

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
MISCELLANEOUS APPEAL NO. 87 OF 2006**

**BETWEEN:**

**A.J. MGOMEZULU ..... APPLICANT**

**-AND-**

**THE ATTORNEY GENERAL ..... DEFENDANT**

**CORAM: HON. JUSTICE NYIRENDA**

Mr. Makono : Counsel for the Applicant

Miss L.N. Msiska : Court Interpreter

**R U L I N G**

The applicant in this matter seeks a number of declaratory orders but more importantly that the prosecution has failed to prosecute this case over a long period of time resulting into denial of justice. It is sought in that regard to declare that the State has no serious intention or at all to have the applicant charged again after he was initially discharged. It is consequently sought that the applicant be acquitted of the charges or that this Court makes such other orders as may be appropriate in the circumstances of the case.

The applicant was arrested and subsequently released on bail early 2005 on allegations of theft. He was subsequently brought before court and charged in Criminal Case No. 83 of 2005. On the 14<sup>th</sup> of October 2005 the First Grade Magistrate at

Lilongwe dismissed the case for want of prosecution. The Order of that court has been exhibited as Exhibit “RCM1”. It was further ordered that bail to which the applicant was subjected be set aside. It was also ordered that any property seized from the applicant on account of this case be returned to him.

In these circumstances I do not understand why this application is before this court. The Magistrate seized of the matter dismissed the charges against the applicant. He or she went on to make other consequential orders of the same nature as the orders that are being sought here.

Perhaps the only order that has not been complied with is the return of the applicant’s property. If that indeed is the case then the State is in contempt and that is a matter for contempt proceedings.

As for the prayer for damages, that would certainly be a subject matter for a separate action whereat even costs may be sought. In all, this application was unnecessary as no order can be made beyond that already made by the trial Magistrate. I make no Order.

Made in Chambers this 14<sup>th</sup> day of March, 2008.

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