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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

REVIEW CASE NO. 30 OF 2021

(Being Criminal Case No. 451 of 2021 before the Senior Resident Magistrate Court sitting at Blantyre)

THE REPUBLIC

V

MAXWELL MAGANGA

ORDER ON REVIEW

Chima J

The matter comes for review under section 42 of the Constitution, sections 25 and 26 of the Courts Act and section 362 of the Criminal Procedure and Evidence Code. The Chief Resident Magistrate (CRM) seeks review of the matter on the ground that the accused herein, who was a remand prisoner, was granted bail by a First Grade Magistrate who was not seized with the matter following a camp court that she conducted at Chichiri Prison on 4 September 2021. The accused had appeared before the Senior Resident Magistrate (His Worship Mwanyongo) on 9 June 2021 for plea taking on a charge of defilement contrary to section 138 (1) of the Penal Code. He denied the charge. The state said they would call three witnesses. Only one witness was present on the day who was ready to testify. The matter, was however, adjourned to 23 June 2021 to allow the accused to seek legal representation in the meantime. The accused was remanded in custody. There is nothing on record to show what transpired on 23 June 2021. This is an anomaly as the court should have noted the reason why the matter had failed to take place. Then came 4 September 2021 when the First Grade Magistrate went for camp court and granted bail to the accused.

Thus this court directs as follows:

1. That the magistrate who conducted the camp court leading to the release of the accused must prepare and file explanatory transfer notes of how she was seized with this matter and why she released the accused from detention.

2. She must file a formal order granting bail to the accused.
3. That the matter must be set down for continuation of trial before the magistrate who was originally seized with the matter.
4. The accused must be summoned to attend trial.
5. The prosecution must be cited appropriately as “Republic” and not the “State” starting from the front cover as is required in criminal proceedings.

Made this day the 15th of November 2021


Justice Vikochi Chima