IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY

CRIMINAL DIVISION

CRIMINAL REVIEW CASE NO. 24 of 2021

(Being Criminal Case No. 1288 of 2020 in the Chief Resident Magistrate Court sitting at Lilongwe)

ZAMEER KARIM..... **APPLICANT**

and

REPUBLIC ..... **RESPONDENT**

CORAM: Honourable Justice Annabel Mtalimanja

Mr. Nampota, for the Applicant

Mr. Nampota, for the Applicant

Ms. Jafali, for the Applicant

Dr. Kayuni, DPP, for the Respondent

Mr. Mangani, for the Respondent

Mrs. Namagonya, Court Reporter

Mrs. Choso, Court Clerk

ORDER ON REVIEW OF PROCEEDINGS BEFORE A SUBORDINATE COURT

1. This is an Application by the Applicant, Zameer Karim, for review of proceedings which are ongoing in the Chief Resident Magistrate Court in Lilongwe (hereinafter referred to as the "lower Court"), being *Criminal Case No. 1288 of 2020 Republic v Zameer Karim and Victoria Chanza.* The Application is made pursuant to section 360 as read with section 362 and 363 of the Criminal Procedure and Evidence Code, Cap.8:01 of the Laws of Malawi (hereinafter referred to as the "CP & EC"). The Applicant calls on this Court to satisfy itself as to the correctness, legality or propriety of the order made by the lower Court on 17th September, 2021 ordering that, notwithstanding that the prosecution had already closed their case, the charge sheet be amended to include the offence of Money laundering.

2. For purposes of this Application, the relevant facts are as follows: the Applicant, along with Victoria Chanza, stand charged before the lower Court with the offences of Forgery, contrary to section 358 of the Penal Code, Cap.7:01 of the Laws of Malawi (hereinafter referred to as the "Penal Code"), Uttering a false document contrary to section 360 of the Penal Code and Fraud other than false pretences contrary to section 319 (A)(a) of the Penal Code.

3. Trial is ongoing, with the State having this far paraded 6 witnesses, namely, Commissioner of Police Goodwell Botomani (Deceased), Superintendent Herbert Njolwa, Commissioner of Police Tadius Samveka, Deputy Inspector Yotamu Banda, Assistant Superintendent Mr. Joseph Nkhoma (Retired) and Mr. George Phuza from Ecobank.

4. On 17th September, 2021, at the close of the testimony of the 6th witness, Mr. George Phuza, the State closed its case. Immediately after closing its case, the learned DPP applied to amend the charge sheet to add a count of Money laundering, contrary to section 331A (1) of the Penal Code against the Applicant. The Applicant objected to the application. The lower Court allowed the application and ordered the Applicant to take plea on the new count. Upon the Application of Counsel for the Applicant for time to consult with his client before taking plea on the new count, the lower Court adjourned the proceedings to 28th September, 2021.

5. On 24th September, 2021, the Applicant filed an Application with this Court to review the proceedings in the lower Court. In accordance with the law, having deemed it fit to call for the record of the lower Court, this Court stayed the proceedings pending the said review.

6. The Applicant seeks this Court to review the correctness, legality and propriety of the order of the lower Court allowing the amendment of the charge sheet. By his Affidavit sworn in support of the Application, Counsel for the Applicant deposed in the main as follows: in the course of cross-examination of PW4, Detective Inspector Yotamu, the Applicant brought to the attention of this witness that even though the Applicant was charged with the offence of Money laundering at the Police, along with the other offences appearing on the charge sheet in the proceedings before the lower Court, this offence was not among the charges the Applicant was answering in the said proceedings.

7. Counsel stated that the State paraded all its witnesses and closed its case, then moved the Court to amend the charge sheet to include a Money laundering count before the parties had made their submissions on case to answer. The State had not given the Applicant any advance warning of the intended amendment. They only made an indication to the Defence that they would be making an application for amendment when the lower Court gave the parties a 5 minute adjournment, 15 to 20 minutes before the close of examination of the last State witness. The Defence was not shown a copy of the intended amendment. It was only produced when the Application was being made.

8. The Defence protested to the lower Court that the State had ambushed them and requested for time to examine the charge sheet in order to raise objections to the same. The Defence indicated that it would need time to formulate its objections to the charge sheet so that the court could take into account its submissions in coming up with a ruling on whether the amendment should be allowed or not.

9. The lower Court proceeded to allow the amendment as applied for and requested the Defence to let the Applicant take plea. The Defence pleaded with the lower Court that it would not allow the Applicant to take plea because it needed time to discuss the new charge with him before plea was taken. The Defence drew the attention of the lower Court to the provisions of section 151 (1) of the CP & EC and urged the Court to be mindful of the fact that once plea is taken the objections on the charge sheet could not be allowed. The Defence further drew the attention of the lower Court to the fact that, in terms of section 151 (8) of the CP & EC, the Applicant may need to recall prosecution witnesses for further cross- examination, which would create challenges since PW 1 was now deceased.

10. The lower Court suggested that the matter be adjourned for some time so that the Defence team could consult their clients and take plea the same day. The Defence rejected this and requested for more time to consult their client. The lower Court observed that since it had already made its Ruling, it was not open to the Applicant to raise any further objections on the amended charge. The lower Court adjourned the matter to 28th September, 2021 for the Applicant to take plea, the Prosecution to close its case and then the parties to make their submissions on whether there was a case to answer.

11. Counsel further deposed that the amendment did not satisfy the requirements of section 151 of the CP & EC. He also contends that the cross-examination of the State witnesses conducted by the Defence had not take into account the Money laundering offence. The introduction of this new count will necessitate the recall of PW1, which will be impossible since he is now deceased.

12. Counsel also stated that the State had not indicated why they did not amend the charge sheet at the beginning of the proceedings, or at least, at the time PW4 was being examined on the absence of the offence of Money laundering on the charge sheet. The State had also not explained why they found it necessary to amend the charge sheet after parading the last witness. Counsel finally contends that the order to amend the charge sheet

at this stage of the proceedings is wrongful, unfair and will constitute a flagrant breach of the Applicant's right to a fair trial.

13. In the Affidavit sworn in response, Dr. Kayuni deposed in the main as follows: at the end of the testimony of the last State witness, the State made an application to amend the charge sheet by way of adding a count of Money laundering. At this stage the State had not yet closed its case and intended to close after the accused persons had taken plea on the amended charge sheet. The State is at pains to understand the reasons why the Applicant objected to the application for amendment of the charge sheet at that stage since section 151(2)(b) of the CP & EC permits the State to amend a charge if they are of the opinion that the evidence so far adduced in the course of parading their witnesses discloses another offence not initially included in the averment.

14. He stated that it is not true that the State did not give an advance warning to Counsel for the Applicant of its intention to amend the charge sheet. The correct position is that the State verbally informed the Applicant that it will be making an application for amendment of the charge sheet at the end of the examination of the last witness. When Counsel for the Applicant lamented that the State had not given them sufficient notice of the intended amendment, the lower Court asked the Applicant to indicate how much time they needed to look at the amended Charge sheet and consult his client on the application made by the State. Instead of indicating the time needed, the Applicant proceeded to make an objection to the Application.

15. Dr. Kayuni further stated the lower Court allowed Counsel for the Applicant to make submissions objecting to the Application and upon hearing both parties, the lower Court proceeded to make a Ruling in favour of the State, ordering the Applicant to proceed to take plea on the amended charge sheet. Despite this order, the Applicant refused to do so and the Court adjourned the matter from 17th September, 2021 to 28th September, 2021 to allow him more time.

16. According to Dr. Kayuni, the fact that PW4 alluded to the fact that the proceedings had nothing to do with a charge of Money laundering, simply because the said charge was not appearing on the charge sheet, does not bar the Prosecutors seized with the matter from amending the charge sheet by adding that offence, as the primary responsibility for drafting charges and attendant amendments rests with prosecutors and not investigators.

17. Both parties filed skeleton arguments to which this Court has had recourse in the determination of this Application.

18. To recap, this Application is before this Court pursuant to section 360, as read with sections 362 and 363 of the CP & EC. It is not in dispute that by virtue of section 360, this Court is empowered to call for and examine the record of any criminal proceedings before any subordinate court for purposes of reviewing the proceedings and satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

19. As this Court stated in the case of *Kumbukani Joy Mindiyera v Republic, Miscellaneous Criminal Appeal No. 35 of 2021* the powers of review of the High Court are distinct from its appellate powers as conferred by section 346 of the CP & EC. It is therefore imperative for litigants in criminal proceedings not to confound the two powers. Further, it is also imperative for the High Court to be wary of attempts to appeal against decisions and orders made in the course of proceedings ongoing in subordinate courts being brought under the guise of review under section 360 the CP & EC, as well as under the Courts Act.

20. Furthermore, this Court agrees with what was stated in the case of *Paulos Norman Chisale v Republic, Misc. Criminal Application No. 4 of 2021* that the High Court should be very slow to interfere with ongoing proceedings in subordinate courts through the exercise of its supervisory and review powers over subordinate courts as provided for under the Courts Act and

the CP & EC; and that this jurisdiction should only be invoked and exercised under very compelling circumstances.

21. Presently, the Applicant argues that the order of the lower Court allowing the amendment is irregular because the requirements of section 151 (2) of the CP & EC had not been satisfied before the amendment was granted.

22. On this aspect, upon examination of the record of the proceedings in the lower Court, this Court first makes the following factual observations:

    a. At the commencement of the trial in the lower Court on 6th April, 2021, the Applicant and his co-accused were charged with and took plea on the offences of Forgery, contrary to section 358 of the Penal Code, Uttering a false document contrary to section 360 of the Penal Code and Fraud other than false pretences contrary to section 319 (A)(a) of the Penal Code;

    b. PW1 was examined in chief and cross-examined on the charges as indicated above. In the course of cross-examination by the Applicant, PW1 refused to respond to questions put to him on documents marked "IDD8" and "IDD12" (produced by the Applicant) on account of the fact that the said documents were illegible;

    c. At the end of cross-examination of PW1 by both the Applicant and his co-accused, the State amended the particulars of count one to introduce the words "an acknowledgement of the notice of assignment". After this amendment, the Applicant and his co-accused took fresh plea and thereafter, the co-accused person re-cross-examined PW1. Then the State likewise further re-examined PW1.

    d. On 10th May, 2021, Counsel for the Applicant informed the Court that they had sourced legible copies of "IDD8" and "IDD12" and applied, under section 201 of the CP & EC, to recall PW 1 to be

cross-examined on the questions he had refused to respond to on 7th April, 2021. The lower Court allowed the Application but ordered that the witness be recalled at the next date of hearing. Further, the lower Court ordered that the cross-examination will be restricted to the questions that PW1 did not respond to and that the State will be accorded an opportunity to re-examine him accordingly;

e. When the lower Court convened on 30th July, 2021, the State informed the lower Court that PW 1 had since passed away;

f. On 17th September, 2021, the State paraded its last 2 witnesses. At the end of re-examination of the last witness (PW6), the learned DPP is recorded to have addressed the lower Court as follows:

"*Y/W we close our case. However, Y/W, considering discretion on State pursuant to section 151 of the CPEC Y/W the State would like to pray for invocation of the section. There is a slight change on the charge sheet. There is an additional count.*"[sic]

g. In response to this Application, Counsel for the Applicant stated that they would need a proper application as they would object to the amendment;

h. The State responded that section 151 is very clear on amendment since the Court had not yet complied with the said section 151;

i. The lower Court ordered as follows:

"*I have considered the application for amendment. It is up to the State as the prosecuting authority to decide which charge they will proffer to the accused persons. I have considered the fact that the court may allow an amendment to the charge at any stage before the court complies with section 254 of the CPEC. I am of the view that the amendment be allowed. The defence may advise their clients as to the nature of this offence for purposes of taking plea on the same*

and then since Counsel shall file submissions for ruling on whether or not there is a case to answer Counsel will address the Court on whether the evidence before the court discloses the commission of the offence added or not. I allow the amendment. The accused will take plea on the added count."

j. After this Ruling, Counsel for the Applicant informed the lower Court that the Applicant will need some time between that day and the week next to consult their client. The Court then adjourned the proceedings to 28th September, 2021 for plea taking.

23. As a starting point, the position of the law is that the prosecution has the discretion and authority to decide what charge(s) to be laid against an accused person. Section 99 (2) of the Constitution gives the Director of Public Prosecution (and by extension, public and private prosecutors as appointed and granted consent to prosecute) wide powers and latitude in any criminal case to institute and undertake criminal proceedings against any person, in respect of any offence alleged to have been committed by that person. Just as the prosecution has the power to determine what charges to proffer against an accused person, the prosecution also retains the power to amend the said charges.

24. It must hastily also be stated that the position of the law is that this enormous power bestowed upon prosecutorial authorities is harnessed or regulated by the constitutional prescriptions on the right to fair trial, in particular and of relevance to the present Application, the right of an accused person to be informed with sufficient particularity of the charge as provided by section 42 (2)(f)(ii) of the Constitution. The rules on framing of charges and amendment thereof in the CP & EC also harness this power.

25. In the case of *Inspector General of Police and the Commissioner General of the Malawi Revenue Authority ex parte Honourable Kamlepo Kalua, Judicial Review Cause No 24 of 2017*, citing with approval the case of *The*

State and the Commissioner General for Malawi Revenue Authority, ex parte Yeremiya Chihana, Judicial Review Cause No. 17 of 2015 it was stated that unless the applicant establishes illegality, irrationality, impropriety, dishonesty, *malafides*, or some other exceptional circumstance, on the part of the investigative and prosecutorial authority, the prosecutorial process must not be curtailed by judicial review.

26. Although this was stated in the context of judicial review proceedings that were commenced by the Applicant to stop the respondent from effecting certain prosecutorial decisions, this Court is of the considered opinion that the reasoning is applicable to the these review proceedings under section 360 of the CP & EC. The exercise of prosecutorial discretion to decide which charge to lay against an accused person and take through prosecution must only be curtailed where there is something latently or manifestly wrong.

27. Regarding amendment to charges, section 151 of the CP & EC provides that:

> *"(1) Every objection to any charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later.*
>
> *(2) Where at any stage of the trial before the court complies with section 254, or call on the accused for his defence under section 313, as the case may be, it appears to the court—*
>
> *(a) that the charge is defective either in substance or form;*
>
> *(b) that the evidence discloses an offence other than the offence with which the accused is charged;*
>
> *(c) that the accused desires to plead guilty to an offence other than the offence with which he is charged:*
>
> *the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge as it thinks necessary to make in the circumstances of the case, unless, having regards to the merits of the case, such amendments cannot be made without injustice.*

(3) Where a charge is so amended, a note of the order for amendment shall be endorsed on the charge and the charge shall be treated for the purposes of the proceedings in connexion therewith as having been filed in the amended form.

(4) Every such new or altered charge shall be read and explained to the accused.

(5) The court shall thereupon call upon the accused to plead to the altered charge and to state whether he is ready to be tried on such new or altered charge.

(6) If the accused declared that he is not ready, the court shall duly consider the reasons he may give and, if proceeding immediately with the trial is not likely in the opinion of the court to prejudice the accused in his defence or the prosecution in the conduct of the case, the court may, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

(7) If the new or altered charge is such that proceeding immediately with the trial is likely in the opinion of the court to prejudice the accused or the prosecution, the court may direct a new trial or adjourn for such period as is necessary.

(8) Where a magistrate decides to proceed with the new or altered charge without directing a new trial he shall, save where he is of the opinion that the presence of a witness cannot be obtained without an amount of delay or expertise which, in the circumstances of the case, he considers unreasonable, re-summon all of any witness for re-cross-examination if so requested by the accused.

(9) If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has already been obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

(10) Variance between the charge and the evidence adduced in support of it with respect to the time at which the alleged offence was committed is not material and the charge need to be amended for such variance if it is proved that the proceedings were instituted within the time limited by law for the institution thereof.

28. This provision anticipates that the prosecution may decide to alter or amend a charge after commencement of proceedings. It must be emphasised that the discretion to amend a charge lies within the broader prosecutorial discretion to decide which charge to proffer against an accused person. This provision also clearly establishes that the question whether to allow an amendment is clearly within the purview of the trial court.

29. On the premise of section 151 and the *Kamlepo* case, this Court holds that the High Court sitting on review of ongoing proceedings should be slow to interfere with the discretion of prosecutorial authorities to amend charges, unless it can be shown that the discretion has been exercised in an unlawful manner, or, it violates the right of an accused person to fair trial. Further, this Court also holds that the High Court should be slow to interfere with the discretion of a subordinate court to allow an amendment, where such amendment has been so allowed in compliance with section 151.

30. Presently, the Appellant has taken issue with the fact that the State applied to amend the charge sheet after it had paraded its last witness. It will be observed that by section 151 (2) of the CP & EC, a court can allow an amendment at any stage of the trial, before the court complies with section 254 or calls on the accused person for his defence under section 313 (of the CP & EC). The use of "at any stage" of the trial implies that the prosecution is at liberty to amend a charge at any stage before the pronouncement of case to answer or the court calls on the accused person to enter his defence.

31. However, this said, this Court must hasten to state that the fact that an amendment can be allowed at any stage before pronouncement of case to answer or an accused person being called to enter his defence does not give the prosecution *carte blanche* to amend charges erratically. The essence of the right of an accused person to be informed with sufficient particularity of the charge he or she is facing and the right to challenge and adduce evidence is to afford the said accused person an effective opportunity to adequately prepare for his or her defence. This Court agrees with the Applicant that amending the charge at the close of the prosecution case was perhaps not the neatest way of doing things. However, this Court finds that this, in and of itself, is not sufficient to impugn the order allowing the amendment, unless it can be shown that the said order will occasion injustice to the Applicant.

32. As this Court understands it, the underlying principle through section 151 is to allow the prosecution amend a charge where necessary, whilst at the same time protecting the right of the accused person to fair trial. This is manifest in the fact that an amendment can only be allowed if it can be made without occasioning any injustice to the accused person.

33. As indicated, the Applicant contends that the order of amendment was irregularly granted since none of the requirements in section 151 (2) were satisfied. He argues that in terms of this provision, an amendment can only be made where the charge is defective in form or substance (section 151 (2)(a); the evidence does not disclose the offence charged but discloses some other offence (section 151 (2)(b); or the accused person desires to plead guilty to an offence other than the offence with which he is charged (section 151 (2)(c).

34. This Court agrees with the Applicant's construction of section 151 (2)(a) and (c). However, this Court holds a contrary view on section 151 (2)(b). Section 151 (2)(b) allows an amendment where it appears to the court that the evidence discloses an offence other than the offence with which the accused person is charged. This Court construes section 151 (2)(b) to mean

that a court can allow an amendment where the evidence discloses an offence other than the offence with which an accused person is already charged with. In this Court's considered opinion this is not only the ordinary construction of this provision, but, it is also consistent with the entirety of section 151 (2) which *inter alia* expressly allows an amendment by way of the addition of a new charge altogether. As argued by the Respondent, by making provision for the addition of a new charge, section 151 (2)(b) must be construed to be allowing for amendment by way of adding a completely new charge where the evidence has disclosed a different offence.

35. The Applicant argues that even if it were to be deemed that all the conditions set out in section 151 (2) were satisfied by the prosecution, the amendment ought not to have been allowed as it will occasion the Applicant injustice. This, according to the Applicant, is because this far into the proceedings, the Defence have been conducting their cross-examination of the State witnesses on the premise of the existing three counts. The introduction of the new count will necessitate recall of the witnesses, however with the demise of PW1, the Applicant cannot put facts to him. This, argues the Applicant, will be highly prejudicial as it will cause him irreparable injustice.

36. To this the Respondent contends that a quick glance at the three existing counts and their respective particulars of facts shows that the State is charged with the burden of proving that the Applicant knew that the K150 million in issue was obtained by criminal means, specifically fraud and deceit. If just one of these three counts is proved, then it can be concluded that the Applicant, trading as Oil and Protein Company Ltd, knowingly obtained the said sum of K150 million being tainted money, so goes the argument.

37. The Respondent further contends that the new count is premising its facts on the other existing three counts, so much so that the finding of guilt on any one of the said counts will mean an automatic finding of guilt on the

new count. Therefore, so the contention goes, just as the prosecution will not need to offer new evidence to establish the new count, the Defence would not be prejudiced if they did not cross-examine the witnesses again.

38. On this aspect the Respondent also argues that the evidence that the prosecution adduced in this case can prove that the Applicant knew he had obtained tainted property, therefore the same evidence which has been duly cross-examined, can prove the new count of Money laundering. According to the Respondent, this point is buttressed by the Defence's own conduct at trial when they cross-examined PW4, and specifically asked him to confirm that the Applicant was not answering a Money laundering charge; this shows that the Defence could spot that the evidence was also bringing out elements of money laundering.

39. This Court observes that the count of Money laundering that was added by the amendment is a felony that carries a penalty of a fine of K2 million and imprisonment for 10 years for a natural person and a fine of K10 million for a body corporate. Given the nature of this offence, this Court finds that for all intents and purposes, the addition of this count was a substantial amendment to the charge sheet that cannot be simply glossed over as submitted by the Respondent.

40. In terms of section 42 (2)(f)(ii) and (iv) of the Constitution, the Applicant not only has the right to be informed with sufficient particularity of the charges he is facing; but also has a right for him to challenge the evidence adduced against him to prove those charges. Thus, in the proceedings in the lower Court, it was not sufficient just to inform the Applicant of the count that has been added to the charge sheet. It was and is imperative that he be accorded the fullest opportunity to challenge the prosecution evidence adduced to prove the added count.

41. This Court has addressed its mind to the submission by the State that it is not going to call any fresh evidence to prove the new charge, rather it will rely on the testimony already on record; and that there is therefore no need for the Applicant to re-cross-examine the witnesses. Whilst it is acceptable

for the State not to call any fresh evidence to prove the new count on account of the fact that the State has the prerogative to choose how to discharge the burden of proving the charges it has laid against an accused person; the State cannot dictate to the Applicant how he should defend himself against the new count. As part of the right to fair trial, the Applicant is at liberty to determine how to conduct his defence to the new count, including challenging the evidence through re-cross-examination of any or all of the State witnesses, if allowed by the trial court.

42. It will be observed that section 151 read in its entirety provides an elaborate scheme that is to be followed by a trial court when dealing with an amendment or alteration to a charge whilst at the same time preserving the right of an accused person to fair trial. The requirement in section 151 (4) to read and explain every amended or altered charge preserves the right of an accused person to be informed with sufficient particularity of the charges proferred against him or her. The requirement in section 151 (7) and (8) to, upon the request of the accused person and deemed necessary, re-summon all or any witnesses for re-cross-examination preserves the right to challenge evidence.

43. It will be recalled that the Applicant is yet to take plea on the new count since the proceedings in the lower Court were adjourned on 17th September, 2021 to 28th September, 2021 to afford him time to consult with his legal team. In the ordinary course of events, following this adjournment, procedurally, the lower Court should next apply the provisions of section 151 (4) to (8), as deemed appropriate.

44. This Court has carefully considered the crux of this Application, which is the Applicant's trepidation that the amendment will prejudice him and occasion injustice, since he cannot re-summon and re-cross-examine PW 1, who is now deceased. This Court is of the considered opinion that the Applicant has jumped the gun on this aspect.

45. Section 151 (8) indeed makes provision for an accused person to re-cross –examine any or all of the witnesses who testified prior to the amendment. However, it must be noted that the re-cross-examination is not a matter of course. Re-summoning witnesses for re-cross-examination is upon the application of the accused person, and subject to the trial subordinate court's opinion that the presence of the witness(es) can be obtained without an amount of delay or expense, which the said court considers in the circumstances not to be unreasonable. As this Court understands it, this provision envisages a situation where, following an amendment or alteration to a charge as has happened in this case, an accused person applies to the Court to re-summon any or all of the witnesses for re-cross-examination on the amended or altered charge.

46. Presently, the record of the proceedings in the lower Court shows that no such application was made by the Applicant for the lower Court to re-summon all or any of the State witnesses so that he can re-cross-examine them on the Money laundering count. Since there is no order of the lower Court denying such an application, it cannot be concluded that the Applicant has suffered any injustice by the addition of the new charge *per se*. Since the power to invoke section 151(8) lies with the lower Court as the trial court, this Court finds that it will an abuse of its review powers to step in at this stage when the law clearly does not support this.

47. Regarding the fear of injustice arising from the demise of PW1, this Court is of the considered opinion that this fear is misplaced. Since PW 1 is deceased, it goes naturally without saying that he cannot be re-summoned for re-cross-examination on the Money laundering count. This being so, on account of the dictates of fairness and justice and indeed for the preservation of the constitutional right of the Applicant to challenge evidence, the evidence admissible to prove the Money laundering count shall be restricted to the testimony of PW2 to PW6, who are alive and available to be re-summoned for re-cross-examination, in the event the Applicant elects to apply to do so and the lower Court deems it appropriate to allow the said application.

48. Therefore, this Court finds that the addition of the Money laundering count has not occasioned any injustice to the Applicant. Thus, this Court finds that there is no irregularity with the order of amendment of 17th September, 2021. Further, this Court finds no basis to impugn the correctness, legality or propriety of the said order. This Court will therefore not interfere with the proceedings in the lower Court. The order of stay that was granted on 24th September, 2021 is hereby set aside and the file is hereby remitted to the lower Court to continue with the said proceedings, accordingly.

Made in Chambers this 22nd Day of October, 2021.

Annabel Mtalimanja
JUDGE.