

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CRIMINAL APPEAL CASE NO. 87 OF 2004**

**LESTER SIZA & 2 OTHERS**

**VS**

**THE REPUBLIC**

From the First Grade Magistrate Court sitting at Mchinji, being Criminal case No. 32 of 2004.

CORAM: HON. JUSTICE CHINANGWA  
Counsel for the state,  
Appellants, Present Unrepresented  
Chulu, Court Clerk

**JUDGMENT**

The three appellants; Lester Siza, Zex Kalirani and Madalitso Rabson (referred 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants respectively) appeared before the First Grade Magistrate Court at Mapuyu on 28<sup>th</sup> April, 2004. They were charged with Burglary contrary to section 309(a) and Theft contrary to 278 of the penal code. Each pleaded not guilty to the charges. However after full trial each was found guilty,

convicted and sentenced to custodial terms of 4 years and 8 months respectively. Trial was concluded on 26<sup>th</sup> May, 2004.

Each appellant has lodged a petition of appeal against conviction and sentence. The substance of the appeal is basically the same. It is to the effect that they did not commit the said offences and that the court should quash the conviction and set aside the excessive sentences.

Facts which emerge from the case are that on 12<sup>th</sup> April, 2004 the three appellants went to drink local beers together at Nkhoka trading centre within Namitete area, Lilongwe. From there they went to break in the dwelling house of Mr Henderson Chungalusa (Pw2). They stole therefrom K32,000 cash and 105 Kgs of tobacco. Total value K48,000. The said cash belonged to Pw1 (Ms Stella Chungalusa) who had given it to her brother (Pw2) to buy tobacco for her. Members of the local community help investigate the case resulting to the arrest of the 3 appellants. The 1<sup>st</sup> appellant was actually found in possession a quantity of tobacco. Upon questioning he confessed that it was the said stolen tobacco.

When the appellants were being investigated by Pw3 each of them confessed to have jointly committed the offence. When they appeared in court each pleaded not guilty, but after full trial they were found guilty and convicted.

This court has carefully scrutinised the evidence adduced in the lower court. It has also scrutinised the judgment. The lower court properly applied section 176(1) Criminal Procedure and Evidence Code. On the retracted confessions. The lower court was right to give due weight on the confessions to accept the truth of the contents. There was overwhelming evidence to set aside the conviction. This court finds no basis to overturn it. Appeal dismissed in its entirety.

Pronounced in Open Court on this 23<sup>rd</sup> November, 2004 at Lilongwe.

R.R. Chinangwa

**JUDGE**