REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

LILONGWE REGISTRY

CRIMINAL CASE NO 11 OF 2021

BETWEEN

THE REPUBLIC

AND

AUBREY SUMBULETA

CORAM : HON. JUSTICE R.E. KAPINDU

Dr. S. Kayuni; Mr. M Gamadzi, Mr. J. Banda & Mr. D. Nyasulu, Counsel for the State.

Mr. D. Kanyenda, Counsel for the Defendant.

C. Kapinda/C Nyalaya, Court Reporter.

C. Saukila, Court Clerk.

RULING

KAPINDU, J

1. The accused person in the present matter, hereafter referred to as the Applicant for purposes of the present Ruling, Mr. Aubrey Sumbuleta, has applied to this Court for change of the venue for his trial. He prays that his trial be held in Blantyre, at the High Court of Malawi, Principal Registry, Criminal Division rather than at this Registry – the High Court of Malawi, Lilongwe District Registry, Criminal Division. He has premised his application on the provisions of Section 69(b) of the Criminal Procedure and Evidence Code (CP & EC) (Cap. 8:01 of the Laws of Malawi). That section provides that:

> *"Subject to section 67 and to the powers of transfer conferred by sections 74 and 75, every offence shall ordinarily be inquired into or tried by the subordinate court nearest to the place at which the offence took place, or where the accused was apprehended or is in custody or has appeared in answer to a summons lawfully issued charging the offence."*

2. The Applicant invites the Court to bear this provision in mind and observe that he was arrested at his home in Mpingwe in Limbe, and then driven all the way to Lilongwe where he was interrogated by the Police at the Malawi Police Headquarters at Area 30 in the said City of Lilongwe. He finds this very troubling, arguing that there was no justification for this kind of conduct on the part of the State. He is of the view that such an interrogation could have been done within the City of Blantyre or within Blantyre District generally. He points out that as a matter of fact, in all the districts that lie between Blantyre and Lilongwe when one sojourns the Republic, there are so many Police Stations that could competently

have investigated the alleged offences, and that therefore it is rather puzzling and unfortunate that he had to be driven the long distance between Blantyre and Lilongwe, passing by all these Stations, only to be interrogated in Lilongwe and subsequently arraigned and tried before Courts in Lilongwe.

3. In this regard the Applicant submits, through his learned Counsel Mr. Kanyenda, that there were courts in Blantyre, both magistrate courts as well as the High Court Criminal Division at the Principal Registry, that could have competently inquired into, tried and determined the present matter. He argues that it was unwarrantable for the State to have brought him all the way from Blantyre to Lilongwe for investigation and trial as if there were no competent investigative and judicial institutions to deal with the matter in Blantyre. He suggests that this conduct smacks of forum shopping.

4. It is the Applicant's argument that in its natural and usual meaning, section 69(b) of the CP & EC should be understood to mean that upon his arrest, the Applicant was entitled, as a matter of priority of process, to have been brought before a subordinate Court nearest to the place where the alleged offences are alleged to have been committed. It is his contention that it is clear from the charges preferred against him that only the offences in counts 1 and 2 are alleged to have been committed in the City of Lilongwe, and that the offences alleged in counts 3, 4, 5, 6 & 7 are all alleged to have been committed in the City of Blantyre. Indeed, I should be quick to mention that this is a fact that the State quickly conceded.

5. The Applicant proceeds to state that two of the three complainants are based in Blantyre; and that about half of the witnesses are also based in Blantyre. He submits that this fact should further move the Court to incline towards deciding to transfer the present proceedings to Blantyre.

He goes on to contend that in any case, most of the witnesses based in Lilongwe are actually witnesses whose involvement in the trial will be merely in an investigative capacity. He submits that those with material direct evidence relating to the matter are all based in Blantyre.

6. The Applicant goes on to submit that section 69(b) of the CP & EC places priority of process, in the second order, to the place *"where the accused was apprehended."* He contends that he was arrested at his residence in Mpingwe in Limbe, in the City of Blantyre, and that there were competent courts within Blantyre City where he could have been brought, instead of moving him across the shire river, all the way to Lilongwe. Whilst on this point, the Applicant reminded the Court that in the case of ***Bvalani & Kabwila vs Electoral Commission & Others***, Civil Cause No. 40 of 2020, Mkandawire, J (as he then was) warned court users against a practice that he termed *"judicial tourism"*. In essence, this is a practice where litigants inexplicably avoid a court of competent jurisdiction which is nearer and to every objective mind more convenient for the parties, and instead take the matter to a rather distant court in order to deal with the matters. Mkandawire J expressed his disapproval with the conduct of *"some counsels who abandon nearby court registries and opt for distant ones."* He observed that:

> *"This is not the first time when [eyebrows] have been raised by these courts in the way some matters are being filed in our courts especially the High Court. At times this has led to speculation by members of the public that court users are involved in forum shopping."*

7. Mkandawire J proceeded to commend Ntaba J, who had handled the matter at the High Court of Malawi, Zomba Registry, observing that:

"she found it wise to transfer it [the matter] to Lilongwe because she thought that this was the most convenient forum to the parties. I really commend my Sister Judge for her wisdom and other judges should emulate her if we are to arrest this awkward practice."

8. The Applicant in the instant case therefore, when I summarise the thrust of his application, calls upon this Court to jealously guard the sanctity of the judicial process from this vice that Mkandawire J called *"judicial tourism"* by deciding to order that the matter should be transferred to Blantyre as the more appropriate forum for trial.

9. The Applicant also complains that trying him in Lilongwe is causing severe strain on his financial resources and that the Court must consider, in this regard, that he is presently unemployed. He states that for every Court sitting in Lilongwe, he has to foot the travel and lodging expenses for his Counsel as well as those for himself, and that this is very costly and imposing a heavy burden on him. He feels there is no reason why the State should put him to such great expense when the State has a full State Advocates Chambers in the City of Blantyre, with competent lawyers who can ably prosecute the case. He feels that the State is deliberately putting him to such huge expense to ruin him financially so that in the end, his fair trial may be compromised as he might eventually fail to afford the services of his Counsel of choice.

10. Finally, the Applicant was emphatic that he was not applying for the recusal of the current presiding Judge from presiding over the present matter, stating that he has confidence in the present Judge. He proceeded to state that in fact, even if it meant the current presiding Judge trying the matter in Blantyre if he so decides, he would take no issue. His only request is that the matter should be heard and tried in the City of Blantyre

where the bulk of the offences are alleged to have been committed, where he was arrested, and where most of the complainants live as well as a significant number of potential witnesses.

11. The State in essence, argues that there were good reasons that prompted the State to obtain the Warrant of Arrest at the Lilongwe Magistrate Court and bring the Applicant before a Magistrate Court in Lilongwe after his arrest, and later to commit him to this Court for trial.

12. The learned Director of Public Prosecutions (DPP), Dr. Kayuni, informed the Court that the Applicant was arrested by investigating officers from Malawi Police Headquarters at Area 30 in the City of Lilongwe. He states that this was because after the Malawi Human Rights Commission (MHRC), which is based in Lilongwe, had concluded its investigations, it referred the matter to the Malawi Police Headquarters in Lilongwe for criminal investigations and that this is why investigators from the National Police Headquarters became seized of the matter. He further stated that the complainants themselves also lodged their individual complaints, calling for criminal investigation into the matter, at the National Police Headquarters in Lilongwe.

13. The learned DPP mentioned that after investigating the matter and establishing that an arrest had to be made, and considering that the investigators were based in Lilongwe, they decided to obtain a Warrant of Arrest from the Lilongwe Magistrate Court. He then contended that according to the law, an accused person is supposed to be brought before the Magistrate who issued the Warrant upon his/her arrest and that this was another pertinent reason for bringing the Applicant to Lilongwe upon his arrest. He cited section 96(2) of the CP & EC as authority for this proposition.

14. The learned DPP also suggested that most of the witnesses were based in Lilongwe, although he later seemed to concede that it appeared as if the numbers of witnesses were almost evenly balanced between Blantyre and Lilongwe.

15. Dr. Kayuni argued that the concept of fair trial should apply evenly to the State and the accused person, and that when issues of expense in the conduct of the trial are raised, the Court should consider both sides and not only the accused person.

16. It was learned DPP Dr. Kayuni's argument that moving the case to Blantyre would substantially drain the resources of the State for the legal team and those supporting them to be traveling to Blantyre for trial. He argued that the unique character of the case, which has novel charges under the Gender Equality Act (Cap. 25:06), require that the State be represented at a very high level of seniority of Counsel, and that Counsel of such desired level of seniority are only in Lilongwe at present.

17. The learned DPP continued to state that moving the case to Blantyre would also drain the resources of the Court if this Court, as in the present presiding Judge, decides to continue to preside over the case if it moves to the High Court Principal Registry in Blantyre. He argued that just like the State, the Court would likewise have to travel with a support team entailing expenditure of substantial state resources in the course of the trial.

18. The learned DPP therefore invited the Court to dismiss the Applicant's prayer in its entirety.

19. Such were the arguments in the present matter. I am very thankful for the resourcefulness and great industry demonstrated by Counsel for both parties in arguing this issue.

20. I must begin by agreeing with the State that this Court has the jurisdiction and competence to inquire into and try any offence that is subject to the jurisdiction of Malawi at any place and time within Malawi. I also agree that as a general principle, the issue of transfer of proceedings in the High Court is discretionary on the part of the Judge.

21. I further agree that where the issue of convenience arises in legal proceedings, this convenience is not restricted to the main parties to the action or trial, but that the interests of all other participants in the proceedings, such as witnesses must also be considered. This is something that I will bear in mind as I make my decision in the present case.

22. Indeed, so much was said in the present case, both in the affidavits in support sworn by both parties, and also in the Skeleton Arguments. Whilst I will not be able to restate all that was said in this ruling, everything that was said has been considered.

23. It seems to me however that the issues are very clear, simple, narrow and straightforward. As a matter of fact, the whole issue seems to ultimately fall squarely on questions of law as regards the venue for a criminal trial under the CP & EC.

24. In the case of ***Republic vs Kampunga Mwafulirwa***, Miscellaneous Criminal Application No. 173 of 2001 (HC, PR) Kapanda J (as he then was) decisively dealt with this matter. The learned Judge stated and held as follows:

> *"it must be remembered that, in deciding where the venue of a criminal trial should be, the following must always be considered: the convenience of the defence, the prosecution*

and the witnesses. I would tend to think that this observation can be discerned from the stipulation in Section 69(b) of the Criminal Procedure and Evidence Code which provides that:

"Subject to Section 67 and to the powers of transfer conferred by Sections 74 and 75 every offence shall ordinarily--- be inquired into or tried by the subordinate court nearest to the place at which the offence took place or where the accused was apprehended in answer to a summon (lawfully issued charging the offence…"

From the above, it would appear that, ***except where there are exceptional circumstances***, ***a criminal trial must invariably be inquired into by a subordinate court nearest the place at which the offence occurred or where the accused was arrested.*** *Further, it is my view that* ***a criminal trial would only be inquired into by a subordinate court other than the one nearest to the place of the occurrence of offence, or where a suspect was arrested, if the High Court has ordered, through an application by a party to the proceedings, to that effect.*** *The provisions of Section 74 and 75 of the Criminal Procedure and Evidence Code are pertinent on the observation that I have just made.* [Emphasis supplied]

25. It appears to me that ***Republic vs Kampunga Mwafulirwa*** was a very cogently reasoned decision by the learned Judge and I do not see any compelling reason or justification for departing from it. From the decision in ***Republic vs Kampunga Mwafulirwa***, it is evident that in the present case, from the manner in which the charges against the accused person have been preferred, most of the offences he is being accused of were allegedly committed in Blantyre, and, as stated earlier, even the State conceded this fact.

26. Secondly, it is an incontrovertible fact that the accused person was arrested in Limbe in the City of Blantyre. According to ***Republic vs Kampunga Mwafulirwa***, on this ground, just like with the first ground, the matter should have first been brought before the subordinate court nearest to where the offences were allegedly committed or nearest to where he was arrested, and this was in the City of Blantyre. In order to depart from this position, according to that case, the State needed to prove exceptional circumstances. Examining the circumstances as explained by the State, I do not see anything exceptional warranting the decision that the State took to bring the accused person from Blantyre to Lilongwe.

27. The fact that the matter was inquired into by the MHRC and that the MHRC reported the matter to the National Police Headquarters provides no plausible basis for causing investigators at National Police Headquarters in Lilongwe to be the ones to travel all the way to Blantyre to investigate the matter. Clearly, it was within the discretion of the appropriate authorities at the National Police Headquarters to refer the matter to, for instance, the Southern Region Police Headquarters at Chichiri. On this point, I take judicial notice that the Southern Region Police Headquarters is literally next to the Malawi Broadcasting Corporation's Chichiri Broadcasting House where the bulk of the offences herein are alleged to have been committed. Again, it would not have been difficult at all for the said Southern Region Police Headquarters to get hold of and, if necessary, arrest the accused person in Limbe.

28. As learned Counsel Kanyenda for the accused person rightly contended, there were certainly courts in Blantyre with jurisdiction and competence to ably deal with the offences in respect of which the accused person has

been charged. I fail to see any exceptional reason to justify holding the trial of the present matter in Lilongwe.

29. I am mindful that both parties raised the issue of expense. The Applicant states that by bringing his trial to Lilongwe, in the circumstances that have already been described above, the State might bring him to financial ruin which in turn might compromise his fair trial as regards his legal representation of choice.

30. The DPP also argues that although he has a fully-fledged State Advocates' Chambers in the City of Blantyre, the nature of this matter is such that it may only be prosecuted by very senior officers who are based in Lilongwe. As a result, he submits, the State will also suffer great expense if the matter is to be tried in Blantyre. The learned DPP argued that fair trial must apply to both the State and the Defence alike.

31. Pausing there, I remind myself that section 42(2)(f)(iii) of the Constitution guarantees every person accused of the commission of an offence the right to be presumed innocent until proven guilty in criminal proceedings. What this means is that when approaching issues as they arise in the course of the proceedings, more so at a very early stage such as in the present matter, the Court must proceed on the preliminary understanding that the person being accused of the offence is legally innocent. This preliminary understanding of innocence is not expressed as an unequivocal affirmation of the fact of innocence, but as a prior statement of consequence in terms of what results from a failure to strictly prove the allegation. The consequence is a finding of "not guilty" leading to an acquittal and this result suggests innocence in the eyes of the law.

32. I must mention that the presumption of innocence, in addition to being a constitutional right in Malawi, is also a well and long-established sound

maxim of general jurisprudence not only in common law jurisdictions around the world, but also one that has gained enormous currency as a norm of public international law. It was long said, over a century ago, that the presumption of innocence *"hovers over the prisoner as a guardian angel throughout the trial"* See James Bradley Thayer, "*The Yale Law Journal*", Mar., 1897, Vol. 6, No. 4 (Mar., 1897), pp. 185-212, at 190; and that it entails that *"a person should not be considered guilty in a criminal case unless and until all idea of innocence be completely extinguished by the weight of the evidence that has been produced"* See ibid, page 191.

33. James Bradley Thayer continued to state that:

> *"The English conception of the presumption of innocence has been expressed by a writer peculiarly learned in the criminal law, who had devoted much time to the study and exposition of it, and, as a judge, was long engaged in administering it. Fitzjames Stephen, in the second edition of his "General View of the Criminal Law of England," published in 1890, when the author had been eleven years a judge of the Queen's Bench Division…"Its real meaning, and I think its practical operation, is that it is an emphatic caution against haste in coming to a conclusion adverse to a prisoner.""* See Ibid, Page 194.

34. Hence, where the Court must weigh issues of convenience and expense between the parties, the Court must warn itself of the dangers of, and indeed steer clear of hastily coming to conclusions or positions that are adverse to the accused person. The Court must bear in mind that on the one hand is an accused citizen, or subject of the jurisdiction, who must be considered innocent unless and/or until he may be shown, beyond reasonable doubt, to be guilty; and on the other is the State that is

accusing such person, has arrested him or her or otherwise restricted his or her freedom, and is prosecuting this presumably innocent person.

35. Added to this is the fact that almost invariably, the relationship between the State and the accused person in terms of resources is distinctly asymmetrical. The State will, almost invariably, be the party that has a disproportionately bigger financial and/or resource muscle in the relationship between the State and the accused person. Under this paradigm, unless there be exceptional circumstances shown, the Court should generally incline towards easing any avoidable financial burden on the part of the accused person in order to achieve a fair trial.

36. I also reckon, as was pointed out by Counsel for the Applicant, that the learned DPP has a fully fledged State Advocates' Chambers in the City of Blantyre. The learned DPP argued that the novel nature of the charge under the Gender Equality Act (Cap 25:06 of the Laws of Malawi) (GEA), namely sexual harassment, is such that the legal practitioners at the Blantyre Chambers do not have the requisite experience and expertise to prosecute this offence, more so in view of the lack of jurisprudence from the High Court thus far, relating to this offence. I do not find this argument sufficiently persuasive. It is true that there is a dearth of jurisprudence from the High Court on the charge of sexual harassment under the GEA. It is indeed unclear as to why, nine years into its existence, the GEA does not seem to be invoked much by investigating and prosecuting authorities in our courts. Thus, it is indeed true as the learned DPP urges, that the charge is novel, in the sense that it is seemingly being raised for trial at first instance in the High Court of Malawi for the first time.

37. However, when one examines the elements of the offence, it seems to this Court that it is perhaps underestimating the capacities of Counsel at the

Blantyre State Advocate's Chambers, who are officers of this Court, to suggest that they might not, at this early stage in jurisprudential development on the charge, have the requisite competence to prosecute the offence. Section 6(1) of the GEA provides that:

> *"A person commits an act of sexual harassment if he or she engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated."*

38. As novel as this law appears, I do not see anything in it that is so unique about the offence that legal practitioners of several years standing, such as some of those at the Blantyre State Advocates Chambers, may not competently prosecute if they are asked to do so. The elements of the offence, that are premised on the test of a reasonable person, seem quite straightforward.

39. As to the nature of the offence, every legal practitioner, in this Court's view, would surely be keenly aware of the fact that sexual harassment is a serious offence under our laws, a felony, and that it is conduct that is demeaning to the victim (or survivor), that undermines the victim's/survivor's dignity, integrity and self-worth, and which conduct strikes at the heart of the victim's/survivor's being.

40. Again, in sexual harassment cases, it is well appreciated that the consequences of the proceedings could be dire for both the accuser and accused if the allegations are found to be without merit. It has been correctly stated in the South African case of ***Rustenburg Platinum Mines Limited vs UASA obo Pietersen and Others***, (2018) 39 ILJ 1330, that

on a sexual harassment charge, the stigma of being a sex pest on the accused person remains forever even if in the end, the allegations are found to be unsubstantiated; and that there is an even greater danger when it is not accepted that the incident took place because the complainant took long to report it, or that he or she cannot recall details with clarity. The Court held in ***Rustenburg Platinum Mines Limited vs UASA obo Pietersen and Others***, that without vindication because of such technicalities, the trauma persists indefinitely for the complainant. These, among others, are nuances that in my view, as pertinent as they are, every properly qualified legal practitioner will surely be alive to.

41. Simply put, whilst the learned DPP might wish to handle the matter himself, with the support of other Lilongwe based officers, probably because involvement at such high level of prosecutorial experience and expertise will contribute more to the quality of the prosecution, which is a perfectly justifiable course of action and which would certainly be a decision that lies squarely in the constitutional province of his decision-making power; when this is weighed against the interests of justice as regards the accused person, such arguments would not suffice as justification for causing the Applicant to be tried in an inconvenient forum which he, according to established legal principles, ordinarily was not supposed to be tried. The prosecution has competent options which the Applicant does not have, and with the presumption of innocence hovering over the Applicant as an accused person, it is certainly not up to this Court at this stage to place any blame upon him for the prosecution's difficulties under the circumstances.

42. In any event, the Court takes judicial notice of the fact that legal practitioners from the Blantyre Chambers ably prosecuted the case of ***Republic vs Aniva*** Criminal Case No. 37 of 2016, PRM, Nsanje Magistrates' Court, under the GEA, for the novel charge of harmful

cultural practices under section 5 of the Act, albeit in the Magistrate Court.

43. Of course, in stating these things, as pointed out earlier, the Court is fully mindful of the fact that it is within the learned DPP's constitutional province to decide who should prosecute which cases in his Chambers and the Court is not seeking to dictate to the DPP's office on whom to assign or not to assign to prosecute the case. All the Court is saying is that the issue of expenses for his chambers, arising from an alleged lack of suitable legal practitioners to prosecute the matter in Blantyre, should not be used as a justification for causing the Applicant to be brought all the way to Lilongwe for his trial, as the justification does not sound to be plausible. If the DPP's Chambers will incur more expense by using Counsel from Lilongwe to prosecute the matter in Blantyre, which will perfectly be within the DPP's discretion to do, that will be the choice that the office of the learned DPP would have voluntarily made, and the Applicant should not be made to pay more for the consequences of such a decision.

44. There was another argument advanced by the learned DPP, which was that according to the law, under section 96(2) of the CP & EC, an accused person is supposed to be brought before the Magistrate who issued the Warrant upon his/her arrest and that the State was therefore compelled to bring the Applicant back to Lilongwe to be brought before the Magistrate Court that issued the Warrant. This interpretation is not entirely correct. The relevant part of section 96(2) of the CP & EC provides that the Warrant of Arrest *"shall order the person or persons to whom it is directed to arrest the person against whom it is issued* ***and bring him before the court issuing the warrant*** *or* ***before some other court having jurisdiction in the case*** *to answer the charge therein mentioned and to be further dealt with according to law."*

45. In construing this provision, regard should be had to the provisions of section 35 of the Courts Act (Cap 3:02 of the Laws of Malawi) which provides that: *"Subject to any written law for the time being in force, the court of a magistrate shall exercise its jurisdiction throughout Malawi."* What clearly emerges is that under Section 96(2) of the CP & EC, a person on whom a Warrant of Arrest has been executed may either be directed to be brought before the Court that issued the Warrant or before any other Court having jurisdiction. Those applying to have the Warrant of Arrest issued have a duty to advise the Court as regards the Court to which the accused person is to be brought once the Warrant of Arrest is executed, and the Prescribed format has to be adjusted accordingly consistent with the law. According to Section 35 of the Courts Act, any Magistrate Court has jurisdiction throughout Malawi. It is therefore not correct to argue that the State was compelled, without option, to bring the Applicant to Lilongwe because his Warrant of Arrest was issued in Lilongwe. It was the duty of the State to bring to the attention of the issuing Court that the person to be arrested was resident in Blantyre, that the offences were largely allegedly committed in Blantyre, and that the principles of law from applicable jurisprudence required that he be brought before the nearest Magistrate Court unless the High Court ordered otherwise.

46. This brings us to an even more pressing reason, as a legal point, why in any event, the present matter should not continue to be held in Lilongwe. In ***Republic vs Kampunga Mwafulirwa***, Kapanda J emphatically stated that:

> *"a criminal trial would only be inquired into by a subordinate court other than the one nearest to the place of the occurrence of offence, or where a suspect was arrested,* ***if the High***

Court has ordered, through an application by a party to the proceedings, to that effect."

47. The Magistrate Court at Lilongwe held committal proceedings in the present matter, away from where most of the offences were allegedly committed and indeed away from where the Applicant, as an accused person, was apprehended, without the authorisation of an Order of the High Court made through a specific application to that effect as was held in ***Republic vs Kampunga Mwafulirwa***. It follows, in the premises, that the proceedings ought not to have been entertained by the Magistrate Court at Lilongwe, and consequently, ought not to have ended up before this Registry of the High Court after being committed by the Magistrate Court at Lilongwe. This was therefore a procedural irregularity under the CP & EC, but it is an irregularity that is curable under section 5 of the CP & EC and does not affect the validity of any action or decision(s) rendered by the Senior Resident Magistrate Court at Lilongwe or by this Court thus far.

48. However, where there is an Application, such as the present one, to move the matter to a more convenient forum, the Court must respect legal principle, as established through statute and its associated interpretive jurisprudence, and transfer the proceedings to a more convenient forum.

49. It thus follows that in view of the foregoing findings and conclusions by this Court, the Applicant's application for change of venue in the present matter must succeed.

50. I therefore order that the trial of the matter herein be moved from the High Court of Malawi, Lilongwe District Registry, Criminal Division, to the High Court of Malawi, Principal Registry, Criminal Division.

51. A related issue is whether the present presiding Judge has to continue to preside over the matter, as transferred, at the High Court Principal Registry in Blantyre.

52. Considering the reasons that the Court has advanced for granting the prayer to have the matter moved to Blantyre, I do not find it to be appropriate, convenient or in the interests of justice for the present presiding Judge to continue having conduct of the matter in Blantyre, when there is a fully fledged Criminal Division of the High Court in Blantyre with highly esteemed Judges. Such a decision would only bring unnecessary travel and travel related expenses on the part of the Court, and might also likely bring some delay to the trial.

53. The Judge President of the High Court, Principal Registry, Criminal Division, will assign the matter to a Judge at Blantyre who will proceed with giving directions under section 303 of the CP & EC and subsequently with trial of the matter.

54. I so Order.

Delivered in Open Court at Lilongwe this 12th Day of November, 2021

RE Kapindu, PhD
JUDGE