

# **Akster and Another v Director of Public Prosecutions and Another, Constitutional Case**

## **2 of 2021, [2024] MWHC 25**

---

### **Judgment**

#### **I. INTRODUCTION**

1. This is the unanimous decision of this Court'.
2. This case involves two claimants, Jan Willem Akster and Jana Gonani, who came to the Constitutional Court to have certain questions resolved. Despite the differing circumstances of their cases, the matters were consolidated because they involved the same constitutional questions.

#### **II. FACTS OF THE CASE ABOUT THE FIRST CLAIMANT: JAN WILLEM AKSTER**

3. Jan Willem Akster, the first claimant, appeared before the Chief Resident Magistrate sitting at Blantyre facing nine counts: four counts of buggery contrary to section 153 (a) of the Penal Code; three counts of attempted buggery contrary to section 154 of the Penal Code; and two counts of gross indecency contrary to section 156 of the Penal Code. The particulars of the buggery counts alleged that the first claimant on divers dates at Timotheos Foundation had carnal knowledge of ME, SB, MM and LH against the order of nature. The particulars of the attempted buggery alleged that the first claimant had on various dates

at Timotheos Foundation attempted to have carnal knowledge against the order of nature of HM and FK. The indecency counts alleged that the first