

CASE SUMMARY: *REPUBLIC v PB AND 18 OTHERS*

BACKGROUND

Sex workers are often the target of police arrest, abuse, harassment and extortion even though the act of selling sex is not a crime in Malawi. The Penal Code criminalises men and women who live off the earnings of prostitution. These offences are aimed at people who live off sex workers' earnings parasitically, and are not aimed at sex workers themselves. The offences were introduced in Africa during the British colonial period.

THE FACTS

On 24 February 2016, 19 women were arrested by police and jointly charged with the offence of living on the earnings of prostitution. The police had no evidence to prove the charge against them. The women did not have legal representation and pleaded guilty. They were convicted by a Fourth Grade Magistrate in Dedza and fined MK7000 each. The women, with the support of the Centre for Human Rights Education, Advice and Assistance (CHREAA) and the Southern Africa Litigation Centre (SALC), brought a review application. The case was argued before Justice Zione Ntaba in the Zomba High Court on 28 July 2016. The applicants were represented by Fostino Maele.

LEGAL ISSUES

The grounds for review before the High Court include:

1. That the Fourth Grade Magistrate had no jurisdiction to hear a case relating to the offence of living on the earnings of prostitution;
2. That the particulars of the charge were bad for misjoinder because the women were all charged together instead of separately;
3. That the magistrate ought not to have accepted a unanimous plea when the court was supposed to obtain separate replies from each of the women;
4. That the particulars of the charge did not capture the essential elements of the offence;
5. That the charge was wrong as the offence of living on the earnings of prostitution does not target the sex worker herself but those who live parasitically and exploitatively off her earnings;
6. That the magistrate did not comply with section 251 of the Criminal Procedure and Evidence Code which requires that the charges are properly explained to each accused before individual pleas of guilty are accepted.

IMPORTANCE OF THE CASE

This case is important because it highlights the many ways in which the criminal justice system ignores the rights of accused persons, especially when they form part of a group that is marginalised in society. The case highlights the need for training on the appropriate interpretation and use of Penal Code offences and the need for police to respect the rights of all persons, including sex workers. The case seeks to clarify the misconception that the offence of living on the earnings of prostitution can be used to arrest sex workers.

For more information contact:

Victor Mhango, Executive Director, CHREAA: Tel: +265 9999 52256, 888 952256, victormhango@chreaa.org

Tashwill Esterhuizen, Sex Worker Rights Programme Lawyer at SALC: Tel: +27 83 4176744, tashwille@salc.org.za

<http://www.southernafricalitigationcentre.org/cases/ongoing-cases/malawi-challenging-the-use-of-the-offence-of-living-on-the-earnings-of-prostitution/>