



Republic of Malawi

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MISCELLANEOUS APPLICATION NO.: 5 OF 2015

(Being Criminal Case No.: 444 of 2015 at the Blantyre Magistrates Court)

**IN THE MATTER OF AN APPLICATION BY THE LEGAL AID BUREAU TO JOIN MATTER AS
AN AMICUS CURIAE**

AND IN THE MATTER OF

MAYESO GWAMBA.....APPLICANT

AND

THE STATE.....RESPONDENT

**APPLICATION BY THE LEGAL AID BUREAU TO JOIN MATTER AS AMICUS CURIAE [Under Rule
10 of the Courts (High Court) (Procedure on Interpretation or Application of the
Constitution) Rules]**

TAKE NOTICE that the Legal Aid Bureau shall on the day of
..... 2016 at O'clock in the noon
apply to the Court that it joins this matter as an *Amicus Curiae*.

FURTHER TAKE NOTICE that the Affidavit of **MASAUKO EDWIN CHAMKAKALA** filed
herewith shall be used in support of the application.

Dated the day of 2016

REGISTRAR



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AFFIDAVIT IN SUPPORT OF APPLICATION

I, **MASAUKO EDWIN CHAMKAKALA**, the Director of the Legal Aid Bureau of P.O. Box 675, Lilongwe, in the Republic of Malawi **MAKE OATH** and **STATE** as follows:

1. **THAT** I am the Director of the Legal Aid Bureau in Malawi and I am by reason thereof duly authorized to swear this Affidavit.
2. **THAT** unless otherwise stated I depone to matters of fact in this Affidavit based on my own personal knowledge of this matter and from the information gathered by myself in the conduct of the matter and I verily believe the same to be true to the best my knowledge, information and belief.

3. **THAT** the Legal Aid Bureau is an independent national institution established under the **Legal Aid Act No 28 of 2010**.
4. **THAT** in general the **Legal Aid Act No 28 of 2010** was enacted to, among other things, make provision for the granting of legal aid in civil and criminal matters to persons whose means are insufficient to enable them to engage private legal practitioners and to other categories of persons where the interests of justice so require.
5. **THAT** the Legal Aid Bureau has broad powers under the Act to do all such things as it considers necessary or desirable to secure the provision of legal aid under the Act or are calculated to facilitate or are incidental or conducive to the discharge of its functions.
6. **THAT** further the provision of legal aid extends to matters involving substantial questions of law in which adequate legal representation would make a material difference as well as in matters where it is in the interest of someone other than the accused that the accused be represented.
7. **THAT** in the discharge of its duties the Legal Aid Bureau is inundated with applicants deemed rogues and vagabonds seeking legal representation in both bail applications and criminal trials.
8. **THAT** almost always such applicants are persons of insufficient means and vulnerable.
9. **THAT** any decision on the constitutionality of vagrancy laws such as the section 184 of the Penal Code being challenged herein is of significant interest to the Bureau as vagrancy laws have a direct effect on the work and services provided by the Bureau.
10. **THAT** considering that the *Amicus Curiae* herein, among other things, is and a statutory obligation to provide legal aid to victims of vagrancy laws in the country, who are invariably persons of insufficient means and from vulnerable groups, it is necessary and crucially important that they be heard by the Court.

11. **THAT** the position to be advanced by the *Amicus Curiae* herein is that section 184(1)(c) of the Penal Code, Cap. 7:01 of the Laws of Malawi is unconstitutional and should therefore be declared invalid.
12. **THAT** the Legal Aid Bureau will, among other things argue that the said section is a violation of the human rights enshrined in the Constitution, as well as in international human rights instruments to which Malawi is a party, in particular, the rights to freedom of movement, privacy, human dignity and is discriminatory.
13. **THAT** the *Amicus Curiae* will further argue that the human right violations occasioned by the said section are neither reasonable nor necessary in an open and democratic society.
14. **THAT** I verily believe that these arguments are relevant to the proceedings herein as they will go to show the extent to which the section violates the human rights provisions in the Constitution and how it is neither reasonable nor necessary in an open democratic society.
15. **THAT** further the arguments will help the Court appreciate how the continued application of the provisions negatively impacts on the public at large in so far as legal aid provision is concerned.

WHEREFORE I humbly pray to this Honourable Court for an Order admitting the Legal Aid Bureau to join this matter as *Amicus Curiae*.

SWORN by the said **MASAUKO**)
EDWIN CHAMKAKALA at)
thisday of 2016)

BEFORE ME:

A COMMISSIONER FOR OATHS