IN THE HIGH COURT OF MALAWI

ZOMBA REGISTRY

CRIMINAL APPEAL CAUSE NO 13 OF 2020

BETWEEN:

FABIANO MALIKO

VS

REPUBLIC

CORAM : HON. JUSTICE KAPINDU

Mr. Twea, of Counsel for the Defendant

Mr. Msume, Mr. Chisanga, Mr. Masanjala, of Counsel for the Appellant

Mr. Mkhula, Official Interpreter

Mrs. L. Mboga, Court Reporter

JUDGMENT

KAPINDU, J

1. This is a very sad case of defilement. It is very heart breaking. A grown man in his forties sexually abused and violated a young girl child of 10 years of age, multiple times. These offences are grisly. They shock society to the core and make us all cringe.

2. In the present case, a grown man of 43 years of age, the Appellant herein, Mr. Fabiano Maliko (or Marko) whom the 10 year old victim called "uncle", a friend to her father, for some warped and vile reasons, decided to sexually violate the little girl child. The facts show that the complainant, who is the father of the victim child, and the Appellant herein, were family friends.

3. The complainant would, every now and then, entrust the accused person with the task of dropping the little girl at school or picking her up from school. According to the evidence, on some such trips, the accused person, whose wife passed away in 2014, would divert to his house with the victim and sexually abuse her. The Court below suggested that he would "have sex with her" on such occasions. This Court thinks this is inappropriate language when it comes to carnal knowledge of a little child who has no capacity to appreciate the nature of the act, let alone the capacity to grant even a semblance of informed consent to such grisly act. Having sex "with" another person in my view suggests informed consent between the parties. The Appellant herein, by forcing his penis into the victim child's small, tender and immature vagina multiple times had what is termed in law carnal knowledge of the little child, and he did so multiple times on multiple occasions.

4. I must perhaps pause here and state that as the Court uses this language to describe the sexual abuse and violation herein, the Court is mindful that this is language of cultural and moral discomfort. Unfortunately, it is language that must be used in order to properly describe the nature and circumstances of the offence with sufficient clarity and in a manner that properly describes the elements of the offence and ensures compliance with the high standard of proof required in criminal matters. I may add that perhaps such cultural and moral discomfort is also necessary for societal reflection on this scourge and for society to ensure that it rids itself of these offences of grave moral turpitude.

5. The Court cannot imagine the excruciating, piercing pain experienced by the little child. The experience must have been so sordid for her. It is a heart-rending thought to consider her dreadful torment and ordeal. The Court cannot imagine the state of confusion – both current and future on the little child. The Court cannot imagine the degree of psychological trauma or injury – both present and future on this little child. Offences such as this one are likely to have lasting devastating effects on the victim child. The child, in addition to the pain and confusion arising from the sexual abuse, may have growing feelings of shame as she grows, and she may also become deeply distrustful of others.

6. Further to this, the Court cannot imagine the trauma and psychological pain, both present and future on the little girl's parents and loved ones. They are all victims of the Appellant's grisly crime.

7. And then the Court cannot also sufficiently imagine the odiousness and perverseness of such a grown man deriving sexual pleasure out of violating a little child whose safety he was supposed to be safeguarding. His conduct was so vile, so revolting, so ignominious, so debased and so degenerate.

8. What the Appellant did, as described above, is a classic illustration of the commission of the offence called defilement that is contrary to section 138(1) of the Penal Code (cap 7:01 of the laws of Malawi). That section provides that:

> Any person who carnally knows any girl under the age of sixteen years shall be guilty of a felony and shall be liable to imprisonment for life.

9. In the present case, the accused person pleaded guilty to the offence. We are therefore not here to re-open the issue of the propriety of the conviction. Suffice it to mention that the Court has taken its time to look at the manner in which the guilty plea was taken and the conviction entered

and concluded that the conviction was correctly entered. For what a confirmation may be worth, the conviction is hereby confirmed.

10. After considering all the relevant factors, the learned Magistrate sentenced the Appellant herein to 14 years imprisonment with hard labour. It is against this sentence that he has appealed to this Court. He finds it to be manifestly excessive. His Counsel forms the view that a sentence in the region of 6 years imprisonment would be appropriate under the circumstances.

11. Counsel for the State seemed rather unsure on what exactly his position was in respect of the appeal. On the papers filed before this Court, and indeed when he presented his initial oral arguments, he took the view that the sentence was indeed manifestly excessive and that it needed to be reduced, although not as much as Counsel for the Appellant was asking for. He thought a sentence in the region of 10 years imprisonment with hard labour would be more appropriate.

12. In their initial agreement for the reduction of sentence, only differing on degree of reduction, both sides considered the usual mitigating factor that the accused person was a first offender. In addition, Counsel for the Appellant argued that the Appellant, at 43 years of age, should be considered an old man and that this should weigh heavily in his favour as a mitigating factor. Both Counsel were also particularly moved that the Appellant pleaded guilty to the offence.

13. It was only after the Court asked several questions relating to the seriousness of the offence of defilement; and in particular whether Counsel on both sides had considered some stream of case law on sentencing in these matters, including the decisions of this Court in **Brian Shaba vs Republic**, Criminal Appeal No. 19 of 2014 (HC, MZ) and **Republic vs Mandala Chisale**, Criminal Review Cause No. 7 of 2014 (HC, Zomba), where sentences of 18 years imprisonment with hard labour and 20 years imprisonment with hard

labour were respectively imposed by this Court, that State Counsel seemed to change tack and argue that in the present case, the 14 years imprisonment sentence should just be confirmed.

14. I should also mention that I was quickly dismissive of the argument by the Appellant's Counsel that at 43 years of age, the Appellant should be considered an old man deserving of some mitigation on that account. That argument sounds plainly ridiculous. The Court does not believe it is an argument on which it should waste anymore energies for discourse other than dismissing it with the contempt that it deserves. I strongly advise Counsel to, in future, avoid raising such flimsy arguments before these Courts, and more so when the matter under consideration is of such gravity as the present one.

15. Other cases that the court considered in this recent sentencing trend in defilement cases included **Republic vs. Bright Jamali**, Confirmation Case No. 421 of 2013 (HC) (PR) where the Court propounded a starting point of 14 years for sentencing in this class of offence and the case of **Republic vs Aaron Mkandawire**, Confirmation case No. 2 of 2019 (Mzuzu Registry) (unreported) where an 82-year-old man was convicted for defiling a little girl child of nine years of age and who, having been sentenced to an eight years imprisonment term by the trial magistrate, had his sentence enhanced to 14 years imprisonment by the High Court. It was in evidence in that case that the girl was the accused person's step-daughter.

16. In the 2014 decision of **Brian Shaba vs Republic** (above), the Court expressed worry that the nature of some of the sentences that some courts had been imposing in sexual offences had not been consistent with the grave, vile, and abhorrent nature of these offences, and indeed that they were not consistent with the intention of the legislature as revealed by the very high maximum penalties that it prescribed for these offences. The

Court pointed out in that case that defilement is a very serious and heinous offence. The court stated that defilement is both a carnally and psychologically invasive offence. The Court noted that according to Section 138(1) of the Penal Code, a person convicted of this offence is liable to imprisonment for life, and that this maximum sentence was imposed for very specific reasons: to show the seriousness of the offence as well as the public revulsion and societal abhorrence for this kind of offence. The Court maintains these views to date.

17. I must pause again here and recall that in argument, Counsel for the Appellant argued, citing the case of **Republic vs Keke**, Confirmation Case No. 404 of 2010, where Mwaungulu J (as he then was) stated that:

> First, the sentencer should consider the maximum sentence, which is meant for the most serious offence which, notionally, has yet to occur, if ever it will. Next, the sentencing Court should consider the maximum sentence for the "simplest crime".

18. Counsel made this submission with a view to shift the mind of the Court away from the possibility of even considering imposing the maximum penalty in the present case.

19. In response, the Court wishes to start by stating a principle of sentencing that this Court articulated in two previous decisions: **Republic vs Funsani Payenda**, Homicide (Sentence Rehearing) Cause No. 18 of 2015 (HC, Zomba Registry); and **Republic vs Oswald Lutepo**, Criminal Case No. 2 of 2014 (HC, Zomba Registry). In **Funsani Payenda**, this Court stated, at paragraph 38 of the judgment, that:

> "I take the view that we must...be using the "category of cases" for a test, and not the fictitious individual test of the "worst offender" – who is,

> according to the common myth, "yet to be born" – which individual test effectively makes it illogical for the maximum penalty to ever be imposed. Parliament did not prescribe the maximum penalties in legislation for decorative purposes, or as conceptual fictions, or as mere illusory punishment signposts. Parliament means what it says and it meant what it said in Section 210 of the Penal Code. It meant for those penalties to be applied in appropriate cases and not to be theorised into non-existence."

20. In **Lutepo**, the Court built on the reasoning in **Funsani Payenda** and stated, among other things, that:

> I find that when one examines the jurisprudence from whence this principle has developed over time in this country, reference has indeed been to the "worst instances" or "worst examples" rather than the individualized abstraction of "the worst instance" of the offence in question. In the case of **Isaac v R** 1923-60, ALR Mal. 724, Spencer Wilkinson, CJ stated that "It has been laid down time and again that the maximum sentence should be reserved for the worst examples of the kind of offence in question". Similar reference to the "worst instances" of the offence as the test for deciding on deserving cases for the imposition of the maximum sentence was made by the Court in **Jafuli v Republic** 9 MLR 241, by Justice Dr. Jere, at page 248. In **Namate v Republic** 8 MLR 132, Skinner, CJ agreed with the principle stated in

> **Isaac v R**, citing several other decisions of similar import... The CJ said: "The maximum sentences permitted by the legislature should be reserved for the worst instances of the offence and it is, indeed, a very grievous example of the crime which calls for the imposition of such sentence on a person of previous good character. It is necessary for the court to compare the seriousness of the circumstances of the particular offence in relation to the worst type of circumstances which could attend a contravention of the penal section. The question which we have to consider is whether the circumstances of this case are so grievous as to fall within the very worst examples. We think it was a very bad case. The amount of money stolen was great. There was a considerable breach of trust. But we do not think that it was so grievous an example as to justify the imposition of the maximum sentence on a first offender. It is not easy in cases of dishonesty as in cases of violence to weigh the gravity of the particular offence against the worst examples of offences of the same nature."

21. The reason I bring these utterances and authorities upfront in the present judgment is because I am convinced that the present case, but for the mitigating factors that will be considered later, would fall in the category of the worst examples or worst instances of the offence of defilement.

22. Having stated these introductory guideline sentencing principles, I think I will do well to restate what the Court said at paragraphs 2.6 – 2.9 in the **Brian**

Shaba case. This Court stated that 'it has been observed that "obdurate sex offenders are, in modern society, on the increase and becoming a menace to the female folk." This is particularly so in the case of girl children. Sexual offenders in cases of rape and defilement inflict a serious invasion of the victim's right to personal privacy as enshrined and guaranteed under Section 21 of the Constitution of the Republic of Malawi. Indeed, they inflict such a serious invasion of that most private of spaces of any human being's individuality. These offences also seriously violate the victim's right to human dignity, which dignity is inviolable in terms of Section 19 of the Constitution.'

23. The Court in **Brian Shaba** proceeded to point out that its sentiments regarding the gravity and grossly abhorrent nature of this class of offences are best expressed by Andrew Ashworth who states that sexual offences (such as rape and defilement) inflict violence on the human cherished values of "self-expression", "intimacy" and "[consensually] shared relationships"; and that they also engender the disvalues of "shame, humiliation, exploitation and objectification – which are often crucial to understanding the effects of sexual victimization".

24. The Court in that case therefore took the view that the conduct of the Appellant – the defiler- did violence on these cherished human values; as well as engendering the disvalues of shame, humiliation, exploitation and objectification of the victim girl child. The Court bemoaned the fact that the Appellant committed the offence fully knowing that he was committing a grave wrong and indeed a serious crime. The Court expressed shock in that case that notwithstanding his knowledge of the tender age of the child in that case, who was 13 years old, the Appellant still felt it within himself to proceed and sexually violate the young girl. He then told the victim not to tell anyone because his reputation would be ruined. The Court formed the opinion that this was a clear signal of the Appellant's deplorable egocentric attitude, and his selfish disregard for the victim child and the damage he had caused. The Court noted with grave concern that the indignity and

humiliation suffered by the victim girl child was, in all probability, going to remain permanently etched on her psyche and negatively affect her future sexual and other relationships.

25. The Court had more observations to make in the **Brian Shaba case**, that I find germane to restate:

> I have...had occasion to look at some sentences that the courts have meted out in cases of defilement, some of which I regret for their extreme leniency. Sentences that have gone as low as three years imprisonment [do] not send an appropriate message to society and to would-be offenders. Such manifestly lenient sentences might send the undesirable signal to society that we are not taking children's rights seriously. Thankfully, this trend no longer represents the settled position of the High Court. The High Court has now set guidelines on the appropriate starting point for sentencing when it comes to this class of crime. In the case of **Republic vs Bright Jamali**, Confirmation Case No. 421 of 2013 (HC) (PR), Mwaungulu **J** (as he then was) laid down important sentencing guidelines in cases of defilement as follows:
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> > The starting point for defilement should, therefore, based on the maximum sentence of life imprisonment, be **fourteen years imprisonment**. Sentencers at first

> instance must then **scale up and down this starting point to reflect mitigating and aggravating circumstances and that the sentence must fit the offender**. (Emphasis supplied)"

26. The Court notes that Mwaungulu, J (as he then was) repeated this guideline in the case of **Republic vs Wyson Alfred**, Confirmation Case No. 152 of 2013 (HC)(PR).

27. The Court has also had opportunity to look at the recent High Court judgment on sentence in the case of **Republic vs Thomas Chavula**, Referral Case No. 1 of 2020 (Mzuzu Registry), where my brother Judge Ligowe J imposed a cumulative sentence (on the basis of the concurrency of sentences) of 24 years imprisonment for the offence of defilement.

28. The Court has also considered the even more recent 2020 decision of **Republic vs Aubrey Kalulu**, Criminal Case No. 1503 of 2017 (HC, LL), a matter referred to the High Court of Malawi for purposes of sentencing by the Principal Resident Magistrate Court at Lilongwe, in terms of section 14(6) of the Criminal Procedure and Evidence Code (Cap. 8:01) (CP & EC), where the High Court imposed a life sentence on the accused person offence of defilement. The Court considered, among other things, that the convict was the victim's family's landlord, that the accused person was HIV positive and he was aware of this condition, that he was suffering from syphilis and tines genetalis, and that as a result of the equal violation the victim's private parts were corroded and she had difficulties walking. The Court considered the young age of the victim at 12 years of age and that she was a friend to the convict's child or sister.

29. The court, in the **Brian Shaba case**, also explored case law regimes in various Southern African and East African jurisdictions and concluded that

the Malawian regime conspicuously stood out for its general leniency for sex offenders. Just to provide one example, in the Republic of Kenya, under section 8(2) of the Sexual Offences Act, 2006, *"A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life."* This entails a mandatory life term for defilement of any child of or below eleven years old. In other jurisdictions they have fixed minimum terms.

30. Coming back to the facts of the present case, as already stated, there is no dispute about the conviction. There is significant dispute on some of the facts and the sentence imposed.

31. As regards the dispute on facts, although the accused person admits that he defiled the victim child herein, he disputes that he did so on multiple occasions. He alleges that he only did it once, on a sabbath. He alleged that on the material day, the complainant had left all his kids, including the victim child, at his place. After considering the manner in which the evidence against the accused person herein unfolded; how the child told her teacher, in tears, during a life-skills class on HIV/AIDS, about what the Appellant had been doing to her and how eventually the child's defilement was confirmed at Hope Centre Hospital; the Court is convinced beyond reasonable doubt that the child victim herein was actually defiled multiple times.

32. This conclusion, that is that the little girl child herein was defiled multiple times, alongside the very tender age of the child at ten years old; and the fact that the accused person was being entrusted with the child by her father and he was a man in a position of trust to her, a man she would refer to as "uncle", and that he is a thoroughly grown and mature man at 43 years of age – which is more consistent with the Appellant at his mature prime age rather than advanced age as was baselessly argued during oral

argument, are all factors that triggered the Court's conclusion that the instant case would fall in the category of the worst instances of the offence.

33. I must also mention that I have considered that in recent days, these courts are being presented with a litany of defilement cases, indicating that the offence is most probably becoming more prevalent in society than before.

34. In his favour, by way of mitigation, the Appellant is a first offender. He also pleaded guilty therefore not wasting the court's resources and time.

35. It is this Court's view that any case where a mature man of more than thirty years of age defiles a child, of ten years or less, more than once, must fit in the category of the worst instances of the offence and must, unless the Court is significantly moved by mitigating factors, attract the maximum sentence of life imprisonment. The mischief behind the offence was to protect the child from all forms of sexual violation and doing so by bearing in mind the peculiar vulnerability of the child owing to her immature age. The peculiar vulnerability enhances as the age decreases to such an extent as in the present case where the child did not even appreciate that she was being sexually violated until she learnt about this from her teacher.

36. I repeat, in this regard, the sentiments that the Court expressed in **Republic vs Funsani Payenda**, that Parliament did not prescribe maximum penalties in legislation for decorative purposes, or as conceptual fictions, or as mere illusory punishment signposts. Parliament means what it says and it meant what it said in Section 138(1) of the Penal Code. It meant for such a penalty, life imprisonment, to be applied in appropriate cases and not to have such maxima theorised into non-existence.

37. This Court mentioned in **Republic vs Lutepo**, at paragraph 91 of the judgment on sentence, that "our courts have equally emphasized the importance of court's being mindful to pass sentences that are meaningful, reflecting the gravity of the offence. Chombo J

observed in the case of **Republic vs Masula & others**, Criminal Case No. 65 of 2008, that if courts do not do that, members of the public could start asking themselves whether "something has gone wrong with the administration of justice.""

38. I have considered the fact that the accused person is a first offender. This Court observed in the **Lutepo** case that:

> "Whilst...the general principle [is] that a first offender should, as a general rule, not be given the maximum sentence; that principle is not cast in stone and Courts are entitled to depart from it in appropriate and deserving compelling cases. The decision of the Malawi Supreme Court of Appeal in **Kamil & Yaghi vs Republic**, [1973-74] 7 MLR 169 (MSCA) illustrates the point." Chatsika, JA, having considered that the Appellants were first offenders, still had the following words to say at page 180:
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> "It has been stated already that the offences which were committed in this case by the two appellants were of a most serious nature and justified the imposition of the maximum sentences... It is observed that if the sentences are made concurrent, the appellants would serve an aggregate term of only five years. It was the view of the High Court that an effective term of five years imprisonment only for offences of this magnitude and seriousness would err seriously on the side of inadequacy and would fail to protect the public. The purpose of sentence is not

only to punish the offender but to deter others who may be influenced to commit similar offences and to protect the public. An aggregate sentence of only five years for offences of this seriousness would fail to reach that objective. In the circumstances, we are in agreement with the reasoning advanced by the learned Chief Justice for holding that this was an exception to the general rule…"

39. In the present case, it is my view that in the category of offences that I have classified as falling among the worst instances of defilement above; I am of the opinion that Courts should not attach much weight to the fact that a person is a first offender. Greater weight should be attached on the need to protect the public and, in particular, children of very tender age from persons of such character. Again I would tend to agree with the remarks of Chief Justice Skinner in **Republic vs Kamil & Yaghi** [1971-72] 6 ALR (Mal) 358, where, the Chief Justice, mindful of principles laid down for sentence mitigation in criminal cases as exemplified by a chain of succeeding decisions, still opined that the case was so serious, that the seriousness eclipsed all mitigating factors advanced, and he handed down maximum and consecutive sentences. The Chief Justice said: " I bear in mind that they are men of previous good character, but people who do desperate things like this are likely to do it again, and the public must also be protected from others who may be tempted to emulate their example."

40. I am mindful that the Appellant entered a guilty plea. This factor weighed on my mind. As stated earlier, he did not waste the Court's time and resources. Ordinarily, he would deserve a significant consideration. The general principle is that a reduction

of up to one third of what could otherwise have been a merited sentence could be granted. I have already stated however that I am of the opinion that Courts should not attach much weight to the fact that a person is a first offender in the category of sexual offences in which the present one falls. In addition, concomitant with a guilty plea is supposed to be a conscientious expression of remorse by the accused person. In the present case, in the face of evidence that he defiled the child multiple times, he suggests he only did it once. This is an indication of lack of remorse which further waters down the plea of guilt. However, there is still a strong sentencing policy consideration that guilty pleas must count for something, otherwise people might be completely dissuaded from pleading guilty in very serious crimes. Ultimately, whether or not to completely ignore mitigating factors depending on the circumstances of the case lies in the sentencing discretion of the Court. In the present case, I find that there is still some need to give the Appellant some consideration in mitigation in respect of his guilty plea. Otherwise, he was deserving of a life sentence.

41. The difficulty lies with coming up with an age benchmark from which to discount the punishment by reason of this mitigating factor.

42. Earlier in this decision I pointed out that this Court was not amenable to considering that at the age of 43, the Appellant was an old man deserving of a reduction of sentence. Courts have these days repeatedly rejected this assertion and for some reason, some Counsel, in various cases, keep bringing up the argument. The basic structure of the argument is that whilst it is acknowledged that a person in his or her forties is not physically old – in the sense of being frail and physically vulnerable by

reason of age; such a person should still be regarded as old on account of the general life expectancy in the country.

43. I find this kind of argument rather unpersuasive. The average life expectancy does not mean that a significant number of people are not outliving that average age. There are so many who die younger and so many who die much older.

44. To my mind, if the notion of life expectancy were to be used at all for purposes of sentencing, of which I am presently unpersuaded, it would, in my view require much deeper scientific analysis of statistical age models which would take into account demographic distribution patterns that inform the fixed life expectancy figure. Demographic models might also show that the life expectancy figure adopted by a particular study may not represent a universal fixed scientific constant and that it might in fact vary depending on the statistical model adopted for analysis. I am not sure that many of us at the Bar and the Bench have the requisite statistical literacy skills in this regard. This is an area that would, in my view, require expert evidence if that avenue of litigating in the area of sentencing were to be followed. All in all, I believe that statistical inferences should not be factored into litigation in ways that would be statistically, mathematically and even legally misleading. This Court therefore remains unpersuaded on the usefulness of using the concept of life expectancy in the sentencing enterprise in criminal cases.

45. In any event, for purposes of the present case, the Court's research reveals that the average life expectancy in Malawi according to the 2019 UNDP Human Development Index, is about 64 years – segregated as 67 years for women and 60 years for men. Thus even if the life expectancy argument were to hold,

which should not be for purposes of the present case, the argument that the Appellant is advanced in age could still not hold as it would be negated by an internationally credible and authoritative source.

46. However, on the specific question as to how to numericise a possible life term and then discount the same in view of mitigating factors, I believe that in the absence of any clear precedent, this is a matter where the Court should exercise discretion, using a test of reasonableness, to glean a figure.

47. This Court opines that it is reasonable to consider that notwithstanding the so-called life expectancy figures, people generally have a real possibility of living much longer, and that it is not considered unusual that people can live up to the age of 90 years. I consider the age of 90 to be e reasonable age from which to do the discounting exercise. To be clear, the age of 90 is not being used in any way as a scientific figure derived from any form of statistical analysis. It is what the Court considers reasonable.

48. Considering the age of 90 as a benchmark, and that the accused person is 43 years old, he could have 47 years ahead of him. From the 47, I discount 7 years for his guilty plea. This Court is therefore of the opinion that the sentence of 40 years Imprisonment with hard labour is appropriate under the circumstances.

49. In the premises, the Court holds that the Appellant's appeal against the sentence of 14 years IHL for the offence of defilement, contrary to section 138(1) of the Penal Code must fail and it is hereby dismissed. The court finds that the sentence of 14 years IHL

imposed by the Court below was manifestly inadequate in view of the gravity and circumstances of the offence. The sentence of 14 years IHL is hereby set aside and it is replaced with a sentence of forty years (480 months) imprisonment with hard labour.

50. Before I conclude, when this appeal was heard, the Court had sought to find out from both Counsel whether the victim child had received any professional counselling services. The Court was informed at the time that this had not been done. The Court sought to find out the nature of the involvement of the Government Department responsible for the welfare of children in the matter. Again it sadly appeared that sad as the circumstances of the present case were, the said Department was not involved at all.

51. Evidently, it was the duty of the State to ensure that the child is referred to the Government Department so responsible, and this had not been done. I must add though, that the parents themselves are also duty bearers who should have ensured that the matter is appropriately reported to the said Department and they should vigorously follow up with the Department to ensure that the abused child receives optimal support services from the State under the circumstances.

52. Thus as I conclude, I hereby direct that the Government Department responsible for the welfare of children should follow up with the child herein and ensure that every necessary service and support is rendered to her to ensure her physical and psychological wellbeing and development.

53. The said Department should furnish a Report in this regard, within three months from the date hereof, to the Child Case Review Board established under section 150 of the Child Care,

Protection and Justice Act, on the progress made in giving effect to this direction, and the Child Case Review Board may provide any further directions to the Department as it may deem appropriate.

54. It is so ordered.

Made at Zomba this 8th day of January, 2021

R.E. Kapindu,

JUDGE