



**THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL CASE NO. 35 OF 2014**

BETWEEN:

THE STATE.....APPLICANT

AND

PAUL MONFORT MPHWIYO.....RESPONDENT

CORUM: JUSTICE R.M CHINNAGWA

Saidi	Counsel for the State
Nundwe	Counsel for the State
Absent	Respondent
Nyirenda	Court Clerk

**RULING ON APPLICATION FOR REVOCATION OF BAIL AND FORFEITURE OF
BONDED PROPERTIES**

Background

1. An application for revocation for bail was made by the State. The application was supported by an affidavit and skeletal arguments. In summary the State argued that the Respondent was charged with theft by public servant contrary to Section 278 as read with Section 286(1) of the Penal Code, money laundering contrary to section 35(1)(c) of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act and

conspiracy to defraud contrary to section 323 of the Penal Code. He was granted bail on 24th October 2014. Some of the bail conditions were that the respondent appear before the Anti-Corruption Bureau (hereinafter ACB) every fortnight; that the Respondent be bonded by Mk18,000,000.00 cash and a residential house in area 43.

2. It was further submitted that records at the ACB show that the Respondent last appeared for bail on 19th June 2023. Efforts by the State to trace the Respondent through his sureties were futile. The sureties on record, Eunice Kaliati and Gabriel Rashid, were contacted through telephone at 09:26 hours on 25th September 2023. They were ignorant of the Respondents' whereabouts.
3. The State prayed that the Respondent's bail be revoked following which the Respondent be arrested and that the bonded properties in cash and kind be forfeited to the Malawi Government.
4. On the date of hearing, 20th October 2023, the Respondent was not available in court nor did the Respondent file any documents to oppose the application. The court proceeded to hear the application in the absence of the Respondent, the State having informed the court that the Respondent was served with the notice of hearing through his wife Mrs T. Mphwiyo. The State informed the court that in their communication with the Respondent's wife, they informed her that they were required at law to serve the notice of hearing at the Respondents' house. The Respondents' wife however preferred to go to the State offices and collect the notice of hearing. The notice of hearing was duly served in that manner.
5. On the same day of hearing, this court granted the State their prayer in the following terms that:
 - a) bail for the Respondent be revoked and the Respondent be arrested.
 - b) the cash bond of MK18,000,000 be forfeited to the Malawi Government.
 - c) a decision on forfeiture of residential house in Area 43 was to await further submissions on whether forfeiture of residential house would not affect third parties being a matrimonial home.

Issue for Determination

6. In this ruling the court considers whether the house in Area 43 can be forfeited to the Malawi Government. It should be noted that this court was seized of the matter after the bail was granted and when trial was at an advanced stage. Thus this court needed to

get further and better particulars as to whether the house could be forfeited without affecting the rights of third parties being a family residential home.

Analysis of Law and Evidence

7. Section 121 (1) of the Criminal Procedure and Evidence Code states that “When any person is required by any police officer or court to execute a bond, with or without sureties, such police officer or court may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or property to such amount or value as the police officer or court may require in place of, or in addition to, executing such a bond; and such amount or value shall be fixed with due regard to the circumstances of the case and shall not be excessive’.
8. Section 121 (2) of the Criminal Procedure and Evidence Code states that “Where any money or property has been deposited in accordance with subsection (1) and it is proved to the satisfaction of a court that the depositor has not fulfilled the conditions upon which such money or property was deposited, the court shall record the grounds of such proof and may call upon the depositor to show cause why such money or property should not be forfeited, and if sufficient cause is not shown or if the court is satisfied that the depositor has absconded or cannot be traced the court may order such money or property to be forfeited’.
9. The reading of section 121 of the Criminal Procedure and Evidence Code quoted above allows a court to forfeit property which was deposited to execute a bond. The forfeiture occurs where the court is satisfied that the conditions upon which the property was deposited have not been fulfilled. In doing so the court ought to record the grounds proving that the conditions upon which the property was deposited were not fulfilled and may call the depositor to show cause why the property should not be forfeited.
10. The facts show that the respondent was the depositor of the property in question. He did not present himself at the hearing to show cause why the property should not be forfeited. This court is informed by the State that the residential home on an official search is solely registered in the name of the respondent. Being a residential family home this court thought it wise a submission be made to confirm ownership so that the forfeiture would affect the rights of the spouse. Section 24(a) of the Registered Land Act states that the registration of a person as the proprietor of private land shall confer on that person the rights of owner of that land as private land. This not being a matrimonial cause of distribution of property the court following the official search

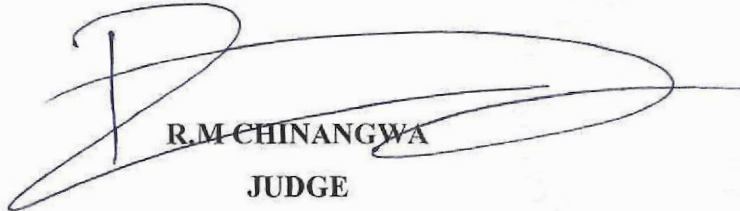
of the register owner finds that the house in area 43 belongs to the respondent and is amenable to be forfeited the same having been bonded on the respondents release on bail.

11. Further, it is this courts belief that the respondent having been legally represented at the time of his bail application in the year 2014 should have been informed by Counsel of the consequences of absconding bail on the bonded properties.

Finding

12. Under section 121(2) of the Criminal Procedure and Evidence Code, this court is satisfied that the Respondent has absconded and cannot be traced and hereby orders the house in Area 43 as bonded be forfeited to the Malawi Government.

Pronounced this 28th day of March 2024 at LILONGWE



R.M. CHINANGWA
JUDGE