

**IN THE HIGH COURT OF MALAWI
LILONGWE REGISTRY
CRIMINAL APPEAL NO 19 OF 1996**

**GWENDERE GOLISOMO
Versus
THE REPUBLIC**

CORAM : HON. JUSTICE A.K.C. NYIRENDA

Zulu; Counsel for the State
Appellant; Present, Unrepresented

**J U D G M E N T
HONOURABLE JUSTICE A.K.C. NYIRENDA**

The appellant was charged with the offence of receiving stolen property contrary to section 328 of the Penal Code. He was convicted on his own plea of guilty and sentenced to 6 years imprisonment with hard labour by the First Grade Magistrate Court at Dowa in what was Criminal Case Number 89 of 1996. I set the matter down to revisit the plea of guilty which to me seems to have retractions. As it turned out, at the hearing of the case the appellant had filed his own appeal challenging, in context, the propriety of the conviction.

In order for a plea of guilty to be unequivocal the trial court should not only concentrate on the accused's answer to the charge but more importantly are the facts in support of the charge.

The facts stated by the prosecutor in court in the instant case are brief and bare. All the record says is that the appellant bought a bull from Mr Fanuel Kalitela. Fanuel Kalitela happened to have stolen the bull from another person. Kalitcha was arrested and he revealed that he sold the bull to the appellant. There is nothing also on the facts to suggest that the appellant must have known or had reason to suspect that Kalitcha must have stolen or unlawfully acquired the bull. The circumstances in which Kalitcha sold the bull to the appellant are not disclosed in the facts.

The appellant now tells the court that Kalitcha actually produced to him papers which suggested that he had lawfully bought the bull and had authority to sell the bull. As an illiterate person the appellant says he had no reason to doubt what Kalitcha was saying to him because, after all, the transaction was at an open market. The impression I have is that the appellant did not fully appreciate the nature of the offence he was pleading to. A conviction in such circumstances is unsafe. Counsel for the State agreed with my views. In Open Court at the hearing of the appeal, I quashed the conviction and set aside the sentence. I had reserved my formal judgment which I now deliver.

Pronounced in Open Court this 31st day of December, 1996.

A.K.C. Nyirenda
J U D G E