IN THE SUPREME COURT OF APPEAL

PRINCIPAL REGISTRY

MISCELLANEOUS CRIMINAL APPEALS NUMBERS 5 & 6 OF 2017

(Being an Appeal from the Lilongwe District Registry Criminal Case No. 65 of 2013]

Between:

MACDONALD KUMWEMBE.....1ST APPELLANT

PIKA MANONDO.....2ND APPELLANT

RAPHAEL KASAMBARA.....3RD APPELLANT

AND

THE REPUBLIC .....RESPONDENT

CORAM: HONOURABLE JUSTICE H.S.B. POTANI JA

R Mbvundula, Counsel for the Appellant

E. Chibwana and G. Msume, Counsel for the Respondent

C Masiyano, Court Clerk

RULING

By way of an *ex-parte* summons, the 3rd Appellant approached this Court seeking an order for transfer of proceedings from Lilongwe to Blantyre. The Court

considered it necessary to accord the Respondent the opportunity to make representations on the matter. It was therefore ordered that the summons should be disposed of *inter- partes* and gave attendant directions on the filing and service of the necessary processes.

According to the summons taken out by the Appellant, the application is made pursuant to section 7 of the Supreme Court of Appeal Act, Order IV rule 2 of the Supreme Court of Appeal Rules and the inherent jurisdiction of the Court. There is an affidavit sworn by the 3rd Appellant in support of the application in response to which there is the affidavit of Gift Msume, Senior State Advocate, on behalf of the Director of Public Prosecutions (DPP).

The case for the 3rd Appellant is that it would be expedient and in the interests of justice to have the hearing in Blantyre and not in Lilongwe principally on three grounds viz: Firstly, that the 3rd Appellant is permanently resident in Blantyre, secondly that thelawyers for all the Appellants are Blantyre based and thirdly that the DPP/ Respondent has an office Blantyre. Additionally, it has been pointed out by the 3rd Appellant that the hearing and delivery of ruling on his application for bail pending appeal took place in Blantyre and that he is informed that the majority of the Justices of Appeal constituting the Supreme Court of Appeal are resident in Blantyre. It is his submission that in the circumstances, the transfer being sought would not pose any challenges to either the bench or the parties.

The position of the Respondent as contained in the affidavit in response is that the choice of locus is a matter for the Court to decide on so much so that as far the Respondent is concerned, it would avail itself at whichever location the Court would sit. The affidavit in response goes on to dispute the averment in paragraph 8 of the affidavit in support that the Respondent made intimations that it would not object to the transfer. On this aspect, mention has to be made that during the hearing counsel Chibwana told the Court that the Respondent has no objection to the application.

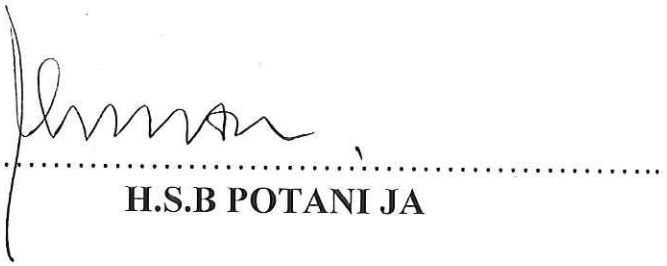
As rightly deposed by counsel Gift Msume for the Respondent, the location of the hearing of a case is ultimately a matter for the Court to decide on. In arriving at such a decision, the Court must strive to achieve an expedient, just and cost effective disposal of the case. It is for that reason that criminal trials ordinarily take place, as

much as possible, near the locality where the alleged offence occurred or where the accused was apprehended or is remanded. In the case of civil trials, the hearing would be near the locality where the incident or transaction giving rise to the case took place.

In the case at hand, sight should not be lost that the application before the court relates to the hearing of an appeal and not a trial. A trial usually involves witnesses coming court to give evidence which is not ordinarily the case with an appeal and such being the case, considerations that come to play in deciding the location for the hearing of an appeal may not necessarily be the same as those for a trial. That said, it is a notorious fact that this Court has development a practice of attending to hearings of appeals right at the registry where the appeal originates from on an assize. The simple reason for such a practice is make the Court more accessible to the parties. Put differently taking justice to the doorstep of the parties. Such being the rationale the practice should not be one cast in stone. Reverting to the present case, in all fairness, the 3rd Appellant's contention that the Court would be more accessible to him and the other concerned parties if the hearing of the appeal takes place in Blantyre rather than Lilongwe has been sufficiently made out. However, there is an aspect of the matter which needs serious consideration. The Court is in possession of an Appeals Fixture dated January 28,2022, which indicates that the appeal the subject of the application is set to be heard in Lilongwe on Thursday, March 31, 2022. In that week other cases have also been scheduled at the same venue. What this entails is that if the application is allowed, it would disrupt the Court's calendar and mostly likely also result in wastage of scarce financial resources that have been directed towards the scheduled Court sittings/ assize. In this kind of scenario, the inclination of the Court is to decline the request for transfer of the hearing of the appeal. The application is therefore abortive. The parties to get on

their feet with earnest preparations for the hearing of the appeal in Lilongwe on Thursday, March 31, 2022. At 9.00 am as scheduled

Made in Chambers day of March 11, 2022 at Blantyre.



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H.S.B POTANI JA