



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION
CRIMINAL REVIEW NO. 9 OF 2016

BETWEEN:

GIFT MUNTHALI

-V-

THE REPUBLIC

Coram: Hon. Justice M L Kamwambe

Inspector Banda of counsel for the State

Maele of counsel for the Accused

Amosi ...Official Interpreter

ORDER

Kamwambe J

This matter has come for review under section 360 as read with section 363 of the Criminal Procedure and Evidence Code. Initially on the 31st October, 2016, I stayed the criminal proceedings before the Mulanje First Grade Magistrate Court after going through the application for stay, and I ordered for the lower court's record to be forwarded to me. I set the 24th day of November, 2016 for the hearing of the review.

The accused is charged with the offence of inconsiderate driving contrary to section 127 of the Road Traffic Act. The alleged accident took place on 15th April, 2015 and trial commenced on 15th September, 2016.

CRIMINAL DIVISION



The issue is whether the charge is statute barred in accordance with section 261 of the Criminal Procedure and Evidence Code.

Section 127 of the Road Traffic Act provides as follows:

- 1) *"No person shall drive a vehicle on a public road without reasonable consideration for any other person using the road.*
- 2) *Any person who contravenes subsection (1) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding K2, 000 or to imprisonment for a period not exceeding six months or to both such fine or imprisonment."*

It is necessary to reproduce section 261 as a whole for better comprehension, and it is as follows:

- 1) *Subject to subsection (2) and (3), the trial of any person accused of an offence triable by a subordinate court, other than any other offence punishable by imprisonment of more than three years, shall-*
 - a) *Be commenced within twelve months from the date the complaint arose: and*
 - b) *Be completed within twelve months from the date the trial commenced.*
- 2) *Where the person who committed the offence is at large, the period prescribed by subsection (1) within which to commence trial shall run from the date the person is arrested for the offence.*
- 3) *Where the cause of failure or delay to complete the trial prescribed by subsection (1) is not*

attributable to any conduct on the part of the prosecution, the court shall order such extension of time as it considers necessary to enable the completion of the trial.

- 4) *A person accused of an offence shall not be liable to be tried, or continue to be tried, for the offence of his trial that is not commenced or has not been completed within the period prescribed by subsection(1), and in such case the accused shall stand discharged of the offence at the expiry of such period.*

Under section 261 of the Criminal Procedure and Evidence Code, **all** offences with a maximum sentence of three years imprisonment must be commenced within twelve months from the date the complaint arose. The offence under section 127 of the Road Traffic Act falls within the application of section 261 CP&EC as the maximum sentence is six months. The accident took place on 16th April, 2015 and the caution statement was obtained in July, 2015, yet trial only commenced in September, 2016, seventeen months after the accident. I also confirmed with the State that the accused was never at large. It is clear that the trial is statutorily time barred and there is no excuse for extension of time. The accused is discharged forthwith. Property seized from the accused to be returned forthwith.

Pronounced in Open Court this 4th day of January, 2017 at Chichiri, Blantyre.



M L Kamwambe

JUDGE