IN THE HIGH COURT OF MALAWI

ZOMBA DISTRICT REGISTRY

CRIMINAL APPEAL CASE NO 15 OF 2018

(Criminal Cause No 932 of 2017 in the Senior Resident Magistrate's Court Sitting at Zomba)

THE REPUBLIC……APPELLANT

VERSUS

GEORGE THAPATULA CHAPONDA……RESPONDENT

CORAM: HON. JUSTICE R.E. KAPINDU

Mr. A. Likwanya of Counsel for ACB

Mr. B. Phiri of Counsel for ACB

Mr. I. Saidi of Counsel for ACB

Mr. Chokotho, of Counsel for the Respondent

C. Nyirenda, Court Clerk & Official Interpreter

JUDGMENT

KAPINDU, J

1. Until February 2017, the Respondent herein, Dr. George Thapatula Chaponda, MP, was a Cabinet Minister serving in the portfolio of

Minister of Agriculture, Irrigation and Water Development in the Malawi Government.

2. Between the latter half of 2016 and the time of being relieved of his Cabinet position, Hon. Dr. Chaponda was embroiled in allegations of suspicious or fraudulent involvement in the procurement of maize from the Republic of Zambia through the State owned Agriculture Development and Marketing Corporation Ltd (ADMARC). As Minister responsible for Agriculture, Hon. Dr. Chaponda was, at the material time, the Ministerial policy holder in the Malawi Government in respect of the affairs of ADMARC.

3. The allegations against Hon. Dr. Chaponda reached a crescendo at the end of December 2016 and the start of January 2017 when His Excellency the President appointed a Commission of Inquiry, chaired by Retired Chief Justice Anastasia Msosa, SC, to inquire into the whole scheme of the alleged suspicious importation of maize into Malawi from Zambia by ADMARC.

4. The Court's examination of the record from the trial Court – the Court of the Senior Resident Magistrate at Zomba (the Court below), shows that the Report of the abovesaid Commission of Inquiry and its recommendations were never brought by the prosecution before the the Court below. The consideration of such Report, including the findings and recommendations thereof, is therefore not germane for purposes of the determination of this appeal. This Report, which is in the public domain, is simply mentioned here in order to provide some background context to the present matter.

5. Similarly, a Joint Parliamentary Committee on Agriculture and Irrigation and the Public Accounts Committee on the Inquiry into the Allegations of Fraud in the Procurement of Maize from Zambia by the Malawi Government through ADMARC, conducted a formal

Parliamentary inquiry into the alleged fraudulent deal. Again, an examination of the record of the Court below shows that the Report of this joint Parliamentary Committee was never presented before the Court or raised in any way as a relevant issue before the Court by the prosecution. It is therefore, likewise, not relevant for purposes of these proceedings, save to lay an appropriate background to the matter herein. This background is particularly significant in the light of the public interest character of the present matter.

6. Hon. Dr. Chaponda was jointly tried with Mr. Rashid Tayub in the Court below in respect of the said allegations. The particulars of the charges they faced are particularized later in this judgment. It suffices for present purposes to mention that they were both found with no case to answer on all the charges laid against them and they were therefore accordingly acquitted on all the charges.

7. The Anti-Corruption Bureau (ACB), which prosecuted the matter in the Court below, is dissatisfied with the decision of the learned Senior Resident Magistrate. It argues that some of the findings of the Court below were wrong in law. The ACB has therefore appealed against that decision before this Court.

8. This is the Court's judgment following the said appeal.

9. It must be made clear at the outset that the law narrowly circumscribes the limits of the right of appeal by the prosecution in any criminal case before our courts. Prosecutorial powers in Malawi are ultimately vested in the Director of Public Prosecutions under Section 99 of the Constitution. According to Section 346(4) of the Criminal Procedure and Evidence Code (CP & EC), Cap 8:01 of the Laws of Malawi:

> The Director of Public Prosecutions may appeal to the High Court against any final judgment or order,

including a finding of acquittal of any subordinate court, **if, and only if,** [s]he is dissatisfied upon a point of law. [The Court's emphasis].

10. An appeal from the Court below to this Court must therefore only be entertained if, and only if, it is based on a point of law. It is not up to this Court to reopen pure matters of fact which were ventilated before and properly determined by the Court below for reconsideration, review or re-assessment, unless doing so will involve the determination of a point of law upon which the Director of Public Prosecutions [the prosecution] was dissatisfied. Thus, whilst appeals before this Court in criminal matters are dealt with by the Court by way of rehearing, when the appellant is the prosecution, such rehearing is narrowed down to matters of law or matters that are relevant for the determination of issues of law appealed against.

11. It is in this respect that the State has raised two issues on appeal, both resting on the application of the law to the facts as revealed by the evidence in the Court below.

12. First, the ACB argues that the Court below erred in law in finding that there was no evidence that the accused person, the Respondent herein, committed the offence of giving false information to the Bureau contrary to Section 14 (1) (a) of the Corrupt Practices Act (Cap 7:04 of the Laws of Malawi) (the CPA). At trial, the ACB alleged, on this count, that the Respondent herein, on or about the 21st day of February, 2017, at his house in Area 43 in the city of Lilongwe, gave false information to the Bureau that the MK95, 000,000.00 that was found in his house belonged to the Democratic Progressive Party (DPP).

13. Second and lastly, the ACB argues that the Court below erred in law in finding that there was no evidence that the Respondent herein committed the offence of possession in Malawi of Foreign Currency,

contrary to regulation 25 (1) of the Exchange Control Regulations as read with Section 3 of the Exchange Control Act. On this count, the ACB alleged that the Respondent herein, on or about the 21st day of February, 2017 at his house in Area 43 in the City of Lilongwe, was found in possession of foreign currency namely 57,500 United States Dollars and 22,370 South African Rands without any lawful justification.

14. When Court convened on 17th January 2019 on the hearing of the appeal, Counsel for the Respondent, Mr. Chokotho, raised an issue *in limine*. He invited the Court to observe that in terms of sections 349(1) and 349(4) of the CP & EC, the law stipulates that an appeal is supposed to be brought in the form of a petition which must be filed within 30 days of receipt of the finding, sentence or order in a case where the appellant asked for the same; or 30 days from the order, finding or sentence if the appellant did not ask for a copy in accordance with section 349(2) and (3) of the CP & EC.

15. Counsel Chokotho submitted that a clear reading of the applicable provisions show that the High Court is mandated not to entertain an appeal unless a Notice of Intention to Appeal is filed within ten days of the date of the finding, sentence or order appealed from unless there is good cause shown for failing to do so.

16. Counsel cited the case of *Chiumbu v Republic*, 9 MLR 87, where the Appellant applied, under section 349(4) of the CP & EC, for the High Court to admit his appeal which had been brought out of time, after the 10 days' period had elapsed. Counsel cited the remarks of Mead J who, in dismissing the application, stated that:

> "In the case of *R v Lesser* (1939) 27 Cr. App. R 69, where the Court of Appeal was considering an

application for leave to appeal out of time, Humphreys J said (27 Cr App at 71):

'There appears to be a danger of the rules which govern the proceedings of this Court being regarded as of no importance. The Court has listened to repeated applications for extensions of time for leave to appeal, which have been put forward as if granting such an application were a mere matter of form. While the Court is always willing to listen to such an application on the ground that the applicant did not understand what the points in issue were, or that he could not read or write, or on some ground of that kind relating to the particular case, it should be clearly understood that a person who has failed to appeal within ten days allowed by statute has lost his right to appeal.'

Counsel also cited the case of *R v Cullen* (1942) 28 Cr. App. R 150 where Lord Calde CJ stated, at pages 150-151, that:

"We have constantly refused applications for extension of time within which to make an appeal when there have been no specific merits brought to our notice which have to justify the Court in extending the time…"

With those decisions I respectively agree. The appellants have shown no good cause to enable the Court to admit the appeal. I dismiss the application."

17. Counsel Chokotho argued that in the instant matter, there is no application by the appellant for leave to extend time within which to appeal and that no good cause has been shown for extending times within which to Appeal. Counsel contended that although the issue of the delay in filing the Notice of Intention to Appeal was raised on 17th

December 2018 when Court first convened on this matter, as at the date of hearing the Application on 17th January 2019, the State had still filed no application to show good cause why the appeal should be entertained. He contended that as it was, it seemed that the State took the approach that the appeal ought to be heard anyway.

18. Counsel further argued that by indicating that the appeal should be brought within 30 days, the Court below did not make any abridgment or extension of time. He pointed out that in terms of section 350 of the CP & EC, it is very clear that bringing an appeal must be by way of Petition and that the requirement under section 349 of the Code must precede the bringing of an appeal. It was his contention that the lower Court did not abridge the time within which the State was supposed to indicate its intention to appeal.

19. In the circumstances, Counsel submitted, this Court is entitled, under section 349(1) of the CP & EC not to entertain the appeal.

20. In response to the preliminary objection raised by Counsel for the Respondent, Counsel Chakhala for the State (the ACB) begun by drawing the Court's attention to the provisions of sections 3 and 5(2) of the CP & EC. He stated that the State would mainly rely on section 3 of the CP & EC which is to the effect that substantial justice should be done without undue regard to technicality.

21. Counsel Chakhala stated that the Court below indicated that the parties were at liberty to appeal within 30 days from the date of the ruling. He argued that in the view of the State, this was interpreted to mean that the State should file its notice of Appeal, which included the Notice of intention to appeal, within those 30 days. He stated that the State regarded this as an extension of time by the Court below, using the Court's own discretion.

22. Counsel Chakhala proceeded to state that he believed that the State was actually not alone in that understanding because the Respondent himself did not object when the state filed the Notice of Intention to Appeal. He invited the Court to recall that it was in fact the Court that noticed that there was a difference between a Notice of Appeal and a Notice of Intention to Appeal.

23. Counsel argued that upon perusing various authorities, he had come to conclude that these terms were in fact used interchangeably. He stated that for instance, in the case of *Chiumba v Republic* (above), Mead J at page 88 stated that the Appellant filed his Notice of Appeal and that by that he in fact meant a Notice of Intention to Appeal. Counsel referred to the remarks of the Judge at page 89 of the Law Report where the Judge referred to failure to appeal within 10 days. Counsel also referred to the case of *Cuthbert Mwatero Chifwenthe v Republic* [2012] MLR 64 where Manda J used the terms Notice of Appeal and Notice of Intention to Appeal interchangeably. He argued that this shows that Courts have been "complicit" in "misleading the Bar". Counsel Chakhala therefore submitted that the language of the Court below misled the State.

24. Counsel also invited this Court to take notice that as prosecuting officers of the ACB, they work on behalf of the Director General and under the general direction of the Director of Public Prosecutions. He therefore stated that within the 10 days prescribed by statute, the prosecuting officers could not just file a Notice of Intention to Appeal without getting prior directions from their superiors. He stated that he made reference to this issue because Counsel for the respondent had insinuated that the State was hesitant to file the Notice of Intention to Appeal. Counsel Chakhala argued that, by contrast, at no time did the prosecution take the appellate process herein for granted. He stated that when the Court pointed out the differences, the State was anxious and checked the law. He stated that the faith of the prosecution was

that the appeal could still be heard if good cause was shown. The question then, according to Counsel, was what that good cause was.

25. Counsel contended that the first good cause was that the State was misled by the lower Court. The State thought that the lower Court had waived the 10 days' period within which to file a Notice of Intention to Appeal. He further stated that as prosecutors, they had to wait for directions from the Director of Public Prosecutions and the Director General of the ACB, and that it would therefore not be fair to impute lack of hard work on the prosecuting officers when decisions had to be taken by the Director General as their superior. Counsel stated that when he consulted the Director General, the Director General told him that he believed that the ACB had 30 days within which to appeal and that, to them, this meant both filing the Notice of Intention to Appeal and filing the Petition of Appeal.

26. Counsel therefore prayed that the appeal should not be dismissed on the grounds of the objection raised. He stated that it was his belief that the reasons that the State had advanced showed that there was good cause to allow the appeal to proceed. He further stated that the case of *Chiumba v Republic* could be distinguished because in that case, the delay was for 53 days whilst in the present case, the State filed its Notice of Intention to Appeal within 30 days. Counsel therefore prayed that the Court should be lenient on the Appellant and proceed to hear the appeal.

27. In reply, Counsel Chokotho maintained that when one examines the provisions of the CP & EC, and in particular section 349(2) thereof, there can be no doubt that the 30 days mentioned in the judgment of the lower court referred to the filing of the actual appeal, and that an appeal is brought by way of Petition under section 350(1) of the CP & EC. Counsel stated that it appeared that the only purported good cause was that Counsel for the ACB sought directions from a more seasoned

Counsel in the Director General of the Bureau who interpreted for him the right of appeal.

28. Counsel Chokotho also expressed concern at the continuous insinuation by the Appellant's Counsel that the Court below misled the prosecution. He stated that this imputed *mala fides* (bad faith) on the part of the Court. It was his contention that Counsel should be very slow in casting aspersions of *mala fides* or lack of integrity on the part of the Court. I should immediately say that I fully agree with Counsel Chokotho on this point.

29. Counsel further stated that when the prosecution was properly understood, they were, in the final analysis, not saying that the lower Court extended the time within which to file a Notice of Intention to Appeal, but that they were saying that since this Court had pointed out differences between the filing of a Notice of Intention to Appeal and the filing of the appeal itself which is done through petition, they feel they were misled by the lower Court.

30. I must begin by observing that in the present case, the Ruling of no case to answer by the Court below was delivered on the 18th of May, 2018, whilst the Notice of Appeal, which was expressed to be filed under section 346(1)(4) of the CP & EC, as well as the Petition of Appeal, were both filed with the Court on the 14th of June, 2018. This was 27 days after the said Ruling of the Court below.

31. I should also believe that in expressing that the Appeal herein was being brought in terms of section 346(1)(4) of the CP & EC, the Appellant was simply making an innocent typographical mistake and that the intention was to state that the Appeal had been filed in terms of sections 346(1) and 346(4) of the CP & EC. For ease of reference, section 346(1) of the CP & EC provides that: "Save as hereinafter provided, any person aggrieved by any final judgment or order, or any

sentence made or passed by any subordinate court may appeal to the High Court", whilst section 346(4) of the CP & EC provides that:

> The Director of Public Prosecutions may appeal to the High Court against any final judgment or order, including a finding of acquittal of any subordinate court, if, and only if, he is dissatisfied upon a point of law; and the provisions of this Part shall apply to an appeal under this subsection with such modifications as the circumstances may require.

32. I now turn to the language of the text of section 349 of the CP & EC in respect of which the Respondent's objections are premised. The language of Section 349 of the CP & EC is, to my mind, clear and unambiguous. The section states that:

> (1) No appeal to the High Court shall be entertained from any finding, sentence or order unless the appellant shall have given notice in writing to the High Court of his intention to appeal within ten days of the date of the finding, sentence or order appealed
>
> Provided that—
>
> (a) where an appellant in custody delivers to any person in whose custody he has a notice in writing of his intention to appeal, for transmission to the High Court, he shall be deemed to have given such notice to the High Court;
>
> (b) if an appellant is unrepresented and states his intention to appeal in the court by which the finding, sentence or order was made and at the time thereof, such statement shall be deemed to be a notice in writing to the High Court of his intention to appeal.

(2) If the appellant, at the time when he gave notice of his intention to appeal, asked for a copy of the finding, sentence or order appealed against, the appellant shall enter a petition, in accordance with section 350, within thirty days of the date of his receipt of such copy, or his appeal shall not be entertained.

(3) If the appellant, at the time when he gave notice of his intention to appeal, did not ask for a copy of the finding, sentence or order appealed against, the appellant shall enter a petition in accordance with section 350, within thirty days of the date of the finding, sentence or order appealed against, or his appeal shall not be entertained.

(4) Notwithstanding the other provisions of this section, the High Court may, for good cause, admit an appeal although the periods of limitation prescribed in this section have elapsed.

33. A number of things are easily discernible from this provision. First, in subsection (1), the section states that no appeal from a Magistrate Court to the High Court *"shall be entertained"* unless the appellant gives the High Court notice in writing of his or her intention to appeal within 10 days from the date of the finding, sentence or Order appealed against. The prohibition against entertaining criminal appeals that do not comply with this requirement has been couched in clear and mandatory terms. The use of the term "shall" lays bare the mandatory character of the prohibition. The cases of *Chiumbu v Republic* [1978-80] 9 MLR 87; *Kassim Ligomeka v Republic* [2012] MLR 229 (HC); and *Cuthbert Mwatero Chifwenthe v Republic* [2012] MLR 64 (HC), among others, all exemplify the mandatory character of the provisions of section 349(1) of the CP & EC.

34. The proviso to subsection (1) of section 349 of the CP & EC clearly does not apply when the appellant is the State as is the case in the instant matter. It applies when the appellant is the accused person. Again it is clear that subsections (2) and (3) of section 349 of the CP & EC are utterly unhelpful to the case of the State. They both make it clear that the filing of a Notice of Intention to Appeal, as required under subsection (1), is peremptory as a general rule.

35. It is subsection (4) that would provide a potential lifeline to the State's case. It states that the High Court may, for good cause, admit an appeal although the periods prescribed in section 349 of the CP & EC have elapsed.

36. Pausing there, I observe that in the case of *Kuthawe & Another v Republic*, MSCA Miscellaneous Criminal Appeal No. 8 of 2015 (unreported), Kapanda JA elaborately considered the import of section 349 of the CP & EC, and in particular, section 349(4) thereof. The learned Justice of Appeal asked the poignant question: "What is this Court's understanding of the scheme of section 349, in particular section 349 (4) of the Criminal Procedure and Evidence Code?" He proceeded to state that:

> the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties (the state and the appellant). In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light heartedly disturbed.

37. In the present case, the decree holder is the Respondent. He has, in his favour, a decree (ruling) of no case to answer and a consequent acquittal on all charges that were preferred against him in the court below. According to the Supreme Court of Appeal in *Kuthawe & Another v Republic*, the Respondent herein, once the limitation period prescribed under section 349(1) of the CP & EC had expired, obtained a benefit – a legal right in fact - under the law to treat the Ruling of the Court below as beyond challenge. The right to treat the decision of the Court as beyond challenge in terms of section 349 of the CP & EC should, according to *Kuthawe & Another v Republic,* not be lightly disturbed or interfered with. The learned Judge went on to state that:

> it is necessary to emphasize that even after sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 349 (4) of the Criminal Procedure and Evidence Code. If sufficient cause is not proved, nothing further has to be done; the application for excusing delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay.

38. Kapanda JA also emphasized the need for courts to ensure that they give effect to the intention of the legislature when applying the provisions of section 349 of the CP & EC. He said:

> It is [a] settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In

> other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature enacted the provisions of Section 349, with particular reference to section 349 (4) of the Criminal Procedure and Evidence Code, all these provisions have to be given their true and correct meaning and must be applied wherever called for.

39. It is therefore the duty of this Court to ensure that the provisions of section 349 of the CP & EC are given their proper effect and applied in a manner that is consistent with their true meaning.

40. From what I have already stated, it is evident that the only thread upon which the prosecution's case hangs is section 349(4) of the CP & EC which Kapanda JA comprehensively addressed in *Kuthawe & Another v Republic* above. The question that arises is indeed whether good cause has been shown to warrant the admission of the appeal in the present matter.

41. The first reason advanced by the prosecution was that the language of the learned Magistrate in the court below was misleading. Counsel went on to suggest that courts in this country had been at fault and were, according to him, complicit in misleading the Bar as regards the perceived differences in the import of a Notice of Intention to Appeal as distinct from the import of a Notice of Appeal. Counsel cited the case of *Cuthbert Mwatero Chifwenthe v Republic* (above) as an instance of a situation where the Court, according to him, misleadingly used these two terms as if they were interchangeable.

42. With respect, I do not see the relevance of the case Counsel sought to make on the purported distinction between a Notice of Appeal and a Notice of Intention to Appeal. Counsel clearly misdirected himself in his submission on this point and his misdirection led to his misconceived attack on the jurisprudence of Malawian courts on this matter. There is nothing misleading in my view about the jurisprudence of these courts on this issue. What is evident, according to my analysis of the jurisprudence, is that courts have indeed used the terms Notice of Intention to Appeal and Notice of Appeal interchangeably. But this point is inconsequential in the present matter. The two terms indeed refer to one and the same thing. The issue in the present matter does not relate to any purported difference between a Notice of Intention to Appeal and a Notice of Appeal. As I have already stated, there is, as a matter of fact, no difference at all between those two terms. The issue in the present matter relates to the distinction between a Notice of Intention to Appeal and a Petition of Appeal.

43. An appeal is filed by way of petition under section 350(1) of the CP & EC. A Notice of Intention to Appeal is filed under Section 349(1) of the CP & EC. These are different formal documents which are required to be filed with the Court in order to breathe life into an appeal. The two documents carry different time periods within which they must be respectively filed. The issue as raised in the objection was that a mandatory period relating to one of these documents, namely the filing of a Notice of Intention to Appeal, which is 10 days from the date of the decision appealed against, was not complied with.

44. So did the learned Magistrate somehow mislead the ACB in the present matter as alleged? When one examines the ruling of the learned Senior Resident Magistrate in issue herein, he stated that "Parties are at liberty to appeal to the High Court in 30 days from today." The Court is at pains to find anything misleading about this statement. How this statement could have been interpreted to entail a waiver of the

mandatory requirements under section 349(1) of the CP & EC is beyond this Court's comprehension. An appeal is lodged by way of Petition under section 350(1) of the CP & EC. Section 350(1) of the Code provides that:

> (1) Every appeal to the High Court shall be made in the form of a petition in writing presented by the appellant or his legal practitioner, setting out the grounds of appeal.

45. The presentation of such a petition to this Court is what had to be done within 30 days from the date of the ruling. I do not see what the source of the confusion could have been. Both parties were legally represented and their respective Counsel knew or ought to have known better. The learned Senior Resident Magistrate did not in his ruling, imply in any way that he had waived the application of the provisions of section 349(1) of the CP & EC. In fact, even if he had been minded to do so, he would have had no power to make such a waiver under the law. I therefore find that there was nothing misleading about the statement that the learned Magistrate made in his ruling as regards the period within which a Notice of Intention to Appeal had to be filed by the ACB.

46. In the instant matter, Counsel only needed to have read the law in order to realise that for the prosecution to be allowed to file the Petition of Appeal under section 350(1) of the CP & EC within 30 days as prescribed by the law and also as rightly directed by the learned Magistrate, it was mandatory that a prior Notice of Intention to Appeal under section 349(1) of the CP & EC had to be filed with this Court within 10 days from the date of the ruling of the Court below.

47. In order to appreciate the legal position, Counsel needed to read the law which is clearly laid down in the CP & EC and not necessarily

to consult other people on what the law was or what it meant. Of course there is nothing wrong with consultation, and more so consulting more senior Counsel than oneself when in doubt. It is a good practice at the Bar. However, I find it odd that this could be cited by Counsel as reason, let alone a good cause, for failing to comply with a statutory limitation period under the CP & EC. The truth is that it is not a reasonable excuse or at all before a Court of law. Counsel must ultimately take professional responsibility before the Court on the appreciation of legal issues applicable to any matter over which Counsel has conduct. I do not find the first reason advanced for the failure to file the Notice of Intention to Appeal in time to be a good cause at all. I dismiss it.

48. The second reason advanced as a good cause to allow the appeal to proceed was that Counsel for the Appellant could not proceed to file the Notice of Intention to Appeal until they had received directions from the Director General of the ACB. This reason, it can easily be noticed, is actually inextricably linked to the first reason. With respect, this was no good cause at all under the law. It does not lie in the mouth of Counsel to come and plead internal inefficiencies, administrative processes or operational protocols of the Appellant as amounting to a good cause for the Appellant's failure to comply with mandatory requirements of the law. That, to my mind, is a counterintuitive argument. The argument is singularly unpersuasive and without merit. It is dismissed.

49. Apart from these two reasons, no other good cause for failure to comply with the requirements of section 349(1) was advanced. It is certainly not the duty of the appellate Court to fashion out some form of good cause for the Appellant and then transform the same into a basis for allowing the appeal to proceed in the face of the mandatory provisions of section 349(1) of the CP & EC prohibiting this Court from entertaining such an appeal. It is a well settled principle of law that *ei qui affirmat non ei qui negat incumbit probatio*, i.e. the person who

asserts the affirmative of or on a matter must prove it, but the person that denies it need not prove it. In this case and on this point, the person alleging the existence of a good cause must prove it. The prosecution has flatly failed to show any good cause for failure to comply with the mandatory requirements, or why in any event the appeal herein ought to be allowed to proceed under the circumstances.

50. In *Kuthawe & Another v Republic,* the Supreme Court of Appeal made it clear that if an appellant fails to prove sufficient cause under section 349(4) of the CP & EC, then nothing further has to be done and that the application for the Court to condone the delay has to be dismissed on that ground alone. He held that it is only where sufficient cause has been shown that the Court has to enquire whether, in its discretion, it should condone the delay. In the present matter, having found that the prosecution has failed to show any good cause at all under section 349(4) of the CP & EC, this Court, following the Supreme Court of Appeal decision in *Kuthawe & Another v Republic*, does not have discretion whether to allow the appeal to proceed or not. Its hands are tied by the law. The appeal cannot proceed.

51. In the result, this Court concludes that the filing of the appeal herein was incompetent as it failed to satisfy the mandatory requirements of section 349(1) of the CP & EC and the State has failed to show any good cause under section 349(4) of the CP & EC why the appeal should still be allowed. The appeal herein must therefore be dismissed on this basis alone.

52. However, having made the above finding which should be dispositive of the whole appeal herein in favour of the Respondent, I consider it to be in the public interest that the Court should still inquire into what the merits of the grounds of appeal raised would have been, if they had been competently laid before this Court.

53. In the Court below, the Respondent was charged on the following counts:

Count 1: Giving false information to the Bureau, contrary to section 14(1)(a) of the Corrupt Practices Act.

The particulars on this count were that, the Respondent, Dr. George Thapatula Chaponda, on or about the 21st day of February, 2017, at his house in Area 43 in the City of Lilongwe, gave false information to the Bureau that K95,000,000.00 that was found in his house belonged to the Democratic Progressive Party.

Count 2: Attempt to obtain advantage, contrary to section 25(1) of the Corrupt Practices Act.

The particulars under this count were that the Respondent, between the months of October and November, 2016, in the City of Lilongwe, being a public officer, namely the Minister of Agriculture, Irrigation and Water Development, and being concerned with the procurement of maize from Zambia, attempted to obtain for Transglobe Exports Produce Limited an advantage, namely a contract, by instructing Foster Mulumbe, the former Chief Executive Officer of ADMARC, to offer a contract to the said Transglobe Exports Produce Limited to export from Zambia 50,000 metric tons of maize, for ADMARC's purchase, without following laid down procurement procedures.

Count 3: Possession in Malawi of foreign currency, contrary to Regulation 25(1) of the Exchange Control Regulations as read with section 3 of the Exchange Control Act.

The particulars on this count alleged that the respondent, on or about the 21st day of February, 2017, at his house in Area 43 in the City of Lilongwe, was found in possession of foreign currency, namely 57,500

United States Dollars and 22, 370 South African Rands without any lawful justification.

Count 4 related to Mr. Rashid Tayub and not the Respondent, hence does not merit any restatement in this decision.

54. In his Ruling of 18th May, 2017, the learned Senior Resident Magistrate at Zomba found both the Respondent and the above-said Mr. Rashid Tayub with no case to answer and he consequently acquitted both of them.

55. The Appellant, the Republic, through the ACB, was aggrieved in part, by the decision of the Court below and decided to bring the present appeal. The Appellant has expressed dissatisfaction with the said decision on two counts, namely: (i) Giving false information to the Bureau contrary to section 14(1)(a) of the CPA; and (ii) Possession in Malawi of foreign currency contrary to Regulation 25(1) of the Exchange Control Regulations as read with Section 3 of the Exchange Control Act.

56. Thus the second count, which related to the issue of the Respondent's alleged criminal involvement in the procurement of Maize from Zambia through Transglobe Exports Produce Limited, was not raised by the ACB before this Court as aground of appeal. In other words, the question of whether the Respondent herein, Dr. Chaponda, was complicit in any way in an irregular or fraudulent procurement process of maize from the Republic of Zambia to Malawi by ADMARC in 2016 is not part of the present appeal. That issue was ventilated before the Court below. The Court found him with no case to answer and the State has not appealed against that finding.

57. The Appellant has advanced 7 grounds of Appeal:

1. That the lower court erred in law in concluding that to find a case to answer for giving false information to the Bureau, the Appellant needed to prove that the MK95 million at the Respondent's house was connected to the alleged procurement of maize from Zambia;

2. That the lower court erred in law in finding that the Appellant went to the Respondent's house to search for evidence of alleged corruption, not money, therefore could not charge the Respondent with the offence of giving false information to the Bureau vis-à-vis MK95 million.

3. That in acquitting the Respondent of the offence of giving false information to the Bureau, the lower Court erred in law by altogether disregarding the provisions of section 10(1)(e) of the Corrupt Practices Act;

4. That the lower court erred in law in taking into account matters that had not been admitted in evidence, namely, a purported sale agreement, purported minutes of a meeting and bank statement from the Euro Account, in deciding that the Respondent did not give false information;

5. That the lower court erred in law in concluding that the Respondent had a permit from the Minister to keep foreign currency;

6. That the lower court erred in law in disregarding the actual wording of the alleged permit in concluding that the Respondent could keep foreign currency; and

7. That the acquittal on the two counts was against the weight of evidence.

58. As multiple as these grounds seem, the Court must be quick to state that three preliminary questions, if answered in the affirmative, would be completely dispositive of the present matter.

59. The first question lies with the interpretation of section 14(1)(a) of the CPA. Is the offence of giving false information to the Bureau contingent upon proof that the false information relates to a matter that is under investigation under the Act?

60. The second question is: if the answer to the first question above be in the affirmative, assuming that the information given by the Respondent herein to the Bureau was indeed false, was it information that related to a matter that was under investigation under the Act?

61. The third and last preliminary question is whether the Respondent herein possessed a permit from the Minister to keep foreign currency.

62. The Court will deal with each of these issues in turn.

63. Section 14(1)(a) of the CPA provides that:

> Any person who gives or causes to be given to the Bureau testimony or information or a report which is false in any material particular in relation to any matter under investigation by the Bureau; shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for ten years.

64. The Court is of the view that the plain meaning of the words used in the section is clear and unambiguous. In the instant case, for the offence of giving false information to the Bureau to be made out, it must be shown that:

(a) The Respondent gave false information to the Bureau. If there was no false information, the charge falls away right there without further consideration.

(b) If the information was false, it must then be shown that the falsity was in a material particular *"in relation to any matter under investigation by the Bureau"*. There exists, under our law, the principle of *de minimis non curat lex* - The law does not concern itself with trivial matters. See *Sakonda v S.R. Nicholas Ltd* (67 of 2013) [2014] MWHC 453. Thus the law will not bother itself with trivial falsities that are inconsequential to the just and effective administration of justice. If the information given by the Respondent was false, and was also significant, that is to say was material as concerning the matter under investigation, then the offence herein would have been made out.

65. It was the duty of the prosecution in the Court below, and indeed in this Court by way of rehearing on appeal, to clearly demonstrate proof of these elements beyond reasonable doubt.

66. At the mention of the term "proof beyond reasonable doubt", perhaps it is apposite for the Court to state a few remarks about this standard of proof in criminal law litigation. Proof beyond reasonable doubt is a standard of proof that is well known and settled in all common law jurisdictions. It is a standard of proof that is rooted in sound reason based on a fair conception of justice. This point is exemplified by the eloquent statement of the International Criminal Tribunal for Rwanda (ICTR) in *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor*, Case No. ICTR-96-3-A, where the Court stated at paragraph 488, that:

> The reasonable doubt standard in criminal law cannot consist in imaginary or frivolous doubt based on empathy or prejudice. It must be based on logic and common sense, and have a rational link to the evidence, lack of evidence or inconsistencies in the evidence.

67. Thus in *Woolmington v DPP* [1935] UKHL 1, the House of Lords famously stated that:

> while the prosecution must prove the guilt of the prisoner, there is no such burden laid down on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the [court] of his innocence ... Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt created by the evidence given by either the prosecution or the prisoner as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.

68. It is firmly established in this country that this equally represents the position of Malawian law. See, among others, *Attorney General v*

Hon. Friday Anderson Jumbe and another [2014] MLR 332 (SCA); *Constable Stonard Chalusa v Republic* [2013] MLR 43 (SCA); and *Namonde v Republic* [1993] 16(2) MLR 657 (HC). The standard of beyond reasonable doubt is so inextricably woven together with the presumption of innocence in criminal trials which presumption is a constitutional right. In the case of *Attorney General v Hon. Friday Anderson Jumbe and another*, Twea JA, delivering the judgment of the Supreme Court of Appeal, adopted with approval the statement of Langa J, as he then was, in the South African Constitutional Court decision of *State v Mbatha* (1996) 2 LRC 208, where he said that "The presumption of innocence is clearly of vital importance in the establishment and maintenance of an open and democratic society based on freedom and equality." This Court cannot agree more.

69. The human rights enshrined and entrenched under our Constitution are fundamental and should not be lightly interfered with. This Court therefore considers that this high standard of proof, although not cast in dry ink under the Constitution, ought to be regarded as part of the fabric of the right to a fair trial under section 42(2)(f) of the Constitution.

70. These courts will therefore not entertain any attempts to whittle down the requirement that in criminal cases, the prosecution is under a duty to prove all the essential elements of an offence beyond reasonable doubt. The burden of proof lies squarely on the prosecution.

71. In the oft-cited case of *Miller v. Minister of Pensions* [1947] 2 AllER 372, Lord Denning held at page 373 that:

> That degree is well settled. It need not reach certainty, but it must carry a high degree of possibility. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law

> would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice.

72. In *Samanyika v Republic*, Criminal Appeal No. 33 of 2002 [2002] MWHC 49, Mwaungulu J (as he then was), succinctly summarized some of the proper descriptions of this standard by Malawian courts. He said:

> The Supreme Court of Appeal in *Jailosi v Republic* (1966-68) ALR (Mal) 494 stated that each link in the chain of evidence must be unassailable and the cumulative effect must be inconsistent with any rational conclusion other than guilt. In *Nyamizinga v Republic* (1971-72) ALR (Mal) 258 this Court held that the prosecution must establish beyond reasonable doubt that guilt is the only inference.

73. The Supreme Court of the United States of America has, on a few occasions, provided some reasoned justifications upon which the standard of proof of beyond reasonable doubt is premised. For instance, in *Brinegar v. United States*, 338 U.S. 160, 174 (1949), the Court stated at 174, that:

> [g]uilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common law tradition, to some extent embodied in the Constitution, has

> crystalized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men [and women] from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.

74. These wise words of America's apex Court ring as true of the constitutional criminal procedure system in the USA as they do for the corresponding Malawian system.

75. Further illuminating justifications for this high standard of proof were elucidated by the US Supreme Court in the case of *In re Winship (No. 778) 397 U.S. 358.* The Court observed that:

> The standard provides concrete substance for the presumption of innocence - that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.' *Coffin v. United States*, 156 U.S. 432 (1895), at 453. The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused, during a criminal prosecution, has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction.

76. The Court further proceeded to observe that:

> It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him

> guilty of a criminal offense without convincing a proper fact-finder of his guilt with utmost certainty.

77. These are therefore cardinal considerations that this Court keeps at the fore of its mind as it assesses the merits of the instant appeal.

78. In terms of the burden of proof, as earlier stated, the law is settled that the burden of proof rests on the prosecution throughout the trial. Section 187(1) of the CP & EC is authority for this proposition. See also the passage in *Woolmington v DPP* (cited above). The burden of proof is also interwoven with the constitutional presumption of innocence for the accused person. The nexus between the burden of proof and the presumption of innocence is borne out by international criminal law jurisprudence. In the case of *Georges Anderson Nderubumwe Rutaganda v. The Prosecutor* (above), the ICTR stated that:

> the standard of proof to be applied is that of proof beyond a reasonable doubt, and that the burden of proof lies on the Prosecution, insofar as the Accused enjoys the benefit of the presumption of innocence.

79. So the first preliminary question to be answered is: what was the false information? According to the Appellant and indeed according to the evidence that was led in the court below, when ACB investigators found the sum of MK95 million in the Respondent's house and asked him about the ownership of the money, the Respondent told them that the money was realized at the Blue Night (a fundraising event for the Democratic Progressive Party (DPP) – the Respondent's political party). The said event, according to the evidence, was held on the 5th of November 2016. It was in evidence that the bricks of money that were found at the Respondent's house had different dates. Some of the dates were before the said Blue Night, whilst others were well after the same. It was the prosecution's case that these discrepancies were inconsistent

with the Respondent's version that the said money was realized at the above-mentioned Blue Night event. The learned Magistrate did not really address his mind to this aspect of the evidence. However, when one examines this evidence, there are a number of reasonable possibilities.

80. First, I do not see why it should be considered an impossibility that one could bring money to the Respondent after the event to fulfil a pledge made at the function. It would be a specious argument to say that money bricks delivered to the Respondent for such purpose should only have borne the actual date of the event or only a date or dates immediately prior or subsequent thereto.

81. It would be even more specious to argue that money bricks that had dates significantly prior to the event were also problematic. There is no law in this country that limits the number of days within which one must keep local currency cash before spending the same.

82. But even if the above analysed evidence were to be accepted as having probative value and potency for the prosecution, the same would still need to be weighed together with the further evidence that is analysed below.

83. The prosecution brought as its witnesses some senior party officials for the DPP to testify in support of its case. Indeed, during argument at the hearing of the present appeal on the 1st day of June 2020, Counsel for the Appellant argued that the evidence of Hon. Nicholas Dausi and Hon. Henry Mussa was categorical in denying the Respondent's claims that the money belonged to the DPP. It was Counsel's submission that the contention that the Respondent gave false information to the ACB was essentially based on the evidence of Hon. Dausi and Hon. Mussa. It is therefore appropriate that we carefully examine such evidence.

84. Hon. Nicholas Harry Dausi, who was at the time serving as Minister of Information and Communication Technology and who was also a member of the National Executive Committee of the DPP had been mentioned by the Respondent as the party official who was meant to collect the MK95 million from his house on behalf of the DPP. In his testimony, Hon. Dausi expressed ignorance about the development. He stated that he had no role in handling money for the DPP. He stated, in his oral evidence, that his main role in the party at the time was to evangelise and extol the ventures of the DPP and to ensure that the party had necessary structures to mount a vibrant campaign. He stated that he was unaware that he was supposed to collect the said money from Dr. Chaponda on behalf of the party. He opined that the Respondent might perhaps have been confused during his interrogation hence bringing in his name (Hon. Dausi's name) into the issue.

85. Hon. Dausi proceeded to testify, however, that the Respondent had indeed previously donated a lot of money to the party and that he would not be surprised if he was intending to do so again. He stated that to his knowledge, the Respondent was a man of considerable wealth and that he had a lot of property. He also mentioned that the Respondent had educated sons who were also wealthy and he specifically mentioned one who made some financial contribution towards the political activities of his father, the Respondent. He stated that when the Respondent donates money to the party, he does not do so with pomp, publicity and fanfare. He also acknowledged that having pledged to donate money to the party, such as the MK 40 million which was put to him during cross-examination, it would be reasonable to expect the Respondent to treat such money as already belonging to the DPP. He stated during re-examination that it would not be a lie to state that the money belonged to the DPP.

86. Another senior party official who testified was the then Treasurer General of the party, Hon. Henry Mussa who informed the Court that he was also known by his a.k.a. name – "Mtengowaminga". Hon. Mussa was, at the time, serving as Minister of Industry, Trade and Tourism.

87. Hon. Henry Mussa testified that whilst he was the overall in charge of party finances at the national level, each regional structure of the party operated its own separate account and that the regional Vice President for such region had overall charge of such accounts and finances. He therefore stated that Hon. Chaponda, being the party's Vice President for the Southern Region at the time, was the overall in charge of the party's finances in the party's Southern Region branch. He told the Court below that the DPP operated a decentralized policy when it came to the handling of party finances. He stated in his evidence that whilst he could not know whether the money was for the party or not, since he did not have powers to manage the regional finances as the same were under the overall charge of the party's regional Vice President, it was possible that Dr. Chaponda's claim that the money belonged to the DPP could be true.

88. Could it be said, under the circumstances, that these two witnesses were categorical in denying the Respondent's claim that the MK 95 million herein belonged to the DPP? The answer seems to be in the negative. One wonders how such alleged denials can be said to be categorical when Hon. Dausi stated that "it would not be a lie to state that the money belonged to the DPP", and Hon Mussa stated that since he did not have powers to manage the regional finances as the same were under the overall charge of the party's regional Vice President, it was possible that the Respondent's claim that the money belonged to the DPP could be true?

89. It is to be recalled, from the principles of evidence that have been set out above, that it was not the duty of the Respondent to prove beyond reasonable doubt that the money belonged to the DPP. Such a

proposition would entail that the Respondent was under a duty to prove his innocence and that is not how the Malawian legal system works. Once the Respondent was accused of giving false information to the ACB, it was the duty of the prosecution to prove, beyond reasonable doubt, that the information he provided was indeed false. The duty of the prosecution was not to merely cast doubt on the truthfulness of the Respondent's story.

90. On his part, under the law, the Respondent could only be called upon to provide an explanation if the State established a *prima facie* case. The law relating to the founding of a prima facie case was eloquently expounded by my brother Judge Madise J in the case of *State v Getrude Dorothy Mnkhondiya and Others* [2012] MLR 414 (HC) where he stated that:

> [A]t the close of the prosecution's case the Court must rule whether a prima facie case has been made out requiring the accused persons to make a defence. A prima facie case was defined by my very elder brother late Chatsika, J as he then called in *Namonde v Rep* [1993] 16(2) 657 as evidence adduced by the prosecution that has not been so discredited as a result of cross-examination or that is manifestly reliable that no tribunal could safely acquit. *Black's Law Dictionary* sixth edition has defined it as such evidence that must prevail until contradicted and overcome by other evidence. It is evidence good and sufficient on the face of it that no reasonable tribunal properly directing its mind to the law and evidence would acquit if the accused elects to offer no evidence in defence. A Court therefore must find no case to answer if there has been no

> evidence to prove the essential elements of the alleged offence.

91. If a prima facie case were established, the duty of the Respondent (which is perhaps no duty at all as it is an optional liberty), was to provide an explanation that might reasonably be true. Under the law, in such circumstances, once an accused person provides an explanation that might reasonably be true, the prosecution has failed to prove its case beyond reasonable doubt. An authority that stands for this proposition is *Gondwe v Republic* (1971–72) 6 ALR (Mal) 33, where Weston J stated at pages 36–37 that:

> Nevertheless, it is trite learning that it is for the prosecution to establish its case beyond reasonable doubt and not for an accused person to prove his innocence. This has been said so often as to be in danger of losing its urgency. As in every case where an accused person gives an explanation, in this case its application required that the court's approach to the Appellant's story should not have been what it evidently was: 'Is the accused's story true or false?', resulting, if the answer were 'False', in a finding that the Appellant must necessarily have had a fraudulent intent. The proper question for the court to have asked itself was – 'Is the accused's story true or might it reasonably be true?' – with the result that if the answer were that the Appellant might reasonably have been telling the truth, the prosecution would not in that case have discharged the burden of proof beyond reasonable doubt imposed upon it by law.

92. In the instant case, the explanation about ownership of the money was provided to the prosecution in advance during the Respondent's arrest and it formed part of the prosecution's prosecutorial narrative in the Court below. The duty of the prosecution was to demonstrate that such an explanation was not only false, but that it could not reasonably be true. The question is: Did they succeed?

93. In the analysis of the Court below, the learned Magistrate begun by asking the correct questions thus:

> The question therefore this court need to answer is whether when the accused person said the money belonged to DPP he should be considered to have given false information and if he did whether the said false information was on a matter under investigation.

94. The learned Magistrate did not give any answer to the first question. He only broadly answered these two questions together by stating that it was his finding that: "the accused did not give any false information to the bureau on a matter under investigation which is corruption in the procurement of maize in Zambia."

95. In this Court's view, the learned Magistrate's analysis should have begun by answering the question of the falsity of the statement. Was it proven beyond reasonable doubt that the statement was false? In my view, based on the analysis made above, the prosecution did not prove beyond reasonable doubt that the statement was false. The evidence of Hon. Nicholas Harry Dausi was in essence only to dispute that Hon. Dausi was meant to have collected the money from the Respondent. Hon. Dausi denied the Respondent's claim that he was meant to collect the money, although he was equivocal on whether he believed the money in issue belonged to the DPP or not. He did state

however that he would not be surprised that the money was indeed a donation to the DPP.

96. Hon Henry Mussa came out more clearly that the claim that the money belonged to the DPP could reasonably be true. He explained that the Respondent was Vice President of the DPP for the Southern Region and in that capacity he was the overall in charge of finances in that region. He stated that the party had a decentralized policy on handling finances. The Respondent's claim could and can only be dismissed if it represented and represents a remote possibility in his favour which could and can be dismissed with the sentence 'of course it is possible, but not in the least probable.' Put differently, the Respondent's explanation should only be dismissed if it can be described as fanciful. See *Miller v. Ministry of Pensions* (above).

97. In my view, the Respondent's explanation could reasonably be true. It cannot be regarded as a fanciful explanation. The statement could reasonably be false, but it could also reasonably be true. A claim either way could not be fanciful either way. One claim could weigh more heavily than the other on a balance of probabilities, but this would not in any way render the weaker claim fanciful. It was up to the prosecution to lead evidence to eliminate any reasonable doubt. They have failed.

98. It should be recalled that witnesses such as Hon. Henry Mussa were prosecution witnesses and not defence witnesses. They must have given their testimony after a prior brief with prosecution Counsel. If that had not been so, Counsel for the prosecution could have sought to have his evidence assailed and could therefore have applied to have him declared hostile under section 230 of the CP & EC so that he could be subjected to cross-examination by the prosecution. This never happened.

99. Be that as it may, the prosecution witnesses, and in particular PW3, insisted that the Respondent gave false information to the ACB. It was his belief that the money in issue did not belong to the DPP as alleged by the Respondent. He testified that he believed that the MK95 million was bribe money. It was his evidence that the money itself was evidence of corruption. He stated that he believed that this money was a bribe although he did not know who gave the bribe and what the bribe was for or when the bribe was received. He stated that he was fortified in this belief because the dates that were indicated on the money bricks were largely dated after the 5th of November, 2016 which was the date of the Blue Night, and further that the money was found in Lilongwe whilst the Blue Night event was held at Sanjika Palace in Blantyre.

100. PW3 proceeded to state, in cross-examination, that he had no evidence that the accused person was involved in corruption in relation to the procurement of maize from Zambia, or that he otherwise conducted himself corruptly. He stated that:

> The 1st accused was not receiving bribes. I don't have evidence that he received bribes for the maize deal. I did not find any payment from Transglobe to Chaponda. I did not find any payment from Zambian Government to the 1st accused. Not even from ZCF. I don't have any evidence on any corrupt conduct of the 1st accused. He failed to give an account of money he was found with, but I have no evidence of any corrupt conduct in relation to the procurement of maize. The only issue is about money found at his house…There is no evidence that that money was received corruptly [but] I doubt that the money belonged to DPP. If the money does not belong to DPP, it is plausible that it [may] belong to the 1st accused [and] it is not a crime to have Malawi Kwacha if it is not obtained corruptly or laundered.

101. PW3 emphasised during his evidence in cross-examination that he had evidence that the money that was found with the Respondent was obtained corruptly. He stated that the evidence was that the Respondent stated that the money belonged to the DPP but this claim was rejected by two DPP officials.

102. PW4 was Mr. Kondwani Zulu. He was team leader of the investigating team. PW4 testified that after searching the Respondent's office at Tikwere House, they asked him where his house was so that they could go and conduct a search. He stated that the Respondent stated that he had a house in Area 3 in the City of Lilongwe and another in Blantyre. However, PW4 stated that at the office the investigators had seen a MASM form that showed that he also had a house in Area 43. This is the house in issue in the present matter. PW4 then stated in his testimony that:

> When we got there [at the Area 43 residence] I asked the accused if he had guns in the house but he said no. He also said that he had money in the house belonging to DPP brought to the house by Nicholas Dausi. Immediately …he said this, my colleague Jack Banda administered a caution to avoid self-incrimination, but the accused continued to speak. He said he wanted to call Dausi to come and collect the money. We allowed him to call. He called briefly and said Mr. Dausi will come to collect the money…Indeed we found the money. It was MK95,000,000…Up to the end of the search he [Hon. Dausi] did not show up.

103. PW4 also testified that he got a statement from the Reserve Bank of Malawi and he established from the Reserve Bank of Malawi (RBM) that the power to approve permits was delegated by the Minister to the

RBM in 1965. He stated that the Bank official who provided the information, Mr. Griffin Phiri, stated that he was not aware that the Respondent had been issued with permit by the Minister. He stated that such an application ought to have passed through the RBM. He established that the RBM did not have any record of the Respondent's application or approval from the Minister. I must quickly mention that Mr. Griffin Phiri himself also testified as PW5 and affirmed Mr. Zulu's assertions of fact above.

104. During cross-examination by Counsel Chokotho, PW4 was likewise taken through similar concessions to those of PW3 that there was no evidence that the Respondent received any bribes whether from within Malawi or from Zambia. He proceeded to state that:

> I did not establish that the 1st accused gave instructions to Mr. Mlumbe to award a contract to Transglobe. It was not part of my investigations…I do not have evidence that the 1st accused attempted to obtain an advantage from Transglobe.

105. It must be pointed out that if the evidence of PW3 and PW4 were to show that the MK 95, 000,000 was in fact bribe money, then such would be strong proof that the Respondent gave a false statement to the ACB. In order to demonstrate this, such evidence needed to prove, beyond reasonable doubt, that the money was indeed a bribe. I must however quickly state that when a witness states that:

> The 1st accused was not receiving bribes. I don't have evidence that he received bribes for the maize deal. I did not find any payment from Transglobe to Chaponda. I did not find any payment from Zambian Government to the 1st accused. Not even from ZCF. I

> don't have any evidence on any corrupt conduct of the 1st accused;

it can scarcely be argued that this would unmistakably prove that such money was indeed a bribe.

106. Looking at the above evidence, one thing that is immediately clear is that there was inconsistent evidence led by the prosecution. For instance, the evidence of Mr. Mbuzi Mkandawire pointed one way, and that of Hon. Henry Mussa contextually pointed the other way. The position of the law in this regard is well-established. In the case of *Kagwa v Republic* [1991] 14 MLR 138 (SCA), Munlo JA stated as follows:

> The law relating to contradictory evidence given by the prosecution is clear. Where the prosecution [leads] evidence on a particular matter by two witnesses or more and that evidence is contradictory, any doubt raised by such contradiction must be resolved in the accused person's favour. See *R v Koche* (1923–60) 1 ALR (Mal) 397. This principle has been quoted with approval in subsequent decisions of this Court.

107. It is therefore clear that any doubts created by the inconsistent evidence led by the prosecution in this case must be resolved in favour of the Respondent. In the result, this Court finds that the prosecution failed to establish a prima facie case. This was not the kind of evidence based on which a reasonable tribunal could convict if the Respondent did not provide an explanation. Indeed, considering that the prosecution had closed its case, it is clear that there was no way the prosecution could then have proved, beyond reasonable doubt, that there was false information in the first place. The falsity of the information not having been proved, the question that arose as regards

materiality to the subject matter of the investigation should not even have arisen. The ground of appeal based on this issue is therefore also incompetent. This ground of appeal must therefore fail.

108. Even if this Court were to find that the information furnished by the Respondent to the Bureau was indeed false, which is not the case, this Court would still have found that such information was not material to a matter under investigation by the Bureau and the ground of appeal would remain incompetent.

109. I have carefully analyzed the evidence. As the learned Senior Resident Magistrate in the court below correctly found, the witnesses were very clear that they did not set out to investigate anything to do with the accused person's possession of huge sums of Malawi Kwacha in his house. They were there to investigate matters relating to the alleged corrupt conduct of the Respondent in relation to the procurement of maize from the Republic of Zambia. They never told the Court, with any measure of satisfaction, how material the money found in the house was to the investigations they were conducting. In fact, they conceded that they only asked him whether there was money in the house as a matter of investigative routine or protocol so that they may not subsequently be accused of having taken away items from the house without explanation and without record.

110. During argument at the hearing of the present appeal, Counsel for the Appellant contended that the Appellant went to the Respondent's house to investigate corruption and that any huge sum of money found would therefore be relevant for purposes of the investigation. This, with respect, is a rather unpersuasive argument. There must be some defined context to every corruption investigation based on a reasonable cause to believe or suspect. The ACB cannot just speculate and then obtain a blanket search warrant to investigate an undefined claim of corruption at any person's house or workplace. They cannot just show

up at one's doorstep and say we are here to investigate corruption. They must necessarily state the nature of the corrupt conduct that is being suspected. If a false statement is made, in order for the same to constitute an offence under section 14(1)(a) of the CPA, the same must relate to the defined nature of the corrupt conduct that is the subject matter of the investigation. In the present case, the ACB diligently defined the nature of the corrupt conduct that they were investigating. They were investigating alleged corruption in relation to the procurement of maize from Zambia to Malawi through ADMARC. The false statement needed to materially relate to the subject matter of the investigation. When one goes through the totality of the evidence, it is evident that the prosecution flatly failed to establish any corruption in that regard and none of the witnesses suggested that the MK 95,000,000 was connected to that defined investigation under the CPA.

111. Counsel for the Appellant also argued that in acquitting the Respondent of the offence of giving false information to the Bureau, the learned Magistrate erred in law by not having regard to the provisions of section 10(1)(e) of the CPA. That section provides that one of the functions of the ACB is to "investigate any offence under any written law disclosed in the course of investigating any alleged or suspected corrupt practice or offence under this Act."

112. Counsel Chokotho's response to this argument was generally that in fact the learned Magistrate in the Court below did consider the relevant law but he was satisfied that the offence had not been made out.

113. The Courts position is that the Appellant's argument on this point also lacks merit. Indeed, section 10(1)(e) of the CPA provides that one of the functions of the ACB is to "investigate any offence under any written law disclosed in the course of investigating any alleged or suspected corrupt practice or offence under this Act." In order to

appreciate whether consideration of section 10(1)(e) of the CPA could have led the Magistrate into finding Respondent with a case to answer on the section 14(1)(a) charge, we need to have a recap of the facts.

114. Officers of the ACB told the Court that they were investigating the Respondent in connection with the alleged corruption in the procurement of maize from Zambia. They also told the Court that the MK 95,000,000 was not connected to that specific investigation. PW3, Mr. Mkandawire, told the Court that it was his view that the MK 95,000,000 herein was a bribe whose source, purpose, or date when it was given to and received by the Respondent he did not know. In other words, his contention was that the MK 95,000,000 was essentially connected to a corrupt act that he was completely unaware of. It was a bribe at large, as it were.

115. When one examines section 10(1)(e) of the CPA in relation to the facts as revealed by the evidence, the question becomes: do these facts show, in any way, that there was any other offence under any written law that had been disclosed in the course of investigating the alleged or suspected corrupt practice in the procurement of maize from Zambia to which the MK 95,000,000 herein was connected? The answer in my considered view is in the negative.

116. In order for this Court to be satisfied that the Court below was wrong in entering a finding of no case to answer, this Court must be satisfied that there was evidence before the Court below, satisfactory to the requisite standard in criminal matters to the extent that that Court could have convicted the Respondent in the absence of an explanation from the Respondent. This entails that there had to be evidence, beyond reasonable doubt, that the issue of the ownership of the MK95 million Kwacha in the present matter, related in some material particular to a matter that was being investigated by the ACB under the CPA, and not merely a chance occurrence.

117. Penal statutes are construed strictly and any lingering doubt is resolved in favour of the accused person. If the law says that in order for the offence to be founded, the false statement must relate in a material way to a matter that is being investigated under Act, the Court must interpret this law strictly in that respect. The Court must be strict in ensuring that the prosecution is put to strict proof of the falsity. The Court must also ensure that the prosecution is put to strict proof of the material nexus between the falsity and the subject matter under investigation and the investigation must be one that is being conducted under the CPA. If there is any doubt, the doubt is resolved in favour of the accused person and the matter cannot even proceed to the defence stage. No prima facie case would have been made out. This is a settled legal position. The finding of the Court below cannot be disturbed under the circumstances.

118. In the final analysis, the question that remains in this regard is: did the prosecution prove, beyond reasonable doubt, that the conduct of the Respondent, in particular the response he gave to the ACB about the ownership of the MK95 million amounted to a crime under section 14(1)(a) of the CPA? The answer is no. Firstly and principally because there was no proof to the requisite standard that the information he provided was false information. The evidence of the prosecution already created so much reasonable doubt that no competent Court, properly directing its mind to the facts and the law, could have convicted in the absence of an explanation from the Respondent. Secondly, this Court has also found that even if it were established that the information was in fact false, the information could not have been material to any matter that was under investigation under the Act at the material time. The result is that grounds of Appeal 1, 2, 3 and 4 of the Petition of Appeal are therefore implausible and they would fall to be dismissed.

119. I must mention however, in passing, that PW3's and PW4's evidence, especially the evidence of PW4, to the effect that when the

Respondent was asked how many houses he had and requested to take the ACB officers to his house, he only mentioned that he had a house in Area 3 in the City of Lilongwe and another one in Blantyre, and that he did not disclose his Area 43 residence, was not assailed during cross-examination. It would therefore appear that such evidence was credible. PW3 stated in his evidence that the house at Area 3 was in fact completely vacant. Paradoxically, it was the house in Area 43 which the Respondent was occupying at the material time. This Court is of the opinion that if at all there was a relevant charge on giving a false statement to the ACB that could have gained traction in a court of law, it was this blatant mistruth. It was a false statement that was directly connected to the investigation and was in all probability intended to mislead the investigators. The ACB however decided not to prefer a charge against the Respondent based on this issue. Be that as it may, the Respondent is well advised to do better in future by always telling the truth when confronted with circumstances of this nature, and more so for an Honourable Member of Parliament and a senior citizen in this country that he is.

120. The second and final preliminary issue we have to deal with is whether the Respondent herein possessed a permit from the Minister to keep foreign currency.

121. Counsel for the Respondent objects to the grounds that are premised on matters of fact and not matters of law. It has already been stated above that the prosecution is only allowed to appeal on matters of law and not matters of fact.

122. Counsel for the Appellant opposed the objection. The opposition is based on the well settled principle that findings of fact based on an error of law are appealable as matters of law. This principle was succinctly stated in the case of *Hayles v The Republic* [2002–2003] MLR 68 (SCA) where Banda, CJ, delivering the judgment of the Supreme Court of Appeal, stated that "It is accepted that a finding of fact which

cannot be supported by evidence is an error in law and will support an appeal to this Court."

123. Counsel for the Appellant contend that in arriving at his conclusions, the learned Magistrate in the Court below took into account evidence that he should not have taken into account because the same had simply been identified in court but had not yet been tendered in evidence.

124. In this regard, Counsel for the Appellant's argument was merited. Although on the face of it this issue was premised on a finding or findings of fact, the issue brought out a point of law for consideration and determination by the Court.

125. However, the Court notes that although the documentary evidence referred to, such as the evidence of the Euro accounts or indeed the permit to hold foreign currency from the Minister had not been formally tendered in evidence so that they could be marked as exhibits, these were shown to witnesses and witnesses testified in cross-examination on the basis of the same. The testimony of the witnesses based on these documents, which were marked as "IDDs", was admissible testimony and the learned Magistrate was entitled to take such evidence into account in arriving at his decision on whether or not the prosecution had made out a prima facie case sufficient as to call the Respondent to enter his defence.

126. During argument, Counsel for the Respondent raised another objection against proceeding with the appeal based on grounds concerning the Appellant's possession of foreign currency. Counsel argued that in terms of section 52A of the CPA, the ACB does not have the requisite mandate to appeal in respect of offences which are created in statutes outside the CPA. It was Counsel Chokotho's submission that for offences outside the CPA, such as the offence of possession in Malawi of Foreign Currency, contrary to regulation 25 (1) of the

Exchange Control Regulations as read with Section 3 of the Exchange Control Act, the appeal could only be prosecuted before this Court by the Director of Public Prosecutions and not the ACB.

127. In response, Counsel for the Appellant argued that all Counsel at the ACB were generally appointed as prosecutors by the learned Director of Public Prosecutions in terms of section 79 of the CP & EC and that they could therefore prosecute an appeal in respect of any offence before the Court. Counsel went further to submit that in any event, they already received the Consent of the Director of Public Prosecutions under section 42 of the CPA.

128. To put things into perspective, section 52A of the CPA provides as follows:

> In any proceedings for an offence under this Act, the prosecution may appeal against any final judgment or order, including a finding of acquittal, of the trial court if, and only if, dissatisfied upon a point of law; but, save as so provided, no appeal shall lie by the prosecution against a finding of acquittal by the trial court.

129. In the case of *Anti-Corruption Bureau v Rodrick Mulonya* [2006] MLR 19, 24 (SCA), Kalaile, JA, delivering the judgment of the Supreme Court of Appeal, stated that:

> Once court proceedings are properly commenced after the Director of Public Prosecutions gives his consent pursuant to section 42 of the Corrupt Practices Act they should continue to be so prosecuted whether there is a change of Directors or

not. The Director of Public Prosecutions does not have to grant a fresh consent to appeal.

130. The Court thus made it clear in *Anti-Corruption Bureau v Rodrick Mulonya* that once the Director of Public Prosecutions grants consent to prosecute under section 42 of the CPA, there is no need for fresh consent to prosecute the appeal. In other words, once the Director of Public Prosecutions authorizes the ACB to prosecute an offence whether under the CPA or a kindred offence under parallel legislation, such authority includes authority to pursue an appeal in appropriate cases.

131. The Court however agrees that section 52A of the CPA only applies in respect of offences which are provided for under the CPA. Thus, where the ACB has authority to prosecute a kindred offence to those under the CPA which is provided for in separate legislation, the ACB, for such an offence, must invoke the procedure as provided for under the CP & EC and not under the CPA.

132. It is noteworthy in this respect that the learned Judge in *Anti-Corruption Bureau v Rodrick Mulonya* stated as follows at page 24:

> we wish to point out that generally, section 346 of the Criminal Procedure and Evidence Code prescribes for appeals from the Magistrates' Courts to the High Court. Appeals under the Corrupt Practices Act are, however, prescribed for by section 52A of the Act which reads: "In any proceedings for an offence under this Act, the prosecution may appeal against any final judgment or order, including a finding of acquittal, of the trial Court if, and only if, dissatisfied upon a point of law; but, save as so provided, no appeal shall lie by the prosecution

> against a finding of acquittal by the trial Court." It should be noted that the expression "aggrieved person" does not appear anywhere in the wording of section 52A of the Corrupt Practices Act. Instead, section 52A uses the expression "the prosecution" which in our opinion, satisfies the conduct of this appeal. The expression "prosecution" in section 52A is consonant with the wording of section 42(1) of the Corrupt Practices Act which reads: "No prosecution for an offence under Part IV shall be instituted except by or with the written consent of the Director of Public Prosecutions."

133. It is noteworthy in the present case that the appeal herein purports to have been brought under section 346 of the CP & EC. The CPA clearly provides that wherever there is procedure prescribed under the CPA, such procedure should prevail over the procedure prescribed under any other law. Section 2(1) of the CPA provides that:

> Save as otherwise provided, the provisions of this Act shall apply notwithstanding anything to the contrary contained in the Criminal Procedure and Evidence Code or in any other written law.

134. Thus in the instant matter, it was wrong for the prosecution to base its appeal solely on the provisions of section 346 of the CP &EC. The best practice was to bring the appeal under both section 52A of the CPA (in relation to the alleged offence under section 14(1)(a) of the CPA) and section 346(1) of the CP &EC (in relation to the alleged offence under regulation 25(1) as read with section 3 of the Exchange Control Act).

135. However, applying the general principle that substantial justice should be done without undue regard for technicality, the mistake made by the prosecution herein was not fatal. It did not occasion a miscarriage or failure of justice. The mistake is therefore condoned with a caution that the Court will expect better in future.

136. Pausing there, it is noteworthy that the Respondent's permit to hold foreign currency was produced before the Court below during cross-examination and it was marked as IDD6. The then Minister responsible for Finance, who was also the Minister responsible for Finance when the permit was issued in July, 2004, Hon. Goodall Gondwe, came to Court and testified on behalf of the prosecution.

137. Hon. Gondwe testified that he was the one who issued the permit to the Respondent. He told the Court that at the material time, the Respondent had been appointed Minister responsible for foreign affairs and that he had an illness which required regular medical treatment during his travels outside Malawi. He stated that the permit allowed the Respondent to possess a reasonable amount of foreign currency for the purpose. He stated that different doctors in different countries would charge differently for medical services and that he could not specify what exactly would constitute a reasonable amount. Hon. Gondwe testified that the permit to possess foreign currency that the Respondent was issued with did not have an expiry date. He stated that the permit was issued to the Respondent both as a person in his own right and in his capacity as a Cabinet Minister. He stated that the permit's validity continued after the Respondent left his office because the ailment continued, and that indeed the permit subsisted even after the Respondent was no longer a Cabinet Minister.

138. Going through Hon. Goodall Gondwe's evidence, one can easily be forgiven for thinking that he was a defence witness adducing defence evidence in support of Dr. Chaponda. But he was a prosecution witness.

This is the kind of evidence presented by the prosecution with which they sought to convince the Court below that the Respondent had a case to answer on the charge of being found in possession of foreign currency without a permit or lawful justification. The State never applied to have Hon. Gondwe declared a hostile witness under section 230 of the CP & EC. The ACB brought a witness who told the Court that it was not true that the accused person did not have a lawful justification to hold foreign currency, and that the basis for granting the permit, and hence for the Respondent holding foreign currency, was for him to take care of medical expenses outside Malawi.

139. Now, the ACB argues that the Court below should have disbelieved and disregarded the prosecution's own evidence even though such evidence was never challenged through cross-examination. I should point out that in the Court below, the learned Magistrate had the following remarks to make on this issue:

> The state has disputed the license arguing that the same is not genuine and that the minister is just trying to save his friend. The court cannot help the state on this, it is their own witness. They have called him themselves. We cannot accept his evidence only where they agree with him and not where they disagree with him. If they wanted to disagree with their own witness they should have turned him into a hostile witness. All in all, if the evidence of the state is anything to go by and the cross-examination, am satisfied the first accused person was justified to possess the said currency.

140. The learned Magistrate's reasoning here cannot be faulted.

141. Simply put, the ACB brought to Court the evidence of Hon. Goodall Gondwe that clearly suggested that Dr. Chaponda was not guilty of the offence. They brought to Court the very official – the Minister responsible for Finance - whom they claimed did not authorize the Respondent to hold foreign currency. That official testified in no uncertain terms that he is in fact the one who authorized the Respondent to hold foreign currency in accordance with the law and for a specific reason, namely to cover medical expenses outside Malawi. The prosecution did not even seek to challenge such evidence in any way. It does not now lie in the mouth of the prosecution to come to this Court and complain that the court below did not disregard such evidence. This was surely no way of proving that the Respondent was guilty of this offence. This is not how convictions are secured in criminal matters.

142. The Court has gone to great lengths in the present judgment to expound the proposition that it is the duty of the prosecution to prove its allegations beyond reasonable doubt. Instead of bringing evidence to Court that would show, beyond reasonable doubt, that the Respondent herein was guilty of the offence charged, the prosecution instead brought evidence that engendered not only an avalanche of doubt about his guilt; but that actually affirmatively and pointedly pointed in the direction that the accused person most probably did not commit the offence at all.

143. All this therefore leaves this Court with no option but to draw the conclusion that the prosecution has failed to prove beyond reasonable doubt that the Respondent possessed the said foreign currency without lawful justification. In fact it is important that we should pay attention to the actual language of Regulation 25(1) under the Exchange Control Regulations. The Regulation is couched in the following terms: "A person shall not, without the permission of the Minister, be in possession in Malawi of foreign currency." It is noteworthy here that

although the particulars of the charge are couched in language that suggests that the offence was that he was found in possession of foreign currency without lawful justification, the actual language under Regulation 25(1) is that the offence lies in possessing foreign currency without the permission of the Minister. In the instant case, the Respondent produced a permit from the Minister responsible for Finance to possess foreign currency which Hon. Goodall Gondwe completely owned as the issuer. Added to this was the clearly exculpatory explanatory oral evidence that was adduced by Hon. Goodall Gondwe. He was a prosecution witness and not a defence witness, and his evidence went unchallenged.

144. During the hearing of the appeal, Counsel for the prosecution sought to fault the Minister's permit, post-facto, that is well after Hon. Gondwe had concluded his evidence, by suggesting that it was issued under a non-existent law. He stated that the Permit purported to be issued under section 25 of the Exchange Control Act and that such a section does not exist. The Court agrees, but also forms the view that this was a typical clerical mistake that would not vitiate the validity of the permit. It is clear to the Court that reference to section 25(1) of the Exchange Control Act was meant to refer to Regulation 25(1) of the Exchange Control Regulations.

145. What is most significant is that there is a permit issued by a duly constituted authority, the Minister responsible for Finance in this case which authorizes a person, the Respondent in this case, to hold foreign currency. In the instant case, the Minister unequivocally vouched that he issued the permit that was presented in Court and that it was valid.

146. Counsel for the Appellant had another argument in his appeal arsenal. He contended that when one examines the permit, the permit only allowed the Respondent to hold a reasonable amount of foreign currency. It was his submission that a reasonable amount had to hover around U$3000 at any given time and that the sums herein, which

included US dollars amounting to U$57500, was much on the unreasonable side. Once again Hon. Goodall Gondwe, giving evidence on behalf of the prosecution, stated that he could not specify what could constitute a reasonable amount for the Respondent to keep. It was his evidence that medical charges differ from country to country and he could therefore not come up with one composite figure that would represent a reasonable amount of foreign currency.

147. The Court's observation is that the permit was not drafted in meticulous terms, and more so considering the stature of the former Minister of Finance as a seasoned economist. In a country whose foreign currency regime is premised on a policy of control, it was ill-advised to issue a permit, without expiry date and that did not specify the actual limit on the foreign currency that the Respondent could possess. Simply stating that the Respondent was permitted to hold a "reasonable" amount of foreign currency was rather imprecise and vague. This rendered the permit as open to abuse. The Court actually thinks that it is arguable that the amount of foreign currency that the Respondent was found to possess, which included U$ 57,500 and 22,370 South African Rands, was on the excessive side. However, this is simply uninformed speculation. The Court was not furnished by the prosecution with evidence that could have demonstrated why this amount was unreasonable. For instance, the prosecution could have sought to show the average cost for Malawians to access medical treatment in various major foreign treatment destinations for most Malawian patients such as South Africa, India, the United Kingdom and the United States of America for a given specified time. Such evidence could have helped the Court to determine the issue of the reasonableness of the amount held. This could in turn have put the Court in a position where it could competently determine whether the foreign currency found in possession of the Respondent was outside the scope of the permit that he was issued with in terms of the amount. The Court once again emphasizes the importance for the prosecution to

always bear in mind the twin issues of burden of proof and standard of proof in criminal matters. The burden was on the prosecution and the standard of proof was beyond reasonable doubt.

148. In the present case, when the prosecution's evidence is viewed in its totality, it without doubt raised reasonable doubt. This Court, in the face of the evidence before it, cannot state that the one and only conclusion that can be drawn from such evidence is that the Respondent herein possessed the foreign currency without a permit from the Minister.

149. In the final analysis, this Court cannot entertain grounds of Appeal 5, 6 and 7 of the Petition either as they that lack merit. They would likewise fall to be dismissed.

150. In the ultimate result, the appeal herein wholly fails. It fails on the basis that the appeal itself was incompetently filed in a manner that did not comply with the requirements of sections 349(1) and 349(4) of the CP & EC.

151. Secondly, and further to the first reason, even if the appeal had been competently brought before this Court, the appeal herein would, in any event, not be sustainable as the Petition of Appeal only succeeded to raise grounds that were unmeritorious. The Ruling of the Court below of 18th May 2018 is therefore affirmed and upheld; and the Respondent herein, Hon. Dr. George Thapatula Chaponda, MP, stands acquitted on all the charges that were leveled against him.

152. It is so ordered.

Delivered in open Court at Zomba this 2nd Day of June 2020.

R.E. Kapindu, PhD

JUDGE