

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APEAL CAUSE NO. 56 OF 2007**

VINCENT KAJULA.....APPELLANT

-VS-

THE REPUBLICRESPONDENT

CORAM: HON.JUSTICE CHINANGWA

Khunga, Counsel for the state
Kambauwa, Counsel for the Appellant
Miss Msiska, Court interpreter
Mrs. Jere, Court reporter

JUDGMENT

The appellant Vincent Kajula appeared before the Senior Resident Magistrate Court sitting at Lilongwe on 8th May, 2007. It was on a charge containing four counts. These were:- fraudulent false accounting contrary to section 35(b), two counts of Forgery contrary to section 357 and attempted theft contrary to section 401 all under the penal code. The appellant pleaded not guilty to all four counts. After trial he was found guilty and convicted. The trial court imposed 3

years IHL on counts 1-3 and 12 months IHL on 4th count respectively.

The appellant originally filed a petition for appeal against both conviction and sentence. However, counsel Kambauwa abandoned the appeal against conviction and proceeded on sentence only. It was argued by counsel Kambauwa that the trial court did not take into account mitigating factors in favour of appellant. Among them being that appellant was of previous good character. That as a result of the convictions he had lost his job. That there was no loss occasioned to the Ministry of Defence. Counsel Kambauwa cited several case authorities. Among them **Rep v. Charles Banda and Boyi Mwachungu, confirmation case No. 653 of 1997 (unreported)**. On the proposition that a first offender should not normally be sentenced to a long period. **Rep v Eneya & Others**, criminal confirmation No. 53 of 2000 on the proposition that the offender's previous good character has to be taken into consideration. Rep v. Chavula 14MLR 429 on the proposition that where no loss is occasioned in a theft case, that factor mitigates the magnitude of sentence.

It is observed that in the present case the appellant is a first offender. No financial loss was suffered by the Ministry of Defence. It is further observed that this was a premeditated crime. The government almost lost K450,000.00 because of

appellant's greed for money. Hence custodial sentences were well merited. Considering the general outcry that there is congestion in prison. It is appropriate to reduce the magnitude of each sentence as follows:

1st count: 3 years reduced to 18 months IHL.

2nd count: 3 years reduced to 18 months IHL

3rd count: 3 years reduced to 18 months IHL

4th count: 12 months reduced to 6 months IHL

All sentences ordered to run concurrently. The appeal succeeds to this extent only.

Pronounced in open court on this 6th day of October, 2007 in Lilongwe.

R.R. Chinangwa
JUDGE

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISC.APPLICATION NO. 141 OF 2007**

LEONARD PHIRI & 3 OTHERS.....APPLICANT

-VS-

THE REPUBLIC..... RESPONDENT

CORAM: HON. CHINANGWA, J

Chidzonde, Counsel for the State
T. Nyirenda, Counsel for the Applicants
Miss Chulu, Court Interpreter
Mrs. Jere, Court Reporter

RULING

The applicants through counsel Nyirenda are applying for bail under section 42(2)(e) of the Constitutional, and section 118 of the Criminal Procedure and Evidence Code.

There were arrested on 3rd May, 2006 by Chipoka police on the allegation of causing the death of an unknown man at Chipoka.

They have been in custody for about 15 months. Counsel Chidzonde for the state raised no objections. He urged court to consider granting bail on appropriate conditions. In this regard bail is granted on these conditions:

- 1) Each applicant to enter into bail bond of K20,000 not cash.**
- 2) Each applicant to have 2 sureties who are to be examined by the Registrar to determine suitability.**
- 3) Each applicant to report once a month at the nearest police station. The date to be determined by the said police station.**
- 4) Not to leave the police jurisdiction without police permission.**
- 5) To be available for trial when notified.**
- 6) Breach of these conditions would result to cancellation of bail, forfeiture of bond and remand of applicant.**

Bail granted.

Pronounced in open court at Lilongwe District Registry this day of 8th November, 2007.

R.R. CHINANGWA

JUDGE