IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL APPEAL NUMBER 178 OF 2008
(Being Criminal Case Number 43 of 2008 in the Senior Resident Magistrate Court sitting at Dalton Road, Limbe)

IN THE MATTER OF AN APPLICATION BY JOSEPH NOMALE FOR BAIL UNDER

SECTION 355(1) OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE

BETWEEN:

JOSEPH NOMALE ……..1ST PLAINTIFF
PETER TSAMWA …….2ND APPELLANT
ANDREW MDEDZA …….3RD APPELLANT

- AND -

THE REPUBLIC ……..……..RESPONDENT

CORAM: THE HONOURABLE MR JUSTICE J S MANYUNGWA
Mr Chisale, of Counsel for the 1st plaintiff
Mr Supedi, Senior State Advocate }
Miss Longwe, Senior State Advocate } for the respondent
Mrs S. P. Moyo – Official Interpreter

O R D E R

Manyungwa, J

INTRODUCTION:

This is an application by the 1st appellant namely Joseph Nomale, the applicant herein for bail pending the determination of his appeal. The application is being made under Section 355(1) of the Criminal Procedure and Evidence Code[1]. The 1st appellant was convicted by the Senior Resident Magistrate Court sitting at Dalton Court in Limbe, alongside the 2nd and 3rd appellants of the offences of unlawful wounding, common assault and malicious damage contrary to Sections 241(a), Section 253 and Section 344(1) respectively of the the Penal Code [2] on 28th July, 2008. The 1st appellant was found guilty on all the three counts and was sentenced to 9 months Imprisonment with Hard Labour on the 1st count, on the 2nd count the 1st appellant and the 3rd appellant were ordered to pay compensation of MK15,000.00 each, to each of the three victims of the common assault, in default to serve a jail term of three months Imprisonment with Hard Labour, and on the third count the 1st , 2nd and 3rd appellants were ordered each to pay a fine of MK35,000.00 or in default to serve a sentence of 6 months Imprisonment with Hard Labour. The lower court further ordered that from the MK35,000.00 fine imposed on each of the appellants, a sum of MK25,000.00 ordered from the fine of each of the appellants had to paid to Shire Highlands Hotel as compensation. The fines were all paid. It would appear that it is the 9 months Imprisonment with Hard Labour imposed on the 1st appellant that is the subject of this application.

FACTUAL BACKGROUND:

The incident that led to the case for which the 1st appellant and his accomplices were convicted occurred on the night of the 2nd of March, 2008 at Shire Highlands Hotel in Limbe. It is stated that the 1st appellant and his accomplices on the material day had gone to Shire Highlands Hotel where there was a family party, and as the said party drew to an end, the 1st appellant and 2nd appellant approached the exit gate whereupon they found that their two colleagues who had left the hotel earlier had been detained by the watchman at the gate, who locked the gate. and the said watchman had thereby blocked the 1st appellant's vehicle, on an allegation that one of the 1st appellant's colleagues had stolen a beer glass. From here the account of the appellants and that of the state differs, suffice to say, that it would appear that there was a bitter disagreement between the two parties and subsequently a fight ensued which resulted in some injuries and damages to property as particularised in the charge. I must also state that I have deliberately alluded to these facts, and that am alive to the fact that the court

[1] Criminal Procedure and Evidence Code, Cap. 8:01 of the Laws of Malawi
[2] Penal Code, chapter 7:01 of the Laws of Malawi

is not at this juncture considering the appeal, but that it was necessary to put to light the circumstances that led to the incident in question.

The 1st appellant was convicted for the offence of unlawful wounding contrary to Section 241 of the Penal Code, and was jointly convicted with the second appellant of the offence of malicious damage contrary to Section 344(1) of the penal code whilst all the three appellants were convicted of Common Assault contrary to Section 253 of the Penal Code. The 1st appellant was sentenced to 9 months Imprisonment with Hard Labour whilst the 2nd and 3rd appellants were fined and the said fines were paid. The three appellants have all given their notice of their intention to appeal against both their convictions and sentences and by the application herein, the 1st appellant through his legal practitioner Mr Chisale, of Fatch, Chirwa & Co, is applying for bail pending the determination of that appeal. The state which was represented by Mr Supedi, and Miss Longwe, Senior State Advocates, oppose the application.

GROUNDS OF APPEAL:

In the appellant's appeal they have raised five grounds of appeal. They contend that the lower court erred in law in finding that the burden of proof rested with the appellants to prove they innocence or self – defence (see p22 of Judgement). Secondly, the appellants contend that the lower court erred in law and in fact in convicting the appellants of the alleged offences as the available evidence failed to resolve the doubt whether or not the appellants acted in self – defence in which case, they must have had the benefit of the doubt. Thirdly, the appellants urge the court that the lower court erred in law in discarding the evidence of the three defence witnesses as they had come through cross – examination undented, unlike the evidence of the 3rd to 6th prosecution witnesses which the lower court adopted wholesale despite it having been seriously dented in cross – examination and which ought to have been discarded. Fourthly, the appellants contend that the lower court failed to adequately consider alternative non – custodial sentences before imposing a sentence of imprisonment on the 1st appellant, who has not previously been convicted of any offence, and that the lower court thereby failed to comply with Section 340 of the Criminal Procedure and Evidence Code. On the fifth ground, the appellants argue that the circumstances in which the offences were committed did not justify the imposition of a custodial sentence of 9 months' imprisonment with hard labour and that in the circumstances of the case the sentence of 9 months' imprisonment with

hard labour for the 1st appellant was manifestly excessive or wrong in principle.

Pausing here, I must state at the outset that the substantive appeal is not for consideration now, but the grounds of appeal had to be introduced in this ruling in order to deal with matters that are usually taken into account in an application for bail pending an appeal such as the one that is before me.

In his affidavit in support of the application sworn on his behalf by Mr Tchaka Ziban Nkuna from the firm of Messrs Chirwa and Company, the 1st appellant has laid information and grounds on which he relies that the application for bail pending appeal should be granted. In the said affidavit it is contended and that in the 1st applicants belief, that he has a strong case on appeal against both conviction and sentence and that therefore the appeal is likely to succeed. Further, the 1st appellant contends that the injuries sustained by the complainants were not that serious as evidenced by the medical reports, and that in any case, the lower court made compensatory awards to the victims including Shire Highlands Hotel. The 1st applicant therefore states that he believes he has a good case, against the sentence, since he is a first offender, not a habitual criminal and that the lower court should have therefore, so the 1st applicant contends, considered, a non – custodial sentence. As I said the state opposes the application and submitted that notwithstanding that the lower court made a mis – statement of the law, the defence of self – defence was not available to the appellants.

THE LAW:

To begin with, it is not in doubt that this court has, under Section 355(1) of the Criminal Procedure and Evidence Code, jurisdiction to grant bail to an applicant or to stay sentence pending the determination of his appeal. The said Section 355(1) is in the following terms:

> S355(1) "Subject to this Code, neither notice of intention to appeal given under Section 349, nor a petition of appeal under Section 350 shall operate as a stay of execution of any sentence or order, but the subordinate court which passed the sentence or made the order or the High Court, may order that any such sentence or order be stayed pending the hearing of an appeal and if the appellant is in custody that he may be released on bail

> with or without sureties pending such hearing".

Thus, a court can grant bail to an applicant pending an appeal. However, in order for the court to do this, the applicant must demonstrate that there are 'exceptional and unusual circumstances' militating in his favour. In the case of ***Kamaliza and Others V Rep***[1]**,** Unyolo J, as he then was, on the subject, said:

> "I pause here to say something about the Law. Yes, the law, because this is a Court of Law. It is now well settled that "exceptional and unusual circumstances" must be shown before a court will grant bail to a person who has been convicted and sentenced. The court's belief that the appeal will be successful and the likelihood that it can not be concluded within a reasonably short time, have been given as examples of such exceptional and unusual circumstances".

Further, Chatsika J had occasion to consider an application for an order for stay of sentence in ***Pandiker V Rep***[2]. Although the learned judge was not faced with an application for bail pending an appeal in that case, but an order for stay pending an appeal, he nevertheless made an illuminating statement on the point under consideration. What had happened in that case was that the applicant was charged in the First Grade Magistrate's Court at Thyolo, with causing death by dangerous driving contrary to Section 123(4) of the Road Traffic Act. He was convicted and sentenced to pay a fine of MK160.00 and was disqualified from driving for four years. He applied to the magistrate for an order staying the operation of the order of disqualification pending the determination of his appeal against conviction and sentence. The application was refused on the ground that staying the order was not mandatory. He subsequently made a similar application to the High Court. It was submitted on his behalf that (a) the power to stay the order of disqualification was discretionary and it did not appear that the magistrate had exercised the discretion judicially (b) for 11 months since the making of the order the applicant had been driving without committing any further offence (c) he had previously been driving for nine years without conviction. In view of (b) and (c) it was argued that he was not a menance on the roads and should be permitted to drive pending the determination of the appeal. The state opposed the application in principle on the ground that the applicant had not shown that any exceptional and unusual circumstances

[1] ***Kamaliza and Others V Rep*** (1993) 16(1) MLR, 198
[2] ***Pandiker V Rep*** [1971 – 72] ALR Mal 204

of hardship would arise if the order were put into effect immediately. The court held that the operation of an order of disqualification from driving will only be stayed pending an appeal if exceptional and unusual circumstances of hardship to the applicant are shown. Such circumstances may be the court's belief that the appeal will succeed in its entirety and the likelihood that it can not be disposed of within a reasonably short time. The court further held that there is an important difference in the practice of granting bail pending trial and pending an appeal. In the first case the accused is presumed innocent and provided the court is satisfied that he will appear for trial, it will not deprive him of his freedom unreasonably, in the second case, the accused has already been convicted and bail will only be granted where exceptional circumstances are shown. This is what the learned judge said on page 207:

> "An application for stay of an order such as this one is analogous to an application for bail pending an appeal. It is important to bear in mind the difference between an application for bail pending trial and an application for bail pending the determination of an appeal. Criminal courts have always considered the former favourably, whereas 'exceptional and unusual circumstances' have got to be proved before the latter can be granted. Before, a person is convicted of any offence he is deemed to be innocent, and provided the court is satisfied that the accused will report at his trial, it will not find it necessary to deprive him of his freedom unreasonably. The reverse is true with a person who has been convicted, because until the conviction is quashed by a superior court he is deemed to be guilty and does not deserve the free exercise of his freedom".

I can not agree more with these reasoning. In the case of ***Maggie Nathebe V Republic***[1], my brother judge Mwaungulu J, attempted to go a step further by saying that where the court has to decide whether bail should be granted to a person who has been convicted and serving a prison sentence, the real question is whether there are exceptional circumstances which could lead the court to conclude that the justice of the case would be served by granting bail. In this the court was doing no more but weighing the scales of justice, but it is clear, in my consideration opinion, that the learned judge still more acknowledged the hallowed principle that before bail can be granted to an applicant pending the determination of his or her appeal, 'exceptional and

[1] ***Maggie Nathebe V Republic*** Misc. Crim. Appl. No. 90 of 1997

unusual circumstances' must be shown to exist. This is what the learned judge said at page 2:

> "It is idle to suppose that in this disclosure I can improve on the statement of principle on which bail pending appeals can be made. The good work has been done by fellow common law judges in England. That principle has been accepted by this court first by Chatsika, J, in ***Pandiker V Rep*** [1971 – 72] ALR Mal 204, although that was not a case of bail pending appeal…The court relied on principles applicable to bail pending appeal. The court approved the English Decisions in ***R V Howeson*** [1936] 25 Crim App R 147. The case was followed in this court in a case involving bail pending appeal in ***Goode V Rep*** [1971 – 72] 6 ALR, Mal 351. The principle has been approved by the Supreme Court in ***Chihana V Rep*** MSCA Crim Appeal No. 9 of 1992… where this court or any court has to decide whether bail should be granted to the applicant who has been convicted and serving a prison sentence the real question is whether there are 'exceptional circumstances' which would lead the court to conclude that the justice of the case would be served by granting bail. That will be the case where ***Prima facie*** there is likelihood that the appeal will succeed or where there is a real risk that by the time the appeal is heard, the applicant will have served the sentence".

Thus, it is generally accepted that if the court is satisfied that there is a real likelihood that the appeal will succeed or indeed that there is a real risk that the sentence will be served by the time the appeal is heard, these do constitute 'exceptional and unusual circumstances' that would incline the court to consider favourably the application for bail pending appeal.

In the case of ***Howeson and Hardy V R***[1], the appellants were convicted of aiding and abetting the director of a company in the publication of a false prospectus and were sentenced, Howeson to 12 months and Hardy to 9 months in each case respectively. In considering Howeson's application for bail pending appeal, it was argued that the case went further that any previous charge under the section, and that there was a very substantial point of law to be argued as was evident from the fact that the judge granted a certificate for appeal on the conclusion of the case. It was also further argued that the applicant was a man of many business activities and had

[1] ***Howeson and Hardy V R*** (1936) 25 Crim. App. R 167

many affairs which required to be would up and the case was one of great complication and it would be useful if the applicant could have free access to his legal advisers in the preparation of his appeal. It was also observed that at the police and throughout the trial he was admitted to bail in his own recognizances. The Director of Public Prosecutions did not support or oppose the application but left the matter entirely in the discretion of the court.

It was held in that case that there were no 'exceptional circumstances' which would justify the granting of the application for bail pending appeal.

Until the late seventies, no attempt had been made to define what would constitute "exceptional and unusual circumstance". An attempt to define what would constitute 'exceptional and unusual circumstances' was perhaps made in the case of ***Joseph Watton V R***[1] in which an application for bail pending appeal was made by the applicant, Namely Joseph Watton, to the Court of Appeal after refusal by a single judge in Chambers in the Crown Court. The judge had granted the appellant leave to appeal against the sentence of 12 months that was imposed on him. It was held by the court in that case that the only ground for granting bail on an appeal to the Court of Appeal from the Crown Court, after refusal by a single judge:

> "[I]s the existence of special circumstances i.e. where it appears, ***prima facie*** that the appeal is likely to be successful or where there is a risk that the sentence will be served by the time the appeal will be heard".

The above test was cited with approval by Chatsika JA in the Supreme Court in the case of ***Chakufwa Thom Chihana V Rep***[2] wherein the eminent judge said:

> "In an application for bail pending an appeal it has to be borne in mind that upon conviction, the applicant lost his freedom of movement. In essence conviction is followed by punishment. The authorities have a duty to restrict as one of the forms of the punishment, his freedom, on the basis of conviction. He is no longer a free man. Therefore, in order to grant freedom to such a person whose fundamental freedom had been lost by the conviction, there must exist some 'exceptional and unusual

[1] ***Joseph Watton V R*** (1979) 68 Crim App R 293
[2] ***Chakufwa Thom Chihana V Rep*** MSCA Criminal Appeal No. 9 of 1992, (unreported)

> circumstances'. In other words the case must be so exceptional and unusual that having regard to all the circumstances surrounding it, the court will be justified in overlooking the order for imprisonment and make a Counter – order that he be released, at least until his appeal has been determined".

As to what circumstances or set of circumstances would be regarded as 'exceptional and unusual' the learned judge continued to say:

> "The case of ***Watton***(supra) makes an attempt at a guide as to what the court should regard as a test of the circumstances which may be regarded as 'unusual and exceptional'. It seems that where it appears, ***prima facie,*** that the appeal is likely to be successful or where there is a real risk that the sentence will be served by the time the appeal is heard, the test will have been satisfied. I think that the two factors must exist concurrently in order for the condition to be satisfied."

In the instant application, it would appear that the major thrust of the 1st appellant's application is the likelihood of success of the appeal, and further the probability or the risk that if the 1st appellant is not released on bail, he is likely to have served a substantial part of the sentence if not the whole sentence by the time the appeal is heard. As stated elsewhere in this ruling, the 1st appellant was sentenced 9 months Imprisonment with Hard Labour effective from the date of conviction for unlawful wounding. It is clear that the court has to deal with both aspects of the unusual or exceptional circumstances i.e. whether it appears ***prima facie*** that the appeal is likely to succeed and secondly whether there is a real risk that the sentence shall have been served by the time the appeal is heard.

I will examine the 1st limb first. The 1st appellant contends that there was misdirection by the lower court on the burden of proof. The 1st applicant submits that lower court erred in law in finding that the burden of proof rested with the appellants to prove their innocence. The 1st appellant therefore argued that, if this is correct as submitted, should as a matter of fact make this court grant the application.

The factual basis on which the conviction was arrived at by the lower court is not complex. On the 2nd March, 2008, there was a family party at Shire Highlands Hotel at which the 1st appellant and his colleagues were present.

As the merry making drew to an end, there was a commotion at the gate as the guards detained some of the colleagues of the applicant and alleged that one of the said friends had stolen a beer glass. It would appear that when the 1st appellant arrived at the gate, he tried to reason with the guards and suggested that perhaps a deposit could be paid for the said glass. This however was to no avail and instead a free for all bout ensued, which later led to the injuries sustained by the victims. From here the two accounts, that of the prosecution and the defence differs, as to who really begun the fight. However, the 1st appellant testified in the lower court that his vehicle was parked outside, and across the gate leading to Shire Highlands hotel and as he walked to the said car, he then came across the guards at the gate who were searching Mr Macholowe's car, and that when he enquired as to what was the problem he was told that his in – law, the 3rd appellant was being accused of having stolen the beer glass. According to him, it was the guards who started the fight, whilst the prosecution on the other hand stated that the fight was started by the appellants. Whilst I do not endeavour to pre – judge the appeal, I wish to observe that the story of the appellants in the lower court was that it was the guards who provoked the situation by overpowering the 1st appellant and other guards joined in beating the 1st appellant with baton sticks. The 1st appellant's retaliation therefore was in self – defence.

The section creating the offence of unlawful wounding is Section 241. The said Section of 241 provides:

> S241 "Any person who
>
> a) Unlawfully wounds another
> b) Unlawfully and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to or taken by any person
>
> Shall be guilty of a felony, and shall be liable for seven years.

It must be appreciated that the defence of self – defence is available to a person charged with the offence of unlawful wounding. However, it is quite surprising that the learned magistrate at p22 of his judgement made this startling statement. The learned magistrate at page 22 of his judgement stated:

> "I have already stated that the burden of proof rests with the accused to prove his innocence or self – defence".

With all due respect to the learned magistrate, this is not the correct exposition of the law. It must be observed that the lower court neither made finding as to whether the defence of self – defence was available to the appellants or not nor whether it was borne out by the evidence. And if there was doubt the same had to be resolved in their favour. To begin with Section 17 of the Penal Code provides:

> S17 "Subject to any express provisions in the Code or any other law in operation in Malawi, criminal responsibility for the use of force in defence of a person or property shall be determined according to principles of English Common law".

Now as I have stated the defence of self – defence is available to a person charged with the offence of unlawful wounding depending on the facts of the case. The principle behind the said defence is that when it is necessary to defend oneself, the use of such force as is reasonably necessary is not unlawful. According to the learned authors of Archbold, ***Criminal Pleading and Evidence***[1]**,** the onus is on the prosecution to prove beyond a reasonable doubt that the accused was not acting in self – defence when he unlawfully wounded the victim. The classic pronouncement upon the law relating to self – defence is that of the Privy Council in ***Palmer V R***[2] approved and followed by the Court of Appeal in ***R V McInnes***[3]: wherein, Lord Morris of Borth-y-Gest said:

> "It is both good law and good sense that a man who is attacked may defend himself. It is both good law and common sense that he may do, but may only do what is reasonably necessary. But everything will depend upon the particular facts and circumstance. Of these a jury can decide. It may in some cases be only sensible and clearly possible to take some simple avoiding action. Some attacks may be serious and dangerous others may not be. If there is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is so serious that it puts someone in immediate peril, then immediate defensive action may be necessary. If the moment is one of crisis for someone in immediate danger,

[1] Archbold, ***Criminal Pleading and Practice,*** 1994 at p19 – 39
[2] ***Palmer V R*** [1971]AC 814
[3] ***R V McIness*** 55 Crim App R 551

> he may have to avert the danger by some instant reaction. If the attack is over and no sort of peril remains, then the employment of force may be by way of revenge or punishment or by way of paying off an old score or may be pure aggression. There may be no longer any link with the necessity of self – defence. Of these the good sense of the jury may be the arbiter. There are no prescribed in summing – up. All that is needed is a clear exposition, in relation to the particular facts of the case, of the concept of necessary self – defence. If there has been an attack so that the defence is reasonably necessary, it will be recognised that a person defending himself can not weigh to a nicety the exact measure of his defensive action. If the jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought necessary that would be the most potent evidence that only reasonably defensive action had been taken…But their Lordships consider…that if the prosecution have shown that what was done was not done in self – defence then that issue is eliminated from the case. If the jury consider that an accused acted in self – defence or if the jury are in doubt to this, then they will acquit. The defence of self – defence either succeeds so as to result in an acquittal or it is disproved, in which case the defence is rejected…"

Now, it must be pointed out, that the old law that a man attacked must retract as far as he can has now disappeared. Whether the accused did retreat is only one element for the jury to consider. It is stated that the 'duty to retreat' factor was perhaps given too much weight in the case of ***R V Julien***[1] and possibly in ***R V McInnes***[2]. Thus a defendant is entitled to rely on a plea of self – defence even though he is unable to show that he demonstrated by his actions that he was unwilling to fight. Failure to demonstrate unwillingness to fight is merely a factor to be taken into consideration in determining whether an accused was acting in self – defence. Further, it must be noted that there is no rule of law that a man must wait until he is struck before striking in self – defence. If another strikes at him he is entitled to get his blow in first if it is reasonably necessary to do so in self – defence. See ***R V Dean***[3].

[1] ***R V Jilien 1953*** Crim App Rep 407
[2] ***R V McInnes 55*** Crim App 551
[3] ***R V Dean*** 2 Crim. App. Rep. 75

Where an accused raises the defence of self – defence, the burden of negativing it rests on the prosecution, but the prosecution are not obliged to give evidence in chief to rebut a suggestion of self – defence before the issue is raised, or indeed to give any evidence on the issue at all. If, on consideration of the whole of the evidence the jury are either convinced of the innocence of the prisoner or are left in doubt whether he was acting in necessary self – defence they should acquit See: ***R V Lobell***[1]. Further, it was held in ***Paul V R***[2] that in a case of unlawful wounding, where an accused raises the defence of self – defence the burden is on the prosecution to disprove that wounding was done in self – defence. Clearly therefore, the lower court erred in stating that the burden was on the appellants to show their innocence. I find that they had no such duty.

Pausing here, it is very clear that the statement of law that the lower court made at page 22 is a clear misdirection of the law, and that the 1st appellant's argument that the appeal is likely to succeed on this point is well founded, what if one also considers that the lower court seemed to have completely disregarded what the defence witnesses told the court. On these grounds therefore, it is my finding that the 1st appellant's appeal would very likely succeed.

Lastly on the second limb, I have considered that the sentence imposed was 9 months. As matters stand, the record of the appeal is not ready although the appellants have already filed their petitions and grounds of appeal. The court record had to be called to this court only for purposes of this application, and it is clear that the same is not ready. In my considered opinion therefore there is a real risk that by the time the appellant's appeal is heard the 1st appellant shall have served quite a substantial part of the sentence, if not the whole of it thereby rendering the whole exercise nugatory.

In these circumstances and by reason of the foregoing, I am inclined to exercise my discretion in favour of the applicant, and I hereby grant to the 1st appellant bail pending appeal on the following terms and conditions:-

1) The 1st appellant to surrender all his travel documents, if any, to the Registrar of the High Court.
2) The 1st appellant to be bounded in the sum of MK100, 000.00 cash.

[1] ***R V Lobell*** 41 Crim. App. Rep 100
[2] ***Paul V R*** [1923 – 60] ALR, Mal 933

3) The 1st appellant to produce two reliable sureties each of whom shall be bound in the sum of MK100, 000.00 not cash.
4) The 1st appellant not to leave the jurisdiction, except with the permission of the court, by making an application to a High Court judge.
5) The 1st appellant to enter into a bond to keep the peace whilst he is out on bail pending the determination of his appeal.
6) The 1st appellant to be reporting to the Officer In – Charge Limbe Police on every Mondays and Fridays before 4 pm.
7) The 1st appellant not to leave Blantyre District without first informing the Officer In – charge, Limbe Police as to his intended destination and the likely duration of his stay.

The sureties to be examined by the Registrar.

I further direct that the appeal be set down before me for hearing by 30th September, 2008.

Pronounced in Chambers at Principle Registry this 14th day of August, 2008 at Blantyre.

Joselph S Manyungwa
JUDGE