

KK/SR/03/12/2008

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CONFIRMATION CASE NO. 701 OF 2009

THE STATE
VS
ALICK BONIFACE CHIUNDILENI

From the First Grade Magistrate court sitting at Nkhotakota
Being Criminal case No. 261 of 2008

CORAM: HON. JUSTICE CHINANGWA

ORDER IN REVIEW

The convict Alick Boniface Chiundileni from V: Chomveka, T/A: Mwadzama, D: Nkhotakota appeared before the First Grade Magistrate Court sitting at Nkhotakota on 9th December, 2008. It was on a charge containing two counts of Registering more than once under section 115(a)(iii) of the Parliamentary and Presidential Elections Cap 2:01 Laws of Malawi.

The convict was convicted on his on plea of guilty and sentenced to two terms of 18 months penal servitude. The terms were ordered to run concurrently. The convict is serving these terms at Nkhotakota prison.

This court record is before me for confirmation. What has exercised my mind is the propriety of the conviction on first count. Perhaps, it is a appropriate to summarise the facts. The convict on 2nd December, 2008 went to Mkhula registration centre(Mkhula) in Nkhotakota district where he registered as a voter for 19th the May, 2009 Parliamentary and Presidential Elections(PPE).

Then on 5th December, 2008 convict went to Kasipa registration centre(Kasipa) in the same district where he again registered as a voter for the same 19th May, 2009 PPE. A monitor at Kasipa a Mr Nelson recognized the convict to have registered at Mkhula on the 2nd December, 2008.

At that time convict was not approached he went home without suspecting anything. The matter was reported to police and Sgt Mandala conducted investigation. It was confirmed that convict had registered on 2nd December, 2008 at Mkhula. Police arrested convict for the offence of registering more than once. He was accordingly prosecuted.

It is appropriate at this juncture to examine the law relating to voter registration under the PPE. The relevant sections are 15 and 18. They state:

“S.15. Every citizen of Malawi residing in Malawi and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election.

S.18. A citizen eligible to register as a voter shall be registered only once”

According to section 15 of the PPE a person is eligible to register as a voter provided that he has attained the minimum age of 18 years. Whereas section 18 of the PPE bars an eligible voter to register more than once. When the convict availed himself for registration at Mkhula on 2nd December, 2008 he exercised his right to be registered as a voter. He did not commit an offence.

The convict having registered himself at Mkhula he was barred from registering again according to section 18 of the PPE. When the convict registered for the second time at Kasipa it was in contravention of the PPE. Part X11 of the PPE outlines some of the offences and penalties. Of relevancy to the present case is section 115(a)(iii) PPE. It provides:-

“Section 115. A person who-

(a) In relation to registration of voters-

(iii) obtains registration in more than one registration area shall be guilty of an offence,”

When convict registered at Kasipa on 5th December, 2008 he committed an offence under section 115(a)(iii) of the PEE. However, that did not make the earlier registration on 2nd December, 2008 at Mkhula illegal. The illegality was only affecting the second registration at Kasipa. The conviction on first count in respect of Mkhula is quashed and the sentence of 18 months penal servitude set aside.

I now proceed to sentence. The convict was sentenced to 18 months IHL. It is observed that section 115 of the PPE does not prescribe penalties. Section 118(1) of the PPE prescribes the general penalty as follows:

“Section 118(1) A person guilty of an offence under this Act for which no other penalty has been specified shall be liable to a fine of K5,000 and to imprisonment for two years.”

It is my considered view that 18 months IHL was on the higher side. Taking into account that he is a first offender. He pleaded guilty and did not waste court's time. The custodial term of 18 months is reduced to nine months IHL.

Order accordingly.

Pronounced in Chambers on 30th day of June, 2009 at Lilongwe.

R.R. Chinangwa
JUDGE