

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CONFIRMATION CASE NO. 417 OF 2007**

**THE REPUBLIC**

**VERSUS**

**SIMON KAWAYA**

**AND**

**ULADI MANESI**

**From the Second Grade Magistrate Court sitting at  
Nkhunga. Being criminal case no. 302 of 2006.**

**CORAM: HON. CHINANGWA, J.**

**ORDER IN REVIEW**

The convict Simon Kawaya and Uladi Manesi appeared before the Second Grade Magistrate Court sitting at Nkhunga in Nkhotakota on 3<sup>rd</sup> August, 2006. It was on a charge of Theft contrary to section 278 of the penal code. Particulars aver that Simon Kawaya and another on 29<sup>th</sup> July, 2006 at Mbwizi village in NKhotakota district stole 91 kgs of barley tobacco

valued at K10,000 being the property of Mr Shadreck Chisikwa.

The convict was convicted on his own plea of guilty and sentenced to 18<sup>th</sup> months penal servitude. Where as the 2<sup>nd</sup> accused Uladi Manesi pleaded not guilty and proceedings against him were pended. The court record is unclear what transpired thereafter.

This court record came before me for purposes of confirmation. On examination of the court record I took the view that the plea was equivocal. In order to appreciate the nature of the plea it is reproduced:

*“It is true that I took tobacco property of Shadrack Chisikwa. I was not allowed to take complainant’s tobacco. I took 35kgs of tobacco. I don’t know the value of this tobacco. **I wanted to sell this tobacco so that I should raise money as my payment since complainant did not pay me my wages.** I did not intend to either give back this tobacco to the owner or give him the proceed. But I did not sell this tobacco “(underlining supplied for emphasis).*

*CT: Enters a plea of guilty in respect of the 1<sup>st</sup> accused.....”*

From the plea of the convict it was clear that he gave a defence justifying why he took complainant's tobacco.

The provision to section 251 of the Criminal Procedure & Evidence Code which deals with pleas of guilty gives good guidance. It provides:

*“Provided that before a plea of guilty is recorded, the court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit without qualification the truth of the charge against him”*

The qualification given by convict obliged the trial court to enter a plea of not guilty and then proceed to full hearing. Having heard both the state and defence the trial court would have definitely come up with a balance decision.

What has exercised my mind is whether to order a retrial so that convict gets a fair trial. However, considering the period he has languished in prison such an order would result to another injustice. It is my considered judgment that in the circumstances it is in the interest of justice to quash the

conviction. The conviction is quashed and sentence of 18 months penal servitude set aside.

He should be released forthwith unless held on other lawful ground.

Order accordingly.

**PRONOUNCED** in Chambers on this 17<sup>th</sup> day of July, 2007 at Lilongwe.

R.R. Chinangwa  
**JUDGE**