

IN THE SUPREME COURT OF APPEAL SITTING AT BLANTYRE

MSCA CRIMINAL APPEAL NO. 33 OF 2020

[Being Judicial Review Cause Number 37 of 2020 High Court, Lilongwe Registry]

BETWEEN

NORMAN PAULOSI CHISALE

APPLICANT

AND

THE INSPECTOR GENERAL OF MALAWI

POLICE SERVICE

RESPONDENT

CORAM: HON. JUSTICE L P CHIKOPA SC JA

C Gondwe/Maele of Counsel for the Applicant

Kayuni Dr./Chuma Chief State Advocate/Senior State Advocate of
Counsel for the Respondent

Masiyano Ms., Clerk

ORDER

In a ruling dated August 20, 2020 concerning these very parties we found, in agreement with the Respondent, as a fact that the Applicant was in illegal detention/custody. We also found as a fact that the Respondent was by his own admission aware of not only the above fact but also of what the law required of him in order to retrieve the situation namely to release the Applicant from the said illegal detention/custody. The Respondent did not however do as the law required of him. The Appellant as a consequence remains in detention/custody to this date.

It is important to note in our view that the Applicant has since his arrest on July 28, 2020 not been charged with any offence before any court. Neither has he been committed for trial before the High Court in view of the fact that he was arrested on allegations of homicide.

On October 1, 2020 we heard an application from the Applicant praying for an order releasing him from the illegal detention/custody. Having heard both parties it is clear that the Applicant continues to be in illegal detention/custody. Listening particularly to the Respondent it is obvious, just as it was during the hearing leading to the ruling of August 20, 2020 above-mentioned, that the Respondent is not comfortable releasing the Applicant by himself obvious though it is to him and his Counsels that the Applicant is in illegal detention/custody. He would rather the courts made an order to that effect and his task is limited to the act of releasing the Applicant.

We will grant him his wish. An order is therefore hereby granted immediately releasing the Applicant from custody/detention.

The question might arise whether such release should be conditional. We think not in so far as it relates to these proceedings. Having been released from illegal detention/custody we see no reason to attach any special conditions to such release. They would be superfluous anyway. The Applicant is already on bail granted to him by the High Court in Blantyre on July 27, 2020 and the Magistrates Court in Lilongwe. If there is any need for conditions we feel the ones imposed in those matters are sufficient.

A fuller ruling will be at hand soonest.

Dated at Blantyre this 2nd day of October, 2020.



L P CHIKOPA SC

JUSTICE OF APPEAL