

IN THE COURT OF APPEAL OF LESOTHO

**HELD AT MASERU
18/2022**

C of A (CIV) No.:

In the matter between:

MAHELENA LEPHOTO

APPELLANT

AND

**THE DIRECTORATE ON CORRUPTION
AND ECONOMIC OFFENCES**

1ST RESPONDENT

THE MINISTER OF LAW AND

2ND RESPONDENT

CONSTITUTIONAL AFFAIRS

3RD RESPONDENT

HER WORSHIP L. NTELANE

DIRECTOR OF PUBLIC PROSECUTIONS

4TH

RESPONDENT

THE ATTORNEY GENERAL

5TH RESPONDENT

THE CLERK OF COURT MASERU

MAGISTRATE COURT

6TH

RESPONDENT

CORAM:

K. E. MOSITO P
P.T. DAMASEB AJA
P. MUSONDA AJA
M.C. CHINHENGO AJA
N.T. MTSHIYA AJA

HEARD:

18 OCTOBER 2022

DELIVERED:

11 NOVEMBER 2022

SUMMARY

Trial within a reasonable time as directed by s 12(3) of the Constitution includes "pre-charge delay" but the remedy of permanent stay is an exceptional remedy that will not be granted without proof of a deliberate stratagem on the part of the State to prejudice the person accused of criminal wrongdoing.

JUDGMENT

PT DAMASEB, AJA:

Introduction

[1] In the present appeal, we are called upon to decide whether the appellant (Mrs Lephoto) should be granted permanent stay of prosecution from charges of corruption and related offences.

Factual background

[2] Mrs Lephoto is in the employ of the Ministry of Finance as its Director: Internal Audit. Being suspected of involvement in improper conduct in relation to the appointment of a company, Sema Integrated Risk Solutions (Pty) Ltd (SEMA), to render forensic services to the Ministry of Finance, she was suspended with full pay on 8 November 2012. The suspension was pending an investigation into possible gross misconduct.

[3] Following Mrs Lephoto's suspension, a disciplinary hearing was initiated against her. According to Mrs Lephoto, she then acted 'proactively' when in January 2013 she challenged the disciplinary proceedings on a '*constitutional basis*' before a full bench of the High Court (Full Bench). Judgement in her favour was only handed down in December 2014. That stalled the disciplinary process to date.

[4] The suspension of Mrs Lephoto was a sequel to an internal investigation conducted by a South African company, Nexus Forensic Services (Pty) Ltd, (Nexus) specializing in forensic investigations. Nexus issued a report on 6 December 2012 on the basis of which Mrs Lephoto was suspended.

[5] Acting on the strength of the forensic investigation by Nexus, in 2013 the 1st respondent (DCEO) obtained against Mrs Lephoto a search and seizure warrant and seized a vehicle, a Mazda 3 with registration number 6352, suspected to be the kick-back received by Mrs Lephoto from SEMA. The search and seizure were on the suspicion that Mrs Lephoto had been bribed by SEMA's director to influence the procurement of the services of SEMA.

[6] On 29 October 2014, the DCEO obtained a preservation of property order in terms of s 88 of the Money Laundering and Proceeds of Crime Act 4 of 2008 (MLPCA) from the High Court.

[7] The next misfortune to befall Mrs Lephoto was a criminal prosecution on 2 June 2015 when she was charged in the magistrate's court (before the 3rd respondent) for corruption offences under the Prevention of Corruption and Economic Offences Act No. 5 of 1995 (PCEO) and the Public Financial Management and Accountability Act No.51 of 2011.

[8] The criminal trial was scheduled to take place on 28 August 2016 before the third respondent (the magistrate). On that date, Mrs Lephoto's legal representative requested the magistrate to act in terms of s 128 of the Constitution of Lesotho¹ and to refer the constitutional question to the High Court.

[9] At the core of the s 128-referral request, is the complaint that the legislative scheme which permits the concurrent pursuit against a suspect of civil proceedings under MLPCA and a criminal prosecution under, *inter alia*, the PCEO is unconstitutional because it denudes the person suspected of her right to remain silent in that in order to defend herself in the civil proceedings, she has to disclose her defence '*prematurely*'.

[10] Section 98(4) of the MLPCA provides that a criminal prosecution and a civil proceeding to recover suspected proceeds of crime may be pursued concurrently. It states:

'The validity of an order under subsection (1) is not affected by the outcome of the proceedings, or of an investigation with a view

¹ '128 (1) Where any question as to the interpretation of this Constitution arises in any proceedings in any subordinate court or tribunal and the court or tribunal is of the that the question involves a substantial question of law, the court or tribunal may, and if any party to the proceedings so requests, refer the question to the High Court.

(2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court or tribunal in which the question arose shall dispose of the case in accordance with the decision or, if that decision is the subject of an appeal under section 129 of the Constitution, in accordance with the decision of the Court of Appeal.'

to institute such proceedings, in respect of an offence with which the property is in some way associated’.

[11] It is that provision that Mrs Lephoto asked the magistrate to refer to the High Court for a declaration of constitutional inconsistency.

[12] The magistrate dismissed the application for referral by way of an order but did not furnish reasons. The magistrate then directed that the trial would commence on 10 April 2017 on which date - Mrs Lephoto’s counsel being indisposed- the matter was postponed to 20 April 2017.

[13] The trial could not commence before the magistrate because in the meantime Mrs Lephoto instituted urgent proceedings in the High Court challenging the constitutionality of s 98(4) of the MLPCA; a declaration of an unreasonable delay in her prosecution in breach of s 12(1) of the Constitution, and a declaration that the magistrate’s failure to give reasons for refusing the s 128-referral breached her right to a fair trial.

The pleadings

[14] In her notice of motion, Mrs Lephoto sought substantive (main and alternative) relief. She sought an order:

- (a) That the criminal trial scheduled to commence on 20 April 2017 before the magistrate '*be stayed pending finalization of the present matter*';
- (b) Directing the magistrate to dispatch the record of proceedings in which she refused the referral request; and
- (c) That the magistrate be directed '*to furnish written reasons for the refusal*' of the s 128-referral.

[15] As an alternative to the main relief captured in (c) above, she sought 5 alternative reliefs. In other words, she invited the court *a quo* to grant any one or more of the alternative heads of relief in the event that the court decided not to direct the magistrate to furnish her written reasons.

[16] The first alternative is a declaration that the failure to furnish written reasons violates her right to a fair trial guaranteed under s 12(3) of the Constitution. The second alternative is that s 98(4) of the MLPCA is unconstitutional and a breach of s 12 of the Constitution. Third, a declaration that the three-year delay in the formulation of charges and prosecution of her violates s 12 of the Constitution. Fourth, that her prosecution be stayed permanently '*pursuant to*' the grant either of an order directing the magistrate to furnish written reasons, an order declaring that the failure to give reasons is unconstitutional; or that the three year delay in her prosecution violates s 12(1).

[17] In the founding affidavit in support of the reliefs that she seeks, Mrs Lephoto makes the following salient allegations in support of alleged *'pre-trial prejudice'* in her *'battle with my employers and or the state since my suspension from work'*.

[18] She states that the Full Bench's delay in giving judgment in her *'proactive'* challenge against the disciplinary proceedings is an instance of the pre-trial prejudice she suffers. She also states that she was not given a copy of the final report produced by Nexus, the company that investigated her and whose report led to her suspension. The Full Bench had held that Nexus violated her constitutional right to a fair trial – a finding she maintains has never been appealed against. That finding led to the disciplinary proceedings being halted and yet she remains suspended when she should have been reinstated.

[19] According to the deponent, the entire criminal case against her is founded on the forensic report by Nexus whose role in the investigation was found by the Full Bench to violate her constitutional rights.

[20] Mrs Lephoto avers that although her vehicle was seized as an instrumentality of crime, the identity of the magistrate who authorised the seizure was never disclosed to her in spite of her *'formal request'* to be informed *'in the trial court'*.

[21] It is said that the agents of the DCEO had informed her that the seized vehicle was going to be used as evidence against her in the criminal trial. That same vehicle was then attached in terms of the asset forfeiture legislation in *ex parte* proceedings in the High Court. She therefore brought a rescission application against that attachment order and the application is still pending.

[22] Mrs Lephoto complains that these actions of the State have the effect that the civil and criminal proceedings are running concurrently and violate her right to remain silent.

[23] The unconstitutionality is said to arise from the fact that the civil and criminal proceedings are founded on the same set of facts and that by *'reacting to the civil case, I have to disclose my defence which of course would be the same defense that I shall advance in the criminal trial'*.

[24] That effectively, the deponent maintains, does away with her *'constitutionally sanctioned presumption of innocence until proven guilty'*. She asserts that there is *'absolutely no sound legal basis why the two cases should run concurrently'*.

[25] According to Mrs Lephoto, she was prosecuted only three years after her vehicle was seized, and during that time she had been deprived of the use of her vehicle. According to her, a period of three years without a judicial determination

that her vehicle is a product of criminal activity *'casts a shadow of doubt and taint the presumption of innocence until proven otherwise'*.

[26] Another prejudice that Mrs Lephoto relies on is the fact that she allegedly had at great expense to secure the services of lawyers to represent her interests in the parallel legal proceedings. She also had to buy a new vehicle to run family errands as the Mazda remains attached; and because she remains on suspension, her professional growth has been *'adversely hampered'*.

[27] Mrs Lephoto then returns to the theme of the failure by the magistrate to give her written reasons for the refusal of the s 128-referral and states that the failure breaches her right to a fair trial because if the point were decided in her favour it would put to rest the criminal prosecution against her.

[28] Mrs Lephoto maintains that the circumstances stated above *'have clearly dealt a blow to my constitutionally entrenched right to a speedy resolution of the charges waged against me'*. She adds that the *'delay as in the present case has yielded adverse prejudice to [her and that] the court is at large to order a permanent stay of prosecution.'*

[29] According to Mrs Lephoto, she is placed at a disadvantage by the State's pursuit of parallel proceedings

against her as she is pitted in her endeavor to protect her interests against the institutional might and vast resources of the State.

[30] The proceedings were opposed by the DCEO whose Director General (DG) deposed to an answering affidavit. The DG disputes that the main relief sought raises any constitutional issue. As regards the s128 referral, the DG states that such a determination was irrelevant to the criminal prosecution of Mrs Lephoto.

[31] The DG avers that the magistrate's failure to furnish written reasons does not raise any constitutional issue either.

[32] As regards the complaint against s 98(4) of the MLPCA, the DG states that there is no constitutional rule that an accused in a criminal case who chooses to participate in forfeiture civil proceedings may not be required to plead his or her cause of action or defence in the civil proceedings.

[33] Concerning the allegation of unreasonable delay in the criminal prosecution, the DG states that Mrs Lephoto was charged before the magistrate's court in June 2015 and was prosecuted in June 2016. It is said that in the period between first being charged and when she made the referral request, Mrs Lephoto *'has been making so many applications at her own instance while the prosecution has been determined and ready to prosecute the matter at all times.'*

[34] According to the DG, the delay in the prosecution of the matter to determine the fate of the vehicle was directly caused by Mrs Lephoto.

[35] It is denied by the DG that Mrs Lephoto suffered any pre-trial prejudice.

The High Court

[36] The matter came before Monapathi, Mokhesi and Moahloli JJ. Mokhesi J who penned the judgment on behalf of the unanimous court identified three issues to be decided, being:

- (a) The consequence of the magistrate's failure to give written reasons in the event it is found to be unconstitutional;
- (b) Whether a three-year delay in preferring charges violates s 12 of the Constitution; and if it did, whether it warrants a permanent stay of prosecution?;
- (c) The constitutionality of s 98(4) of the MLPCA.

[37] The Full Bench found that the magistrate's failure to give written reasons within a reasonable time violated s 12(3) of

the Constitution in that it *'amounted to a denial of the applicant's right to prosecute her appeal, and consequently a denial of her right to a fair trial.'*

[38] The court a quo went on to consider whether that violation of a constitutional right justified a permanent stay and held it did not. The Full Bench reasoned that a permanent stay is a *'drastic'* remedy and that, in any event, Mrs Lephoto was not hamstrung by the reasons' absence and by the failure to dispatch the record in approaching, as she did, the High Court for relief in terms of s 22 of the Constitution - in her quest to invalidate s 98(4) of the MLPCA and to seek a permanent stay of prosecution.

[39] The court a quo wrote that:

'even without the record and written judgment, she could still invoke the jurisdiction of this court through s. 22 to achieve the same purpose she would have achieved had the written judgment been rendered'.

[40] The court a quo then proceeded to consider whether the three-year delay to charge Mrs Lephoto violated s 12(1) of the Constitution which requires that:

*'If any person is **charged** with a criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing*

within a reasonable time by an independent court established by law.'

[41] The High Court concluded that Mrs Lephoto's complaint relates to '*pre-charge delay*' and that s 12(1) does not protect pre-charge delay.

[42] According to the Full Bench:

'Nowhere does s 12 provide that a suspect be charged within a reasonable time' and therefore the 'pre-charge delay about which the applicant is complaining is not an incident of right to a fair trial which is protected under s. 12 of the Constitution'.

[43] Finally, the court *a quo* dismissed the challenge to s 98(4) of the MLPCA. Since the appeal is not directed at that finding it is unnecessary to set out in full the court *a quo*'s reasoning in its rejection of the constitutional challenge.

[44] Suffice it to state that in doing so the High Court cited comparative jurisprudence which sanctions the parallel pursuit of civil and criminal proceedings against economic and organised crime. Mokhesi J, following international trends, rejected the clamor for permanent stay on the strength of the allegation of the constitutional impropriety of a parallel pursuit of civil and criminal remedies in respect of corruption and related offences.

[45] The High Court therefore held against Mrs Lephoto in respect of the three issues the court a quo identified. The court however did not order costs against her on the now customary practice that in constitutional matters a litigant against the State is not to be mulcted in costs save in exceptional circumstances.

[46] As regards the trial pending in the magistrate's court, Mokhesi J ordered that it '*should start de novo before a different magistrate*'.

The appeal

[47] The original notice of appeal also impugned the High Court's validation of s 98(4) of the MLPCA. That ground has since been abandoned and the appeal is directed at three conclusions reached by the High Court.

[48] First, that the High Court erred in not declaring the magistrate's failure to render reasons for refusing a s 128(1)-referral to be a violation of the appellant's right to a fair trial in terms of s 12. Second, that the court a quo erred in finding that the period of delay in prosecuting an accused should be reckoned only from the date when formal charges are preferred in court and not before. Third, that the court *a quo* erred in not permanently staying the criminal prosecution against the appellant.

Appeal grounds considered

Not declaring as unconstitutional the magistrate's failure to give reasons for non-referral

[49] It will be recalled that the Full Bench held that the failure to give reasons amounted to a denial of Mrs Lephoto's right to prosecute an appeal and consequently a denial of her right to a fair trial. Now, Mrs Lephoto complains that in so doing the court *a quo* 'failed to attach weight to the fact that Section 128 provides a procedure that is *sui generis*, and which is different from and unrelated to the appeal/review procedure.'

[50] It is said that the section 'recognizes that the subordinate court lacks jurisdiction to decide constitutional questions and it should thus not act *ultra vires* its powers purporting to do so. Second it enables the High court in the first instance, and the Court of Appeal in the second to give an advisory decision on the subject.'

[51] It is stated further that the High Court erred in not distinguishing between the prayer declaring the refusal to give reasons as being an affront to the right to fair trial and the relief seeking a permanent stay of prosecution.

[52] Had the High Court exercised its discretionary power to make a declarator in terms of s 2 of the High Court Act, it is said, it would have concluded that the magistrate failed to

give reasons when, under the common law and the Constitution, she had the duty to do so; by purporting to refuse to make a referral assumed jurisdiction over a matter beyond her jurisdiction; the *sui generis* procedure of s 128 is for the benefit of an accused and an essential part of a fair trial, and a declaratory order would serve as binding precedent that would guide the subordinate courts in similar circumstances.

[53] The argument goes that had the High Court approached the matter in that way, it would have made an order declaring the magistrate's refusal a violation of Mrs Lephoto's right to a fair trial.

[54] With the greatest respect, I fail to see the substance to this argument. The magistrate's failure to give reasons was a live controversy only in so far as the constitutionality of s 98(4) of the MLPCA remained a live controversy. The complaint was that had it been referred and the High Court made a determination (which the magistrate could not) that s 98(4) is unconstitutional, the stay would have been granted.

[55] The High Court made a determination in two respects: (a) That the magistrate's refusal to give reasons violated Mrs Lephoto's right to fair trial and (b) that s 98(4) passes muster. I fail to see how the court erred.

[56] The real complaint seems to be that having found as it did that the magistrate violated Mrs Lephoto's fair trial rights, the High Court should have granted a permanent stay.

[57] Granting a stay on the basis that s 98(4) fails to pass muster is no longer an avenue open to Mrs Lephoto because the challenge to the validity of s 98(4) has been abandoned on appeal. In other words, that section's constitutional validity is presumed as per the High Court's finding.

[58] Without a s 98(4) challenge being a live issue, the failure to give reasons for its referral assumes only historical significance. It is now a moot issue and I decline counsel for Mrs Lephoto's invitation to us to make some '*declaratory order [to] serve as binding precedent that would guide the subordinate courts in similar circumstances.*'

[59] That disposes of the first ground of appeal.

Pre-charge prejudice

[60] The next ground of appeal concerns the High Court's finding that *pre-charge* prejudice falls outside the purview of s 12(3) of the Constitution.

[61] Mrs Lephoto's case for a permanent stay is that her right to trial within a reasonable time commenced when on 9 October 2013, DCEO's agents showed up at her home armed with a search warrant and seized her vehicle as an exhibit

and accused her of involvement in a criminal offence. That was followed with disciplinary proceedings and attachment of her vehicle in terms of the MLPCA.

[62] As a result of these events, Mrs Lephoto maintained that she suffered the following *pre-trial prejudice*: being deprived of the use of her vehicle; being suspended; being accused of criminal conduct; her professional growth being halted and incurring substantial sums of money on legal defence. All these, she submitted '*correspond with the start of the impairment of [her] interest in the liberty and security of her person*' warranting a permanent stay of prosecution in terms of s 12(1) of the Constitution.

[63] The DCEO, on the other hand, maintained that the right to trial within a reasonable time starts at the stage where a person is charged with an offence - not before - and that in the present case Mrs Lephoto was charged in June 2015 with the trial scheduled for June 2016 and then being postponed because of the challenges she mounted as previously described.

[64] The High Court agreed with the DCEO and held that the right to trial within a reasonable time commences at the stage where a person is formally charged and not before.

[65] Mokhesi J held that '*the pre-charge delay is not protected by s 12 of the Constitution*' and that nowhere does

s 12 provide that a suspect be charged within a reasonable time. The learned judge relied on Canadian *dicta*² to justify that conclusion. Mrs Lephoto's counsel disputed that the Canadian cases cited support the DCEO's case.

[66] I do not share the very narrow and restrictive approach adopted by the Full Bench. I prefer the more progressive approach adopted by Gubay CJ in the Zimbabwe case of *In Re Mlambo*³ and which is also followed by the European Court of Human Rights in, for example, *Foti v Italy*⁴.

[67] The more purposive and rights-sensitive approach is to the effect that the concept 'charged' is not limited to the situation where the accused is called upon to plead to a formal charge. As Gubay CJ reasoned in *Re Mlambo*, such a restrictive approach would have the effect of rendering trial within a reasonable time protection nugatory and susceptible of abuse - '*permitting the State to delay inordinately before bringing a person before the trial court, happy in the knowledge that by so doing there has been no violation of a constitutional right*'.

[68] Gubay CJ then admirably sums up the correct position as follows:

² *R v Morin* (1992) 8 CRR (2ed) and *R v Kalanj* [1989] 1 S.C.R 1594.

³ 1992 (4) SA 144.

⁴ (1983) 5 EHRR 313 at 326.

'I have no hesitation in holding that the time frame is designed to relate far more to the period prior to the commencement of the hearing or trial than whatever period may elapse after the accused has tendered a plea. This meaning is wholly consonant with the rationale of [s 12(1)] – that the charge from which the reasonable time enquiry begins, must correspond with the start of the impairment of the individual's interest in the liberty and security of his person. The concept of 'security' is not restricted to physical integrity, but includes stigmatization, loss of privacy, anxiety, disruption of family, social life and work.'

[69] I adopt that approach. I am accordingly satisfied that in the case before us the time period begun to run on 9 October 2013 when the DCEO took coercive steps against Mrs Lepotho by seizing her vehicle and accusing her of criminal conduct. That would therefore be a period of three years before she was formally indicted in June 2016.

[70] The next question is, did such delay fall foul of s 12(1) of the Constitution?

[71] The basis on which Mrs Lephoto seeks a permanent stay is the alleged unreasonable delay in prosecuting her between 2013 and 2015 and the alleged pre-charge prejudice set out in para [62] above. The High Court approached the matter on the basis that the period concerned was three years. I will assume that to be correct for the purpose of this judgment.

[72] Mrs Lephoto's case is that the Crown has proffered no reasonable explanation for why she was not prosecuted on the preferred charges between 2013 and 2015. The argument was made that the State had marshalled all the evidence needed to commence the prosecution but failed to do so. What is apparent, it is said, is that the Crown never really intended a prosecution. According to Mrs Lephoto, the Crown's failure to prosecute her occasioned her enormous prejudice.

[73] Mrs Lephoto's claim to be protected from further prosecution based on a three-year delay is, not to put too fine a point on it, remarkable. Not least because it seeks to set a standard in a developing country such as Lesotho with enormous resource constraints that may be difficult to enforce and may inexorably lead to a collapse of the criminal justice system with resultant loss of public confidence in the administration of justice.

[74] The notion that a person who had at no stage been subjected to prolonged pre-trial incarceration, save for the anxiety of an imminent prosecution, should be permanently set free is, in my view, difficult to justify without more – such as malice, or a calculated stratagem to persecute a suspect and such like.

[75] I am not aware of any comparative approach, and none has been cited to us by counsel for Mrs Lephoto – even from

jurisdictions boasting far superior resources than Lesotho's - where such a low bar is being practiced.

[76] The remedy of a permanent stay is a drastic one and not to be granted lightly. As Cachalia JA remarked in *Rodrigues v National Director of Public Prosecutions and Others*⁵:

'Permanent stays are almost never granted following delays in the commencement and conclusion of a trial. This is because a permanent stay is an exceptional remedy. It may only be granted where the delay is egregious and has resulted in irreparable trial-related prejudice. Moreover the trial-related prejudice must be demonstrably clear ('definite not speculative'). More often than not, where there is a delay, but not clear trial-related prejudice, there are a range of less drastic remedies available to ameliorate any broader prejudice an accuse may suffer. These include a mandamus requiring the prosecution to commence the trial forthwith, denying it a postponement of the trial or awarding damages to an accused following an acquittal.'

[77] Mrs Lephoto has not been a passive recipient of legal salvo from the State. She has given as good as she got - in some instance acting, as she puts it, '*proactively*' to protect her rights. She made no active effort to push for a prosecution. On the contrary, she had been to court to halt a disciplinary hearing. She initiated a rescission application to reverse the attachment of her vehicle, which proceeding is still pending. She sought to challenge the very basis of her

⁵ [2021] ZASCA 87; [2021] 3 ALL SA 775 (SCA); 2021 (2) SACR 333(SCA0 (21 June 2021) para [51].

prosecution by challenging the *vires* of s 98(4) of the MLPCA. She approached the High Court to declare that provision unconstitutional only to abandon the point on appeal. These are legal strategies which were bound to cost her money and which it is her right to pursue.

[78] The legal costs associated with the actual prosecution must be minimal at most because she has so far actively resisted that prosecution.

[79] On the contrary, I discern no stratagem on the State's part to occasion Mrs Lephoto an unfair trial. In my view, circumstances in which a trial is stayed by court order because of *pre-charge* delay is bound to be exceptional. There must be demonstrable bad faith, negligence or remissness of the quality described by Gubay CJ in *Re Mlambo*.

[80] I am satisfied that Mrs Lephoto did not satisfy the test for the grant of a permanent stay of prosecution on account of unreasonable pre-charge delay by the State in her prosecution. The High Court order dismissing the application for stay can therefore not be faulted, albeit for different reasons.

[81] Now that the High Court's rejection of a permanent stay is upheld by this court, the charges preferred against the appellant will be tried *de novo* in the magistrate's court.

[82] Mrs Lephoto came to this court to vindicate constitutional rights and for that reason, just as in the High Court, she should not be mulcted in costs although she is unsuccessful.

Order

[83] In the result, I make the following order:

The appeal is dismissed and there is no order as to costs.



**PT DAMASEB
ACTING JUSTICE OF APPEAL**

I agree:



**KE MOSITO
PRESIDENT OF THE COURT OF APPEAL**

I agree:



P MUSONDA

ACTING JUSTICE OF APPEAL

I agree:



**MH CHIHENGO
ACTING JUSTICE OF APPEAL**

I agree



**N T MTSHIYA
ACTING JUSTICE OF APPEAL**

FOR APPELLANTS:

ADV. M E TEELE KC

FOR RESPONDENTS:

ADV. T C TSUTSUBI