six be re-introduced and a further aspect added requiring the accused to inform the Regional Commissioner of Police South when he is back from wherever he might have gone.

Mr. Kaluwa, for the first accused opposes the application mainly on the ground that nothing has changed in the circumstances of the case to compel the court to vary conditions for bail. That the State brings nothing new that was not before the court earlier and therefore that the court is functus officio on the matter before it. Counsel has referred the court to the case of *S – vs – Mambo (1992) 1 ZLR 245 (H)* on this aspect.

Mr. Kaluwa is largely correct because most of the issues brought up by the State in support of this application were before the court and did exercise the courts'

mind especially with regards to the fact that the charges against the first accused are serious. Indeed I do not find it appropriate that this court should be preoccupied with the first accused's bail in such a protracted manner and I hope that once the conditions for bail are set out, the State should do all possible to be within the conditions because any condition as to bail is obviously a restraint on the liberty of an accused person.

There one aspect of the matter that perhaps requires further consideration as a result of the plight that the State has expressed. In its previous ruling this court observed that the whole scheme and necessity for the second condition and the condition under protest here are to prevent or at least reduce the risk of the first accused leaving the country and also to make sure that he is under proper protection while the case is in progress. If the police are already finding it difficult to follow the movements of the first accused then certainly his own protection on account of this case might be compromised. It is therefore incumbent that I allow the State condition number six previously removed to the extent necessary for the protection of the first accused. This condition will now be as follows:

“That I am free to travel within Malawi and whenever I intend to leave Blantyre for any destination within Malawi, I must first inform in writing the Regional Commissioner for Police South of my intended destination. Provided that the communication to the Regional Commissioner for Police South is not for the purpose of seeking authority or permission to travel’.

Observably the court has removed the requirement of stating the duration of his stay outside Blantyre and has declined to add the requirement of informing the Police of the accused's return to Blantyre. If the purpose of condition Number Six is for the accused's protection police will be available for that purpose wherever and whenever as long as it is within Malawi.

PRONOUNCED at the High Court in Blantyre this 13th day of July, 2007.

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