

THE GABLE MASANGANO CASE

Gable Masangano vs The Attorney General,
Minister of Home Affairs and Chief
Commissioner of Prisons [2009] MLR 171

Fostino Yankho Maele

Maele Law Practice

Malawi

FACTS

- The Applicant was a prisoner serving a sentence of 12 years since 2006.
- The Applicant had been at Chichiri Prison but he was subsequently moved to Domasi prison where he was at the time of the case.
- The Applicant commenced the case on his own behalf and on behalf of all prisoners in Malawi.

THE CLAIM

- The claim was that his imprisonment was unconstitutional as he was subjected to torture and cruel and inhuman and degrading treatment because
 - Insufficient or lack of ordinary diet.
 - Insufficient or lack of food i.e. eating one meal/ day.
 - Insufficient or total lack of clothing.
 - Lack of cell equipment like blankets, sleeping mats
 - Lack of cell space. Cells built to house 80 people housing 120 people
 - Lack of access to communication of friends and relations
 - Lack of medical treatment
 - Harassment from prison warders.
- The Applicant also claimed that that Respondent had failed to meet the minimum Constitutional and statutory obligations placed on them with regard to prison conditions.

PROCEDURE

- The matter was commenced as a judicial review proceeding.
- The matter was later certified by the Chief Justice as substantially relating to the interpretation of the provisions of the Constitution and was therefore referred to the Constitutional Court.
- In Malawi there is no separate Constitutional Court. Rather, whenever there is a constitutional matter, three judges of the High Court are selected to decide on the matter sitting as Constitutional Court.
- Judicial Review proceedings are not concerned with the merits of the decision, rather they look at the decision making process.
- The Applicant was arguing that the Respondent was acting illegally and irrationally by depriving them of what they were entitled to under the law.
- The Applicant also argued that the omissions by the Respondent stop provide adequate necessities of life was cruel and inhumane treatment.

THE EVIDENCE

- The evidence that was submitted before the court was through affidavits.
- Some information came from Official reports of statutory bodies i.e the Malawi Prison Inspectorate Report .

THE LAW

- The Applicants relied on several sources of law
 - The Constitution
 - The Prisons Act
 - UN conventions like Convention for the Prevention of torture and inhuman or degrading treatment.
 - UN minimum standards on Treatment of prisoners
 - Communications from UN bodies i.e. UNHCR
 - Case law from within AFRICA region Zimbabwe, South Africa, Lesotho, Nigeria.
 - Foreign Case Law generally

LEGAL HURDLES

- The Respondents raised several objections to the proceedings
 - Propriety of adding as the Attorney General (AG) as a party to the judicial review proceedings.
 - The Application was time barred as the Applicant had not brought the promptly as required under Order 53 rule 4 of the Rules of the Supreme Court as the Applicant was relying on the findings of the Malawi Prison Inspectorate in 2004.
 - The Matter is unjusticiable. The matter raised issues that the judicial process is not equipped to deal with. The Application involved the allocation of State resources to prisons which involves economic and policy considerations which are unjusticiable and therefore unarguable before a court of law.
 - The Applicant had alternative remedies hence there was no justification for the judicial review proceedings.

SURMOUNTING LEGAL HURDLES

- The Court agreed that the Attorney General (AG) is not an appropriate party to Judicial Review proceedings unless the AG was part of the decision which is being reviewed. In this case the AG was not part of the Decisions made by the prison authorities hence not a right party. However the Minister of Home affairs and the Chief commissioner of prisons were maintained as appropriate parties.
- The Court dismissed the argument that the matter was time barred. The court noted that the issues raised by the Applicants were a daily occurrence even at the time the court had commenced the present case hence the water is ready.
- The court dismissed the argument that the matter was not justiciable. The court stated that matters involving prisoners tight are within the ambit of the court. The court went on further it has the power to decide whether an issue is justiciable. The court went on further to stat that the court had power to interpret, protect and enforce the constitution.
- On the issue of alternative remedies the court found that there was no difference between the remedies sought by the Applicants and the remedies which are available generally under the Constitution for general violation of Human rights.

HOLDING

- The Court re-affirmed the following rights
 - Prisoners have the right to food and clothing and other accessories in terms of the minimum standards
 - The right to appropriate accommodation which is not congested,
 - The right to access medical care
 - The right to communicate with relations and lawyers.
- The Court held that overcrowding in prisons amounts to inhuman and degrading treatment and therefore unconstitutional.
- The Court directed the Respondents to reduce overcrowding by half and thereafter periodically to eliminate overcrowding.
- The Court further ordered Parliament to make available to the Respondents adequate financial resources to enable them meet their obligations.

SHORTFALLS

- The case was taken up as a judicial review proceeding. This matter should have been dealt with by Originating summons seeking declaratory orders and other reliefs as claimed in the judicial review proceeding.
- The pleadings were more concerned with violations of civil and political rights i.e. right to freedom from torture, inhuman and degrading treatment without a specific reference to violations of socio-economic right which were apparently the actual violations complained by the Applicants i.e. right to housing, right to health care, right to food e.t.c
- Failure to reply to responses by the Respondents: Generally the Applicants did not respond to the responses made by the Respondents thereby making the court believe that the Applicant's were just making allegations without substantiating them.

CONTINUED

- Failure to provide evidence on arguments: Generally there Applicants failed to provide evidence of the several allegations that were made.
 - The Applicants failed to show how the conduct of the Respondent failed below the minimum standards.
 - The Applicants failed to bring evidence of harassment.
 - The Applicants failed to show evidence of torture or lack of medical treatment.
 - The Applicants failed to show that they had no access to communication.
- Failure by the Applicants to enforce the judgment: The Applicants did not follow up on the judgment to enforce the orders that the Court had made.
- The judgment did not make an order for the respondents to report back as to what steps have been taken to comply with the order.

POSITIVES

- The case is a stepping stone in the realization of socio-economic rights. The Court makes it clear that issues about prisoners' rights are not a no go area for the courts and are not non justiciable.
- The Case clarifies that minimum standards set by the law are binding and it is not Defence to state that they cannot be met due to lack of resources.
- The Court made a specific order requiring the prison authorities to take steps to reduce overcrowding in prisons.
- The Court put a time frame within which the prison authorities were to comply with the order.
- There was a direct order to parliament to provide resources to the prison authorities to comply with the court order.

End

Thank you