

# EL v THE STATE

‘The Breastfeeding Case’

# SUMMARY OF FACTS

- The appellant was a young lady woman living with HIV who was convicted of negligently and recklessly doing an act which is “likely to spread the infection of any disease which is dangerous to life” under section 192 of the Malawi Penal Code for accidentally breastfeeding another person’s child. She was unrepresented at her trial and sentenced to 9 months’ imprisonment.

# THE ISSUES

- Whether the conviction could be justified?
- Whether the provision was constitutional (overly broad and vague)?
- Whether the sentence was manifestly excessive?

# **THE OUTCOME(Per Justice Z Ntaba)**

- The conviction could not be justified (The Judge particularly acknowledged human rights principles against overbroad criminalisation of HIV transmission).
- The Constitutional challenge referred to a full-member panel
- Sentence was set aside

# SIGNIFICANCE OF THE CASE

- Confirmation of international human rights legal principles against overly broad criminalization of HIV transmission;
- A few countries in the region and elsewhere have a similar clause in their Penal Legislations (**Zambia, S. 183; Botswana, S. 184; India, S. 269; )**

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**THANK YOU FOR YOUR  
ATTENTION**