



JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION

Criminal Review Case No. 3 of 2020
eCMS 77 of 2020

[being Miscellaneous Criminal Cause no. 1 of 2020, PRM, Zomba Magistrates' Court]

In matter between:

DR. THOMSON FRANK MPINGANJIRA

APPLICANT

versus

THE STATE (ANTI-CORRUPTION BUREAU)

RESPONDENT

ORDER & DIRECTIONS

(nyaKaunda Kamanga, J., 28th January 2020)

UPON examining and scrutinising the record of the case and the proceedings in Miscellaneous Criminal Cause no. 1 of 2020, PRM, Zomba Magistrates' Court pursuant to section 360 of the Criminal Procedure and Evidence Code;

UPON hearing the Applicant through his legal practitioners as well the Director General of the Anti-Corruption Bureau by authority of section 363(1) of the Criminal Procedure and Evidence Code;

AND UPON INQUIRING from the legal practitioner for the Applicant and the Director General of the Anti-Corruption Bureau on the issues pertaining to the warrant of arrest, its execution and the handling of this criminal matter;

THIS COURT MAKES THE FOLLOWING MAIN FINDINGS:

1. THAT the legal process and order of 22nd January 2020 by the Principal Resident Magistrate sitting at Zomba cancelling the warrant of arrest obtained by the respondent and releasing the Applicant from custody is not justified in terms of the applicable law and procedure. The application and proceedings before the magistrate were replete with irregularities and that the Magistrate being a creature of statute he lacked jurisdiction to preside over the assumed hearing for the application in terms of section 96(3) of the CP and EC, thereby rendering the proceedings a nullity;

2. THAT there is no record supporting the assertions made by Counsel Mr. Lusungu Gondwe that he, or any other legal practitioner for that matter, appeared before the said Magistrate to move the application;
3. THAT Counsel Mr. Lusungu Gondwe and the legal firm of Messrs Ritz Attorneys at Law acted improperly and misconducted themselves in the discharge of their professional legal duties in the manner they prepared and handled the application in this criminal matter, in that they ill-advised their client and his relations and misled the said Magistrate with regard to the applicable law.

IT IS HEREBY ORDERED and DIRECTED that:

1. The Principal Resident Magistrate's orders cancelling the warrant of arrest that was issued against the defendant and releasing the Applicant from State custody and directing the ACB to compel Applicant's attendance at court by way of summons under section 84 of the CP and EC, having arisen from proceedings that were null, are void *ab initio* and are hereby set aside;
2. The warrant of arrest that was obtained by the respondent as prosecutors in the course of investigating the corruption allegations against the Applicant is hereby restored and remains in force. The ACB and any other law enforcers are at liberty to re-execute it on the Applicant, if they so desire;
3. The Magistrate having violated clause 2(2) of the General Code of Conduct (Eleventh Schedule); rules 2(1), 3(A)(2); 6(1)(c) of the Judicial Code of Ethics (Twelfth Schedule) in that he misconducted himself by displaying gross incompetence by assuming jurisdiction which he never had and in handling this criminal matter, the Registrar of the High Court of Malawi and Supreme Court of Appeal should within 7 days hereof and pursuant to General Code of Conduct refer H/W M. Benedictus Chitsakamire, Principal Resident Magistrate (E) and this criminal matter to the Judicial Service Commission so that it can inquire into the conduct and competency of the said magistrate;
4. Counsel Mr. Lusungu Gondwe be and is hereby admonished under section 89(1)(c) of the Legal Education and Legal Practitioners Act for his improper conduct and unethical conduct;
5. AND CONSEQUENTLY the Registrar of the High Court of Malawi and Supreme Court of Appeal should within 7 days hereof and pursuant to section 90(3)(a) of the Legal Education and Legal Practitioners Act refer Counsel Mr.

Lusungu Gondwe and this criminal matter to the Disciplinary Committee of the Malawi Law Society so that the Society can inquire into the conduct of the said legal practitioner and the legal firm;

6. AND FURTHER CONSEQUENTLY the Registrar of the High Court of Malawi and Supreme Court of Appeal should within 7 days hereof under section 90(3)(a) of the Legal Education and Legal Practitioners Act refer Counsel Mr. Lusungu Gondwe and this criminal matter to the Disciplinary Committee of the Malawi Law Society so that the Society can inquire into the conduct of the said legal practitioner and the legal firm;
7. AND CONSIDERING the pending investigations and disciplinary hearing against Counsel Mr. Lusungu Gondwe and the legal firm of Messrs Ritz Attorneys at Law are hereby stopped and suspended from representing the criminal suspect, Dr. Thomson Frank Mpinganjira, in the criminal investigations and any possible prosecution that may arise from the bribery allegations which have been made against him.

This order on review is appealable to the Supreme Court of Appeal.

Pronounced in open court this day of 28th day of January 2020
at Chichiri, Blantyre.

Dorothy nyaKaunda Kamanga
JUDGE

Case information :

Applicant	:	Present and represented.
Mr. Lusungu Gondwe	:	Counsel for the Applicant.
Mr. Wanangwa Hara	:	Counsel for the Applicant.
Mr. Bonongwe	:	Counsel for the Applicant.
Mr. Reyneck Matemba	:	Director General of the Anti-Corruption Bureau
Mr. Chiwala	:	Chief Legal & Prosecution Officer, ACB.
Ms. Mthunzi	:	Principal Court Reporter.
Ms. Ngoma	:	Court Clerk.