

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL APPEAL NO. 43 OF 2000**

**PAUL LYSON CHIMETA
Versus
THE REPUBLIC**

**From the Chief Resident Magistrate's Court Sitting at Zomba
Criminal Case No. 12 of 2000**

CORAM: THE HON. MR JUSTICE F.E. KAPANDA

**Mr Kamwambi, Chief State Advocate of Counsel for the State
Accused, present and unrepresented
Mrs Kachimanga, Official Interpreter/Recording Officer**

Kapanda, J

JUDGMENT

Introduction

The appellant, together with another person, were charged with the offence of theft by a person employed in the public service provided for under Section 283(1) of the Penal Code (Cap. 7:01) of the Laws of Malawi. After full trial, the appellant was found guilty of the said offence and convicted accordingly. The court sentenced him to serve a custodial term of imprisonment of fourteen (14) years. The other person, who was charged together with the appellant, was acquitted of the said offence of theft by a public servant.

Being dissatisfied with both the conviction and sentence the appellant has appealed to this court. It is essentially his prayer that the conviction and sentence should be set aside.

The Appeal

In his document, dated 28th August 2000, the appellant purported to put his grounds of appeal. I must confess that I was at pains to find out what the appellant was really saying regarding this appeal. It will suffice though to put it here that it appears that the Appellant is aggrieved by the fact that his Co-defendant was acquitted of the charge of the said offence of theft by a person employed in the public service. Further, it was the Appellant's argument that he only got K10,000.00 out of the money that was not put on charge after the over payment of salaries. In point of fact the total amount of money that was supposed to have been brought up on charge was K160,000.00. It was from this amount that the Appellant helped himself with K10,000.00.

As regards sentence the appellant has urged this court to set aside the sentence on the ground that the conviction was wrong. It was further contended by the Appellant that his warrant of commitment was drafted irregularly in that instead of same indicating that his imprisonment was to be with effect from the date of his arrest, as pronounced by the court below, it shows that the said sentence is with effect from 15th August 2000 i.e. the date of his conviction.

Rather strangely the State appears to be supporting the appeal. It is the view of Counsel for the State that the appellant ought to have been charged with the offence of negligence by a public officer and not theft by a person employed in the public service.

The said offence of negligence by a public officer is stipulated in Section 284(1) of the Penal Code of the said Laws of Malawi. In my judgment the facts of this case do not, in any way, support the view that the proper

offence should have been negligence by a public officer. As shall be observed later, in this judgment, this was a pure case of theft by a public servant.

Law and Findings

Appeal against Conviction

It is my judgment that the Appellant's appeal against conviction is without merit. Indeed, the appeal raises no sufficient ground to make this court overturn the finding of guilt entered by the lower court. I am of this view because I have observed that the Appellant actually knew that the salaries had been overpaid and proceeded to convert part of the money that was overpaid to his own use. Actually, during the appeal hearing the Appellant conceded that he never brought the overpaid money on charge as was required of him. Moreover, the Appellant admitted that of the said total sum that was overpaid he took K10,000.00. It is clear, from the evidence on record, that the Appellant knew that this money was not his but that of his employer. In point of fact, it is in evidence that the Appellant knew that there had been an overpayment of the salaries.

This appeal ought to have been dismissed summarily pursuant to the provisions of Section 351 of the Criminal Procedure and Evidence Code. It is not too late to do so and I therefore dismiss the appeal against conviction summarily.

Appeal Against Sentence

In view of my findings regarding the issue of appeal against conviction it follows that the appeal against the sentence generally must fail. Regarding the question of the day from which the sentence is supposed to run I find that there is merit in the appellant's argument. It is observed that indeed the court had ordered, presumably in open court, that the sentence was to be with effect from the date of the appellant's arrest. The warrant of commitment, unfortunately, does not indicate as to when the sentence will start running. I order that a proper warrant of commitment must be issued indicating that the sentence of 168 months, meted out on the appellant, is with effect from the date of arrest of the appellant i.e. 17th of February 2000. It is so ordered.

Made in open Court this 8th day of June 2001, at the Principal Registry, Blantyre.

F.E. Kapanda

JUDGE