



The Republic of Malawi

**IN THE HIGH COURT OF MALAWI**

**MISCELLANEOUS CRIMINAL NO. 263 OF 2017**

**BETWEEN**

**VINCENT WANDALE ..... PLAINTIFF**

**-VS-**

**THE REPUBLIC ..... DEFENDANT**

**CORAM** : **HON. LADY JUSTICE I.C. KAMANGA**  
 : Taulo, Counsel for Applicant  
 : Masanjala, Counsel for the Respondent  
 : N'gambi, Court Interpreter

**JUDGMENT**

The applicant appeared before the Senior Resident Magistrate charged with the offence of publication of false news likely to cause fear and alarm to the public contrary to section 60 (i) of the Penal Code.

The particulars alleged that the applicant on or about the 25<sup>th</sup> day of October 2017 at Malawi Institute of Journalism Radio Station in the city of Blantyre published a false statement to wit: that Thyolo and Mulanje districts are now part of the African Traditional Republic of Mulanje and Thyolo for which he is the Supreme Leader when in fact the said districts are part of the Republic of Malawi, and that such statement was likely to cause fear and alarm among members of public in Malawi.

The matter was set down for hearing on 30<sup>th</sup> October 2017. When the court presented itself for hearing, the Prosecutor that is in charge of the matter addressed the court. He informed the court that he had brought the applicant to court so that he would be informed of the grounds of his detention as the court had issued a warrant of arrest on the previous day. The prosecutor further informed the court that based on the investigation report on the applicant, he opined that the applicant's circumstances were such that they raised doubts on the soundness of the applicant's mind.

Hence the prosecution sought that the court should invoke section 133 (1) (b) of the Criminal Procedure and Evidence Code for the applicant to be referred to a psychiatric hospital or any other place to assess on the applicant's soundness of mind. This would assist in considering the applicant's plea.

The applicant's counsel was the defence counsel in the trial court. Applicant's counsel objected to the prosecution's prayer for the applicant to undergo psychiatric assessment. Applicant's counsel advised the court that his client had

told him that he was sane and that there was no need for the applicant to undergo the medical assessment.

Applicant's counsel indicated that since his client did not desire the assessment, and no inquiry had been done by the court, the applicant could not be subjected to any examination. Applicant's counsel advised the court that his client was fit to stand trial. Again applicant's counsel advised the court that since it had not formed any opinion on the applicant's state of mind, the applicant should stand trial.

Applicant's counsel referred to section 11 of the Penal Code and indicated that the applicant should be presumed to be a person of sound mind.

#### **THE TRIAL COURT DETERMINATION**

After considering the positions of both parties, the trial court determined that the "question whether an accused person is of unsound mind may be raised by either prosecution or the defence or the court itself. And that the provisions of S 133 (i) of the Criminal Procedure and Evidence Code must be construed to mean that once the court is alerted of the fact that the accused may be of unsound mind, it is required to invoke the provisions and call on a medical practitioner for his opinion.

That the test of unfitness to plead is whether the accused person will be able to understand the course of the proceedings so as to make a proper defence. That his ability to understand question and reply rationally is a relevant factor.

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The trial court concluded that from the prosecution presentation, it opined that the interest of justice required that the applicant should undergo mental examination. And that it was in the best interest of the applicant, the court as well as the State that the examination should be conducted before plea is taken.

Directions were given for the applicant to be examined at Kamuzu Central Hospital on the soundness of his mind, his capacity to understand the course of proceedings so as to make a proper defence, his ability to understand questions and reply rationally, and whether the applicant would be able to understand the evidence given, or give his evidence. Upon examination by the medical practitioner, the court determined that the applicant should be admitted to Zomba Mental Hospital.

Whereupon the applicant moved this court, ex parte for stay of execution of the order of the trial court. The application was made under Order 10 rule 8 of the Courts (High Court) (Civil Procedure) Rules. The grounds for seeking stay included that the trial court decision was unlawful and ultra vires and inconsistent with section 133 of the Criminal Procedure and Evidence Code.

That the trial court fettered its discretion when it heavily relied on medical report that emanated from government funded Hospital and disregarded the applicant's

plea to have his mental status assessed by a private Independent Medical Institution. That the decision is to order the applicant to be admitted at Zomba Mental Hospital is unlawful and unconstitutional as it is contrary to the applicant's right to choose a medical practitioner for health treatment.

There was a sworn statement made by his counsel in support of the application. There were no arguments to support the application. The court ordered that application be made inter-partes.

The State filed a preliminary application on grounds that the application for stay of execution by the application was wrongly premised in law. That the application was not appropriate as it related to criminal law and not civil law. And that the applicant had not disclosed the desired relief.

Both counsels attended court for the preliminary hearing.