



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONSTITUTIONAL CAUSE NO. 5 OF 2015

(Being Criminal Case No. 444 of 2015 before the Blantyre Magistrate Court)

BETWEEN:

MAYESO GWANDA.....APPLICANT

AND

THE STATE.....RESPONDENT

LEGAL AID BUREAU.....1ST AMICUS CURIAE

CENTRE FOR HUMAN RIGHTS EDUCATION,

ADVICE AND ASSISTANCE.....2ND AMICUS CURIAE

PARALEGAL ADVISORY SERVICE

INSTITUTE.....3RD AMICUS CURIAE

MALAWI LAW SOCIETY.....4TH AMICUS CURIAE

CORAM:MTAMBO, KALEMBERA, NTABA, JJJ.

: Mr M. Mambulasa

: Miss A. Itimu, Senior State Advocate, of Counsel for the Respondent

: Mr T. Chakaka-Nyirenda, of Co-Counsel for the Respondent

: Mr T. Kalua, of Counsel for the 1st Amicus Curiae

: Mr F. Maele, of Counsel for the 2nd Amicus Curiae

: Miss V. Jumbe, of Counsel for the 3rd Amicus Curiae



: Mr L. Gondwe, of Counsel for the 4th Amicus Curiae

: Mr Kakhobwe, Official Interpreter

: Mrs Pindani, Chief Court Reporter

JUDGMENT

Kalembere J

The Applicant was charged with the offence of being rogue and vagabond under section 184(1)(c) of the Penal Code before the Senior Resident Magistrate Court sitting at Blantyre. On 25th day of March 2016, his trial was stayed pending the determination of the Applicant's constitutional petition. On 3rd June 2015, the Honourable the Chief Justice certified this matter as a constitutional matter pursuant to section 9(3) of the Courts Act, following a referral by Her Worship Moyo in Form 3 of the Courts (High Court)(Procedures on the Interpretation or Application of the Constitution Rules of the Courts Act. Both parties, including the *amici curiae* have filed detailed submissions and skeletal arguments in respect of their respective positions on the matter. In short, the Applicant's contention is that the offence of rogue and vagabond under section 184(1)(c) of the Penal Code is unconstitutional as it infringes upon his various rights under the constitution in itself and in its application. On the other hand, the Respondent opposes the application on the grounds that issues pertaining to the said section deals with or are to do with law enforcement officers and not the provision itself.

The brief facts of the matter are such that the Applicant was arrested by the Malawi Police Service at Chichiri, in the City of Blantyre, on 20th March, 2015 at around 4:00 am. He, being a vendor, was on his way to Limbe where he sells plastic bags. He was kept in custody at Soche Police Sub-Station in Blantyre until 23rd March 2015 when he was charged with the offence of being a rogue and vagabond contrary to section 184(1)(c) of the Penal Code before the Blantyre Magistrate Court. Subsequently he was released on bail pending trial scheduled for the 25th day of March 2015. On 25th day of March 2015, the trial was stayed pending the determination of this constitutional petition.

The main issues for determination are the following:

