



REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL CASE NUMBER 29 OF 2019

THE REPUBLIC
VS
MOHAMED SHAHIN MAHOMED IQBAR JUMA

AND

Coram : Honorable Mrs. Justice F.A Mwale
Mr. Kaonga, Counsel for the Accused
Mr. C. Mpandaguta, Official Interpreter

Mwale, J

RULING ON APPLICATION TO CORRECT A FACTUAL ERROR

1.1 The applicant stands charged with the offence of murder contrary to section 209 of the Penal Code. The Court pronounced its ruling on a case to answer on 7th July 2020 and set down defence for 27th July 2020. On this date, of counsels for the applicant presented a scenario to the Court that left them professionally embarrassed as the applicant had instructed them to file an application that they were not comfortable to file. This Court granted an adjournment to

the 10th of September when the defence would resume, so that if any application were to be filed in the interim, the Court would deal with it according to law.

1.2 The applicant has therefore filed this application for the Court to correct a factual error in the Ruling on Case to Answer alongside with a Notice of Discharge of legal Practitioners and a Notice of Change of Legal Practitioners as he is now represented by new counsel.

1.3 The applicant by his application seeks this Court correct an error in the Ruling on Case to Answer in which the Court “incorrectly stated the day that the Accused had a conversation with the deceased and that fact is critical to the ultimate placement of blame. The application is made under section 42(2)(f)(iv) of the Constitution, Order 14 of the Courts (Subordinate Court) Rules, and section 345 of the Civil Procedure and Evidence Code.

1.4 The issue according to the application is that this Court in erring as to a date when a particular event took place, made a substantial error warranting the Court not only to correct the error, but also to revisit its ruling as according to the Sworn Statement in Support of the application, it is impossible to return a finding of guilt in view of the error. The relevant parts of the Sworn Statement read as follows:

12. **THAT** her written statement is clear that she received the call on 19th December, 2018 and it is also clear that it was on a Thursday that she made the visit because she states: *“I started dressing her hair since she said she wanted to attend a wedding ceremony in Blantyre on the following day”* and it is known through the witness statement of PW1 and the prosecution’s summary of its evidence, that the wedding she was going to attend was on Friday 21st December.

13. **THAT** the testimony above was ably recorded by the Court. Exhibited and shown before me is a copy of the handwritten notes of the Court attached as **AK1**.

14. **THAT** clearly, the record of the Court shows that PW5 indeed visited the deceased on the 20th December, 2018 and not the 19th December, 2018.

15. **THAT** on PW5’s completed and sworn evidence it is therefore impossible that the accused is guilty as, on the prosecution evidence and case he had left the deceased for the last time the night before the hairdressing appointment the next day.

16. **THAT** regrettably the court was not assisted by the prosecution’s submission on a case to answer in which the witness’ evidence as to the relevant date was fundamentally misrepresented as follows:

“and on the morning of 19th December, 2018, while doing the hair of the deceased she overheard a heated conversation...”.

17. **THAT** no doubt as a consequence of the prosecution's error of fact the Court also fell into error as follows in its ruling dated 7 July, 2020 on no case to answer (para 2.2, under heading "*The Evidence and the Arguments*"):

"PW5 was J.Banda, a beautician and hairdresser who [overheard] a heated conversation between the deceased and the accused the day before the murder."

18. **THAT** I verily believe that there can be no doubt that the Court has erred in the above observation and that it ought to read: "...*overheard a heated conversation between the deceased and the accused the day after the prosecution allege the murder occurred.*"

19. **THAT** I believe that this is a proper case for the Court to make this factual correction to its ruling to reflect the actual evidence given by PW5 as well as the Court's own record which this Court can do as it is still seized of the matter.

1.5 Having reflected on the issues raised I find as follows:

- 1.5.1 Once a court finds that there is a case to answer, the ruling of that court is final, and it is only upon appeal after conviction that any factual error or otherwise on which the case to answer was premised becomes a ground for appeal.
- 1.5.2 If an error arises at this stage that ought to be corrected, it must satisfy the "slip rule". The errors envisaged by the "slip rule" are clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission. The applicant's submission go beyond a mere technical correction as the application requires the Court to revisit its ruling on the basis of the error. Revisiting a ruling goes beyond correcting a clerical mistake or omission.
- 1.5.3 There is no way in which the applicant will be prejudiced in his defence in any way under section 42(2)(f)(iv) of the Constitution because the ruling was clear in following the prescription of the law in section 313(2) of the Civil Procedure and Evidence Code. The applicant has a choice to either remain silent or give evidence. At the close of the defence whether the applicant gives evidence or not, the defence will be invited to make submissions. The issues being raised in this application are issues that should be raised in argument.
- 1.5.4 This is an ex parte application in which the applicant alleges an error has been made, whether there is an error will require a finding after both sides have been

heard. The issue has therefore been raised prematurely. The Court's hand should not be forced at this stage to make a decision on the evidence before it has heard the entire case.

1.6 As I have reasoned above, the order to correct an error in the ruling is not granted.

Pronounced in Chambers in Lilongwe in the Republic this 4th day of September 2020.


Fiona A. Mwale

JUDGE