



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION
CRIMINAL REVIEW CASE NO. 6 OF 2018**

BETWEEN

THE STATE.....RESPONDENT

AND

RICHARD KAMUNGA ETIEL.....1ST APPLICANT

AND

CLEMENT MICHONGWE.....2ND APPLICANT

CORAM: Hon. Justice M L Kamwambe

Chisanga of counsel for the State

Salamba of counsel for the State

Maele of counsel for the Applicants

Amos...Official Interpreter

RULING AND DIRECTION

Kamwambe J

This matter comes as a review case under section 42 (2) (F) (viii) of the Constitution and under sections 25 and 26 of the Courts Act and under sections 360 and 361 of the Criminal Procedure and Evidence Code (to be referred to as the CP & EC).

Mr Chisanga who is a private practitioner prosecuted this matter in the lower court upon obtaining due consent from the

office of the Director of Public Prosecutions under section 79 of the CP & EC. He wondered if he was expected to seek a further consent so as to defend the matter on behalf of the State. For want of this further consent Mr Chisanga was seeking an adjournment so that such consent is first granted to him before hearing the matter. So as to put himself on a safe side he has applied for such consent to be granted.

He further intimated that he had yet another reason for seeking an adjournment, being that the lower court record was incomplete or insufficient to allow a meaningful review to be undertaken.

Mr Salamba who works in the DPP'S office in Blantyre sought that the State be discharged since Mr Chisanga is there to represent the State anyway, but Mr Chisanga retorted that the State can never be discharged because he is merely acting on behalf of the State.

Section 79 of the Criminal Procedure and Evidence Code reads as follows:

- 1) *The Director of Public Prosecutions may, by writing under his hand, appoint generally, or in any case or any class of cases, any person employed in the Public Service or such other legally qualified person to be a public prosecutor.*
- 2) *Every public prosecutor shall be subject to the express directions of the Director of Public Prosecutions.*

Later the court was referred to section 80 of the Act which states as follows:

A public prosecutor may appear and plead without any written authority before any court in which any case of which he has charge is under inquiry, trial or appeal; and if any private person instructs a legal practitioner to

prosecute in any such case a public prosecutor may conduct the prosecution, and the legal practitioner so instructed shall act therein under the directions of the public prosecutor.

This section clears the mist in that Mr Chisanga would continue to prosecute the matter under the directions of Mr Salamba without necessarily obtaining a further consent so long as the client, who is Peoples Trading Centre Ltd chooses to be represented by Mr Chisanga (under the second limb of section 80 of the CP&EC). Mr Salamba does not need to appear physically in court so long as there is communication about the case between him and Mr Chisanga. On the other hand, Mr Chisanga continues to be a public officer in respect of this case which was previously prosecuted by him by virtue of the wording of the first part of section 80 CP&EC. What must be born in mind is that Mr Chisanga already had charge of this case as such, he only needs to inform the principal, which is the office of the DPP that he is continuing to attend to the matter pertaining to new developments because he is anyway acting under the directions of the DPP or public officer. There is no need to seek another written authority.

On the issue of the record, I order the Assistant Registrar, Mr Nkhata to provide those concerned with the lower court record which I have seen to be available.

Hearing of the review is adjourned to the 25th September, 2018 at 9.00 am

Made on this 12th day of September, 2018 at Chichiri, Blantyre.


M L Kamwambe

JUDGE