



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION  
CRIMINAL APPEAL CASE NO.37 OF 2016**

**ISAAC SITOLE & ANOTHER  
V  
THE REPUBLIC**

**Hon. Justice M L Kamwambe**

Dr. J. Priminta of Counsel for the State

Maele of counsel for the Applicants

Amos..... Official Interpreter

---

**RULING**

**Kamwambe J**

I heard the appeal by the two Applicants and I delivered my judgment which was couched in this manner:

*"In the circumstances of this case where the Appellant has just served about 6 months out of the 96 months sentence, I order a retrial within three months while the convict is still in custody."*

Noting that the three months period within which the High Court had ordered retrial has expired, the Appellants moved the court for clarification. The Appellants are of the view that the State having failed to prosecute the case within three months as ordered by the High Court, the Appellants should be released. The



Appellants' position is that the case ought to have been completed within the three months period. The State is of the view that the court meant commencement to be within the three months period.

My order may have been ambiguous, however, I am still alive to clarify what I meant. What I meant is that commencement of the retrial be done within the three months period. I could not have meant conclusion of trial because there could be other factors unknown to me which could affect the smooth flow of the case, such as capacity in the magistrate.

I hope the above clarifies the issue.

**MADE in** Chambers this 23<sup>rd</sup> day of May, 2017 at Chichiri, Blantyre.



M L Kamwambe

**JUDGE**