



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION**

MPHATSO MAKANJA

MISC CRIMINAL CAUSE NO. 17 OF 2018

MPHATSO MAKANJA.....APPLICANT

-V-

THE REPUBLIC.....RESPONDENT

CORAM: Hon Justice M L Kamwambe

Francisco of counsel for the State

Maele of counsel for the Applicant

Amos...Court Clerk

ORDER

This matter was commenced by summons for directions under the Courts Inherent Jurisdiction and section 16 of the Criminal Procedure and Evidence Code as read with section 5A of the Courts Act.

The application was filed with this court on the 10th day of August, 2017. The affidavit of counsel Maele stated that the Applicant intended to file a review of his conviction but efforts to trace the file proved futile. On 30th May, 2018 the Applicant wrote

the Registrar for the file but there was no reply. On 20th of August, 2018 I ordered the Registrar to reply to the letter from the Applicant within three weeks. On 26th October, 2018 the Registrar replied that they failed to find the file. On 7th February, 2018 court sat to hear the application from the Applicant seeking orders as the court deems fit.

The Applicant is serving a sentence of 7 years after being convicted on the charge of defilement in Mulanje FGM Criminal Case No. 387 of 2016.

The missing of the record should be interpreted in favour of the convict who is denied the opportunity to appeal or apply for review.

I thus make the **ORDER THAT** the Applicant **BE RELEASED IMMEDIATELY** unless he is serving sentences for other convictions.

Made in Chambers this day of 20th February, 2019 at Chichiri, Principal Registry, Blantyre.



M L Kamwambe

JUDGE