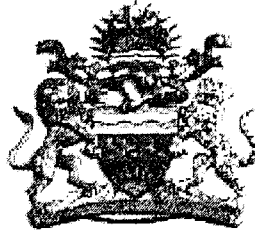


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**IN THE MALAWI SUPREME COURT OF
APPEAL AT BLANTYRE
MSCA CIVIL APPEAL NO. 07 OF 2009**
(Being High Court Misc. Application No. 224 of 2009)

BETWEEN:

COLLINS MONTE NG'AMBI APPELLANT

AND

DIRECTOR OF ANTI-CORRUPTION
BUREAU RESPONDENT

**CORAM: HON. JUSTICE MTAMBO, SC, JA
HON. JUSTICE TEMBO, SC, JA
HON. JUSTICE NYIRENDA, SC, JA**

Makhalira, of Counsel for the Appellant
Khunga, of Counsel for the Respondent
Mwale, Court Official
Ethel Matunga Chisale (Ndunya) Senior Personal Secretary

J U D G M E N T

MTAMBO, SC, JA

The circumstances leading to this appeal are these. On December 12, 2008, the Appellant was arrested by the Respondent on an allegation that he had committed an offence under the Corrupt Practices Act (Cap 7:04) of the Laws of Malawi, hereinafter referred to as the Act. On January 30, 2009, the Respondent issued, and served on the Appellant, a Restriction Notice, hereinafter referred to as the Notice. The Notice was issued pursuant to s. 23 (1) of the Act. The section empowers the Respondent to direct, by written notice to any person, that such person shall not dispose of or otherwise deal with any property or proceed with any contract, transaction, agreement or other arrangement specified in such notice, which is the subject of, or otherwise implicated in, such investigation or prosecution without the consent of the Respondent. Pursuant to sub-s. (5) thereof the Appellant applied to the High Court for an Order to reverse the directive. The application was dismissed on February 26, 2009.

On May 6, 2009 the Notice was renewed in accordance with s. 23 (3) of the Act, which allows the Respondent to do so upon its expiry for further periods of three months, on application to a magistrate showing cause why the notice should be renewed. The Appellant challenged the renewal, again under s. 23 (5) of the Act. By the judgment dated June 17, 2009 the application was dismissed. The court was of the view that the Appellant advanced nothing further than he presented in the earlier application. The Judge said:

"It therefore baffles me that the same affidavit evidence which was before my brother Judge has also been brought before me in this application. There has not been any new and fresh evidence brought before me. If the applicant was dissatisfied with the decision of my Learned brother, Twea, J he should have appealed; otherwise bringing similar application with same affidavit evidence before another judge hoping that a

different outcome will arise is tantamount to an abuse of Court process”.

On August 31, 2009 a seizure order was issued under s. 23 A of the Act, which empowers a court, among other things, to authorize the Respondent to seize any asset at any stage during the investigation of, or the proceeding for, an offence under the Act. Although the seizure order is not the subject of this appeal, we thought we should mention it for proper appreciation of the judgment.

The appeal raises three issues. The first issue is simply *“whether the lower court ruling reflected on all the information that was deponed in the Appellant’s affidavit and that of his aunt.”* In their affidavits both the Appellant and his aunt narrated how the Appellant acquired the assets in issue, namely, that he had worked for several organizations for a long time and that he had inherited sufficient wealth from his deceased relatives. This is what the Court said:

“The applicant filed his affidavit explaining innocent acquisition or possession of the property in issue. The state filed an affidavit in opposition showing the contrary. The applicant subsequently filed an affidavit of one Mailesi Ng’ambi, an aunt to the applicant, which tended to support the evidence of the applicant.

I have carefully examined the evidence. I am aware that this is not a trial. My duty at this stage is to examine the evidence and determine whether or not the restriction order is justified.

It is on record that the applicant is employed and earns about K18,000.00 per month. In the period between March and August 2008 he bought or acquired real property: six plots

within Karonga Town Assembly and he spent over K5,000,000.00 in cash. The applicant also acquired other pieces of land and property after that period. The applicant deponed that the land and property were family property. Further that he disposed of some deceased estate property within the family and used the proceeds therefrom and some savings to buy the other properties. However, the period in issue, 1992 – 2001, does not tally with the period of acquisition of the property as deponed by the state and this has not been disputed.

It is my view therefore that the applicant has not satisfied this court on balance of probabilities that the property is family property. I am inclined to believe the State; that the property was acquired in quick succession and the means for the purchase thereof have not be explained. This in my view justifies the investigation and thus the restriction order”.

We are ourselves satisfied that the High Court took into account all the evidence that was before it as may clearly be seen from the passage which we have replicated above. We therefore find no merit in the argument that the court below did not reflect on all the relevant information that was before it, and we reject it.

The second issue is whether the renewed Restriction Notice “...could have been refused by the lower court considering the lack of commitment on the part of the Respondent to speed up the matter”. We have said above that a restriction notice may be renewed upon expiry for further periods of three months on application to a magistrate showing cause why the notice should be renewed. This is exactly what was done. We do not, therefore, think that it

could be a subject of appeal to this Court. If, however, the issue is raised with reference to the refusal by the High Court to reverse the renewed Notice, we observe that the Ruling of the Court is dated June 17, 2009, some six months after the investigation may have commenced. We do not think that a period of six months can be said to be so long as to found the inference that the Respondent lacked commitment to speed up the matter. The second issue too therefore is without merit, and it fails.

The third issue is “*whether the Restriction Orders and seizure order are against the interest of justice regarding proprietorship*”. It was submitted that since the dawn of the Restriction Notice on the property, the Appellant has been denied access to it and the proceeds therefrom which is contrary to the provisions of s. 28 (2) of the Constitution of the Republic of Malawi which provides that no person shall be arbitrarily deprived of property.

The question of arbitrary deprivation of property does not arise here. The primary purpose for the Notice is to preserve the property so that there would be something to salvage in the event of a conviction and not to deprive the Appellant of it arbitrarily. It is more so considering that there is a procedure which must be followed before a notice is issued and effected. This argument too must fail.

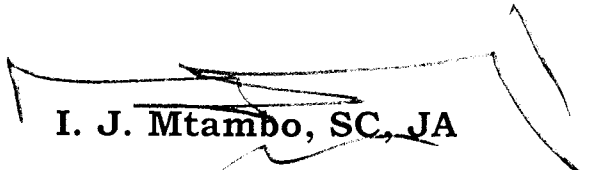
All in all, the appeal fails in its entirety and it is dismissed.

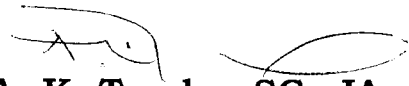
That, however, is not the end of the matter. It has been brought to our attention that the Respondent appears to be taking its time about the case. We have said that the Appellant was arrested in December 2008. No charge, it appears, has been brought against him. His property still remains sequestrated, so to speak. When this Court was faced with a similar situation in the case of **Anti - Corruption Bureau v. Amos Chinkhadze** MSCA Cr. App. No. 1 of 2003 (unreported), it observed as follows:

“It would seem that the Anti-Corruption Bureau has developed the reputation of moving slowly during and after conducting their investigations. I would observe that when the Bureau has invoked its restraining or seizure and freezing powers under sections 23- (1) and 32- (5) respectively they should move swiftly in order to bring about the speedy conclusion of the case which the Bureau has against the suspected person. Delay in commencing criminal proceedings or pursuing such proceedings after they are commenced, amounts to conduct on the part of the Bureau which is oppressive, unfair and unjust. Issuing restriction orders and obtaining seizure and freezing orders, and sitting back thereafter, may produce results worse and more oppressive than the notorious forfeiture orders of the old times.”

The Respondent does not seem to heed that. This is unacceptable to us. We therefore repeat that observation and direct that the Respondent do take steps, if this has not already been done, to bring the appellant before a court of law to be dealt with according to law within fourteen (14) days next ensuing from the date of this judgment or he (the appellant) be at liberty to apply to the High Court to consider the propriety of continued seizure of his property.

DELIVERED in open Court this 27th day of April, 2010 at Blantyre.

Signed:  **I. J. Mtambo, SC, JA**
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Signed:  **A. K. Tembo, SC, JA**
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Signed:  **A. K. C. Nyirenda, SC, JA**
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