

Pandirker v Republic

Summary

Court:	High Court of Malawi
Bench:	Honourable Justice Chatsika
Cause Number:	Criminal Appeal Number 55 of 1972
Date of Judgment:	April 18, 1972
Bar:	Savjan and Cochrane, Counsel for the Applicant Okigbo, State Counsel, Counsel for the Respondent

1. The Applicant, who was charged in the First Grade Magistrate's Court, Thyolo, with causing death by dangerous driving, was convicted and sentenced to a fine and a four-year driving disqualification. The Applicant applied to the magistrate to stay the disqualification order pending his appeal against the conviction and sentence, but the application was refused. The Applicant then made a similar application to the High Court. The Applicant argued that the magistrate had not exercised his discretion judicially, and that he was not a menace on the road as he had driven without further incident for eleven months since the order was made. The State opposed the application in principle, arguing that the Applicant had not shown any "exceptional and unusual circumstances" of hardship that would arise if the order were put into effect immediately.

2. The Court held that there is an important distinction between the practice of granting bail pending trial and bail pending appeal. In the case of bail pending trial, the accused is presumed innocent, and bail will be granted provided the court is satisfied that the accused will appear for trial. However, in the case of a post-conviction application, the accused has already been convicted, and bail will only be granted where exceptional circumstances are shown. Applying this principle to the stay of a disqualification order, the Court found that such an order would only be stayed pending an appeal if exceptional and unusual circumstances of hardship were shown. The Court held that the Applicant had failed to prove such circumstances. The Court reasoned that if there was an overwhelming probability that the substantive appeal would succeed, it would have considered the application more favourably. Since the Applicant's counsel admitted there was no such overwhelming probability and the appeal could be heard in a reasonably short time, the application was dismissed.