

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CRIMINAL APPEAL CASE NO. 54 OF 2007**

**BETWEEN**

**SAMUEL PHIRI ..... APPELLANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**Being Criminal Case No. 68 of 2006 in the Senior Resident Magistrates' Court sitting at Lilongwe.**

**CORAM : CHOMBO, J.**

: Appellant, Unrepresented  
: T. Kayira, Counsel for the State  
: Mbewe, Court Reporter  
: Chulu, Court Interpreter

**JUDGMENT**

This is an appeal on conviction and sentence arising from the findings of the lower court. The appellant was found guilty, convicted and sentenced on a charge of obtaining money by false pretences. The appellant's submissions are that a Mr. Motswetswe of South African decent and a businessman asked the appellant to look for an auditor. The appellant knew the complainant to be a capable auditor and so he introduced the complainant to the said Motswetswe. After a few days the complainant asked the appellant to help him look for a horse chemical (I suppose it is a drug) which can be found in Mozambique. The appellant looked for the chemical and brought the seller

thereof and the chemical to the complainant. The complainant bought the chemical at K180,000.00 and he paid the Mozambican seller the said money. Yet a few days later the complainant called the appellant asking that the two meet at PTC Old Town. When the appellant got to the venue he was surprised to find that he was under arrest. It is his submission that whatever happened between Mr. Motswetswe, the seller from Mozambique and the complainant had nothing to do with him.

The State opposes the appeal asking this court to dismiss the appeal and confirm the conviction and sentence of the lower court. I have meticulously gone through the evidence on the record and the submissions on appeal.

In order to appreciate the part played by the appellant it is necessary to go through the main points of the case, which the appellant did not dispute in the lower court.

PW 1 gave detailed evidence of how the appellant called on him at his house and explained about the South African businessman who needed auditing services. The appellant sweet-talked PW 1 into agreeing to the business venture by giving Pw1 details of his personal (PW 1's) life that a stranger would not know about. This convinced PW1 that he was not dealing with a stranger. When the appellant introduced PW1 to the South African friend, and before PW1 could start the auditing business, Motswetswe, the South African businessman, introduced the issue of the horse chemical, and an exorbitant purchase price of US\$20,000.00 like a carrot, was waved to the unsuspecting PW1. When PW1 did not show interest in the so called horse

chemical Motswetswe wrote down the name of the chemical and gave it to PW1 that perhaps he would think twice about the matter.

As PW1 was leaving the hotel where he had a meeting with Motswetswe, the appellant asked for a lift with PW1. Strangely the appellant showed great interest in the chemical and he asked PW1 to read out the name of the chemical to him, as he did not understand English very well. Less than 4 hours later PW1 got a call from the appellant telling him that he had met somebody who had the horse chemical that Motswetswe had talked about. From that point on, PW1 found himself flowing with the tide. He was introduced to one Ellard from Mozambique who had the chemical and appellant called PW1 to go see the chemical. Even when PW1 tried to say he could not make it because he was busy at work, appellant prevailed on him to go meet Ellard who had the chemical. The appellant engineered things in such a way that Ellard should not meet Motswetswe who had offered to buy the chemical at US\$20,000.00 when PW1 would be buying it from Ellard at the price of K550,000.00. When Ellard thereof threatened to return to Mozambique the same day the appellant prevailed on PW1 to convince Ellard to stay overnight and asked for K5,000 which Ellard could use for his accommodation. PW1 parted with that money.

The following morning about 7:00 am Motswetswe called PW1 to meet him at Crossroads and that he was ready to pay deposit for the chemical but that the appellant had to be there. In order to ensure that PW1 was kept hooked to the idea he was shown a box with lots of K500.00 notes by Motswetswe. PW1 had to look for the appellant who told PW1 where he was and was informed that thieves had stolen the chemical from Ellard and that his friends were angry with him because of the theft but that if PW1 paid in

advance Ellard would be able to bring him the chemical. Unwillingly PW1 agreed to the advance payment but he only had K175,000 which he gave to the appellant – counted it and gave to Ellard and the same was recorded in Chichewa and they all signed as witnesses thereof.

Ellard left with the money promising to call PW1 as soon as he entered Mozambique to agree on how and when to meet PW1 to hand over the chemical.

The appellant called PW1 to remind him that they had a meeting with Motswetswe that afternoon at 3pm when, however they met Motswetswe the story had changed. Motswetswe said the South African Embassy did not have the US\$20,000.00 and would only release it to him the following week. It was again the appellant assuring PW1 not to lose heart.

PW1 started smelling a rat when on Saturday evening he got cellphone sms messages from Motswetswe that he was in police custody in Salima. He reported the matter to Police and that is when plans to arrest the appellant were effected.

Having followed through the evidence on record, it is apparent that the appellant played the critical role that resulted in PW1 withdrawing money from his account to give it to one Ellard. When the purported South African businessman, who I have no fear of contradiction to call a conman, first introduced the issue of the horse chemical, PW1 was not interested in that deal. The appellant, pretending to be unable to speak English, asked the unsuspecting PW1 to read over the name of the horse chemical to him. I say

that he was pretending he does not know English because he is the one who introduced PW1 to Motswetswe in the first place – how did he communicate with Motswetswe then – and how did he know that Motswetswe had introduced the issue of the horse chemical to PW1 if indeed he does not understand English, I am more than convinced that appellant used that excuse to force PW1 to reopen the topic of the horse chemical so that he could properly con PW1 into buying it. Appellant is the same man who found the drug – it is interesting that he managed to do that within 4 hours of the subject being introduced to PW1. I have no doubt at all that if there was no scheme to con PW1 the appellant would have gone to sell the horse chemical straight to Motswetswe and receive the US\$20,000.00; which opportunity anybody in their right mind would not have missed. But the appellant chose instead to submit the chemical to PW1, giving the impression that he would be more than happy with just a commission from PW1. It was the appellant who found the so called horse chemical and he knew the buyer – Motswetswe. All this, I find points to one thing, a mind bent on deceiving PW1 so as to squeeze money from PW1. Indeed, I do not think I would be wrong to conclude that the appellant, the said Motswetswe and one Ellard are part of the same syndicate prowling around seeking someone to devour with their ill-gotten scheme. And this case should alert the police about this new way of defrauding innocent people.

As submitted by State Counsel in order to prove the elements of the offence, it is not necessary that the person being accused should have received the money; it is enough to show that his input resulted in the complainant parting with money. That, I am afraid has been clearly demonstrated by the facts of this case.

The appellant also appealed against the sentence. I have looked at the aggravating circumstances of this case – that the appellant singled out complainant with an aim of defrauding him, led him as sheep to be entangled in a web that resulted in the loss of his precious money – a sum of K180,000.00. I honestly doubt whether the purported horse chemical was of any use nor was it what it was put out to be. These are serious matters and a sentence of 2½ years I do not find to be excessive.

In the circumstances I must dismiss the appeal in its entirety and confirm the conviction and sentence of the lower court.

Let me also take this opportunity to warn members of public about cunning fraudsters like the appellant and his two accomplices, and the appetite for making quick money. As shown in this case, in a bid to make money quickly PW1 has lost a substantial amount of money.

MADE in Court this 7<sup>th</sup> day of February, 2008.

E.J. Chombo  
**J U D G E**