



**IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
HOMICIDE CAUSE NO. 13 OF 2018**

BETWEEN

THE REPUBLIC

AND

MAXWELL MATCHINA AND TWENTY ONE OTHERS

CORAM : **Z NTABA, J.**
: Dr. S. Kayuni, Mr. Masanja, Mr. Matonga, Counsel for the State
: Mr. M. Chamkalala and Mr. T. Kalua, Counsel for the 1st to 5th, 8th to 12th
Accused
: Mr. T. Chirwa, Counsel for the 7th Accused
: Mr. Chidothe, Counsel for the 14th to 22nd Accused
: Mr Twea, Counsel for the 6th and 13th Accused
: Mr. A. Nkhwazi, Court Interpreter
: Mrs. G. Chirombo, Court Recorder

Ntaba J.

RULING

1.0 BACKGROUND

- 1.1 The trial for the above stated individuals commenced on 23rd August, 2018. The State at plea taking proffered seven (7) charges against the twenty two (22) accused. The charges were varying for the accused. The seven counts were murder contrary to section 209 of the Penal Code, causing another person to harm a person with disability contrary to section 224B(1)(a) and 224B(1)(a) of the Penal Code, transacting in human tissue human tissue contrary to section 224A(ii) of the Penal Code, extracting human tissue contrary to section 224A(a)(i) of the Penal Code, possession of human tissue contrary to section 224A(b)(ii) of the Penal Code and

Trafficking in persons contrary to section 14)(1) of the Trafficking in Persons Act. The deceased person was Mark White Masambuka, a person with albinism.

- 1.2 The State prayed that they should discontinue charges against the 13th to 22nd Accused until such a time that they are ready to proceed with their cases. The court granted the prayer as per the provisions of section 77 of the Criminal Procedure and Evidence Code.
- 1.3 The court proceeded to take plea for the remaining 12 Accused. Thereafter, the court proceeded to undertake the directions aspect of section 303 of the Criminal Procedure and Evidence Code.

2.0 CONCLUSION

- 2.1 The court has noted that the State is ready to proceed with trial of 12 accused, that is, the 1st to 12th accused on the charge sheet following the discharge of the ten (10) accused.
- 2.2 The court is mindful that there is a particular issue in terms of the 4th Accused initial plea of guilty to the 1st count. Notably, the State undertook a medical examination of him regarding fitness to stand trial however following my observations of him throughout the preliminary issues in court, this court forms an opinion that before it reviews its decision to reverse the court's decision amending the entered plea of not guilty to one of plea of guilty as prayed by Legal Aid Bureau who are his lawyers. It needs a full and detailed medical report which shall include –
 - 2.2.1 his state of mind when he committed the offence;
 - 2.2.2 his ability and/or capacity to comprehend the charges framed against him;
 - 2.2.3 his ability and/or capacity to realize the seriousness of the penalties if the plea of guilty is entered;
 - 2.2.4 his ability or capacity to follow the court proceedings;
 - 2.2.5 his ability or capacity to help his lawyer to defend his case including the plea of guilty;
 - 2.2.6 his ability and or capacity to maintain appropriate and in court;
 - 2.2.7 his ability and or capacity to give his own evidence should need arise or he elects to do so; and
 - 2.2.8 therefore this court is making a Reception Order for seven (7) days for Mr. Alfred Yohane to be kept at Zomba Mental Hospital for the said days under section 133 of the Criminal Procedure and Evidence Code. A report to be furnished to the court at the end of the said 7 days.

- 2.3 In terms of the request by Legal Aid Bureau to have their 10 clients moved to one central prison which the State objected to and requested that it be restricted to two prisons only. At this point, noting the concerns raised by the State, I will be denying that request as we need to ensure the Accused's safety. As such I am requesting a written assessment from the police through the State be furnished as to whether keeping the accused in Zomba and Domasi is safe. Such report be done and furnished to the court by 29th August, 2018. The court shall review and make another appropriate order then.
- 2.4 In terms of the preliminary applications by Counsel Chirwa and Twea, this court orders that those be filed and served by 28th August 2018. The State and if Legal Aid Bureau want to respond to the applications should do so by 31st August, 2018. A ruling shall be delivered by 6th September 2018.
- 2.5 The fourteen (14) days prayed for by the Legal Aid Bureau to allow them to confer and investigate possible defences for the their clients is granted.
- 2.6 Trial management shall be as follows –
- 2.6.1 trial bundles to be resubmitted by State which are properly tabulated including removal of the documentation of the 10 discontinued accused, chronology of events, list of witnesses and in their order of testifying;
- 2.6.2 State's preliminary applications to be made by 29th August 2018;
- 2.6.3 court management especially for the child witnesses and *locus in quo* to be finalized and plans supplied to all sides by 31st August, 2018;
- 2.6.4 trial shall be for the ten (10) days as prayed to allow for both State and defence to put on their cases. The trial dates be from 8th to 19th October 2018. Trial shall be held in Zomba except for the locus in quo.
- 2.7 Where possible and at the earliest time before trial commences, counsel for the defence after conferring with their clients to indicate the possible number of witnesses to allow for budgeting by the State.
- 2.8 For the media covering this trial, this court orders that they do so responsibly and ensure that people's privacy and dignity is respected throughout the trial especially for the victim's family. This is a sensitive issue and should be treated as so. In terms of the children, to ensure if they learn of their identities through court records but shall not report nor disclose their identities. Such should be anonymized for reporting especially regarding their testimony.

- 2.9 All files disclosed to Counsel Kamwendo shall be transferred to Counsel Twea with the assistance of the court.
- 2.10 The Court shall assign the same two interpreters from the High Court throughout the trial but shall borrow a Yao interpreter from the Chief Resident Magistrate to ensure such is available during the trial dates.

Made in chambers this 23rd day of August, 2018.



Z.J.V. Ntaba
Judge