



CRIMINAL CASE NO. 1 OF 2009

THE REPUBLIC

V

DR E BAKILI MULUZI

AND

VIOLET WHISKY

Coram: Hon. Justice Kamwambe

Messrs Mwala and Saidi of counsel for the State

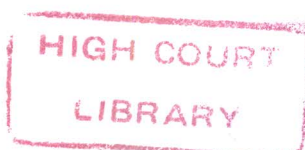
Messrs Chokotho and Banda of counsel for the Defendants

Mr PhiriOfficial Interpreter

ORDER AND DIRECTION

Kamwambe J

On the 13th June, 2016 this criminal matter came up for continued hearing. Mr Mwala lead counsel for the State stated that he was just re-engaged yesterday Sunday in the afternoon and he was not ready to proceed. He also wondered if the Anti-Corruption Bureau had summoned the witness, Mr Victor Banda, to appear before court today. He alerted the court that since his contract with Government had expired he did not appear in the last two occasions scheduled for hearing. Later on he brought up the issue of need to make a review of the counts because some witnesses are not available due to long time having expired and also to reconsider counts in which amounts are now admitted by the State



not to have been stolen by the 1st Defendant. He asked the court to grant them at least thirty days to prepare.

The defence had no objection to the request by the State but proposed further that when we next meet, we convene for mention only so that we are sure that trial shall proceed on the set days. I do not have any problems with the defence suggestion. However, the defence intimated to court that in the months July and August the 1st Defendant shall be engaged in Commonwealth missions. They also submitted that after review by the State, need might arise for them to look at any issues arising before trial proceeds. This would mean extra days required. Again, I have no problem granting the defence time to consider the reviewed counts and prepare their strategies. It is just fair to do so.

I feel compelled to comment on the conduct of the State in this matter. I thought this time round the State will act diligently to demonstrate their willingness to prosecute this matter as they promised, but their actions go the other direction. Mr Mwala told the court that he was just recruited to continue representing the State yesterday Sunday afternoon in a meeting he had with the Director of Anti-Corruption Bureau. The State must have known that counsel required to prepare himself mentally and physically for the case on Monday and that court was convening for hearing and not as if it were sitting for mention. Further, there is no explanation from the State why it recruited Mr Mwala at the eleventh hour a thing which was likely to affect progress of the case. As if that was not enough, they did not even alert the witness to be available in court on the 13th June, 2016. This means that they are not utilising their in house counsel optimally. I said last time that the court is observing the conduct of the State. It is proving now that the State is prepared to frustrate court's progress in the matter. This conduct which in my view borders on contempt of court is very unbecoming and needs to stop, otherwise the court shall consider measures to be taken against the State agency concerned. I advise the State

once again to demonstrate seriousness in the case at hand or come out plainly with its intentions.

I have looked at the Commonwealth events for the 1st Defendant. He is engaged between the 27th and 30th July, 2016 and between the 21st and 28th August 2016. I have taken into consideration time for preparation for departure and rest after arrival. Also I give time allowance for the Defendants to consult with their lawyers. I have not forgotten the defence request for time to study the counts as reviewed. Time for the State to review the counts started running on 13th June, 2016 and I give them a generous gesture to complete the exercise by 31st July, 2016. The defence will have all the time thereafter to the end of August to study the reviewed counts. The case shall come for mention on the 1st day of August and another one on the 17th August, 2016. I have done this so that the case is thoroughly prepared and truly ready for trial with minimum hitches when it proceeds. During mention defendants need not appear because at this time we shall just be verifying our readiness so that we have a smooth start.

In view of the above, I adjourn the case to 5th September up to 16th September, 2016, then from the 26th September to 7th October, 2016 to commence at the usual time of 9:00 am.

Pronounced in open Court this 17TH day of June, 2016 at Chichiri, Blantyre.



M L Kamwambe
JUDGE