

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CONFIRMATION CASE NO. 396 OF 2007**

THE REPUBLIC

VS

DYSON BRIGHT KABVALA

**From the First Grade Magistrate Court sitting at
Nkhotakota. Being criminal case no. 43 of 2007.**

CORAM: HON. CHINANGWA, J.

ORDER IN REVIEW

The accused Dyson Bright Kabvala appeared before the First Grade Magistrate Court sitting at Nkhotakota on 10th April, 2007. He was charged with a traffic offence namely Driving Motor vehicle with worn out tyres, contrary to regulation 181(1)© of the Road Traffic Regulations as read with section 167(2) of the Road Traffic Act.

Particulars aver that the accused on 9th April, 2007 at Mbandira along Nkhotakota/Salima road in Nkhotakota district drove a motor vehicle registration no. BM 4347 Toyoace van which had 3 worn out tyres. The accused

pleaded guilty to the charge. He was convicted and sentenced to 6 months I.H.L. The operation of sentence was suspended for a period of 24 months on condition that the company bought new tyres.

The order of the trial court persuaded me to carefully examine the statement under caution of the accused. The translated reply in English reads:

“I am a driver of a motor vehicle registration number BM 4347 Toyoace van for Bowler Beverages company. Today the 9th April, 2007 I left Lilongwe for Dwangwa for sales and when I reached Mvera I noticed that one of the tyres was flat and I changed it.....”

From the examination of the statement under caution it emerges that the motor vehicle did not belong to the accused person. It belonged to Bowler Beverages Company. That is why the trial court ordered the company to buy new tyres.

On 16th April, 2007 the police P-rosecutor Mr Magwenje made the following submission to the trial court:

“PP: Your Worship this case was adjourned to 24/04/07 for sentence after the court ordered the

company Bowler Beverages should buy new tyres. It was on Saturday when I was approached by Mr Mkumba from Bowler telling me that they have bought the new tyres..... I inspected the new tyres and I got convinced that they are new tyres. I tender the new tyres as part of evidence. That is why I have brought the case before 24th April, 2007.”

The trial court should not have proceeded to enter a conviction against the accused person. Why? Just because the accused was not the owner of the motor vehicle. He was a mere employee.

Even the state misdirected itself to prosecute the accused when there was evidence that accused was a mere driver in the employment of Bowler Beverages Company.

This being the position the conviction cannot be left to stand. It is quashed and the sentence set aside.

It is ordered that a copy of this judgment be furnished to Dyson Bright Kabvala and the employer Bowler Beverages Company for their information.

Order accordingly.

Pronounced in Chambers this 17th day of July, 2007 at
Lilongwe.

R.R. Chinangwa
J U D G E