

Section 286 of the Penal code provides for the offence of theft by servant in the following terms:

This elements for the offence include the following:

- You must have been employed by the complainant.
- You must have had custody of items that are capable of being stolen belonging to your employer.
- When required to do so, you must have failed to produce the items that are capable of being stolen.

The particulars of the offence provided as follows:

Michael Chanza and Derrick Chibokera on or about the first day of August, 2005, at Farmers World shop in the District of Ntchisi being a shop manager and shop clerk respectively stole K110,611.70 in a form of cash or commodities. The same being property of Farmers World Company.

Six witnesses testified then the prosecution and the defendant was his own sole witness. In making his determination, the magistrate laboured to many the evidence and the law to establish that it was the appellant who had misappropriated the said sum. After analyzing the evidence of the witness he concluded as follows:

“ First accused was the manager. He left things Miss from the shop. The cash missed. He could not explain how he missed cash which was in the cash chest which was under his control. It was the sum of K76,926.70 plus cash for the sale of other commodities and items i.e. nine (9) iron sheets missed which were not accounted for; five (5) bags of fertilizer not accounted for; nine (9) iron sheets, packet of son batteries plus the shortage of paraffin of 889 litres which they say was lost through leakage of pumps. This was the

evidence. PW1 Fred Liwonde Banda introduced himself as an investigator with Farmers World. He identified the appellant as the Branch Manager of the company at Ntchisi. The appellant's duties included receipt of goods from the Head Office and sale of the said goods to customers. And that the appellant was also in charge of cash flow of the company at Ntchisi.

On 5th August, 2005, PW1 received a report that after a stock take at Ntchisi it was found that there was a shortage. He invited the appellant at his office where the appellant admitted to have stolen K76,926.70 and also to have misappropriated some stocks and the have written false sales worth K16,355.00.

PW2 was Peter Mvalo an internal auditor for the company. He told the Court that on 5th August, 2005 he audited the Ntchisi Branch where he found a shortage of stock. He had expected to find K104,206.70 but found that K64,225.00 cash plus K39,981.00 was not accounted for. He told the Court that the appellant was the custodian of the keys for the safe where money was kept. When he asked the appellant to open the safe, the appellant told him the he could not find the keys. They forced the safe open and found K27,280.00 cash. When he asked the appellant on the whereabouts of K64,225.00 the appellant failed to produce the cash. Upon physical counting of stock, it was found that stock worth K16,355.00 was missing.

PW2 stated that this shortage to toward the appellant failed to account was not because of paraffin leakage, but that it was based on cash received and goods other than paraffin that the appellant had received.

PW3 was the Area Manager. His evidence was that upon auditing Ntchisi, records indicated that K104,206.70 cash was supposed to be

in the cash chest. Upon opening it only K27,280.00 was found. He had a meeting with the appellant where the appellant admitted to having misappropriated the sum of K76,926.70. That this money was not a shortage but actual deliberate misappropriation.

PW4 was Gift Mkandawire. In his testimony he told the Court that on 27th July 2005 he was advised to be responsible for writing cash sales for all products at the Ntchisi shop. PW4 told the Area Manager not take up such duties before knowing the status of the shop. In auditing the shop to establish its status, he discovered that five bags of 23:21 fertilizer amounting to K16,000 were missing. There were other items missing from the shop. He informed the Area manager and this culminated into a full audit where it was realized that money that was supposed to be in the safe was not there. A summary of the misappropriated cash and stocks was produced. This was the information.

A.	Iron sheets 9 x K1050 10 ft 29g.....	K 9,450.00
B.	Post dated cash sale	K16,355.00
C.	Commodity buying cash	K76,926.00
D.	Paraffin 100 litres	K75,000.00
E.	Farmers World Hand Bag	K 175.00
F.	Sun Batteries	<u>K 205.00</u>

TOTAL	<u>K110,611.70</u>
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In his defence the appellant told the Court that when he reported for duties in November, 2004. He found that there was a shortage of 485 litres of paraffin. Then there was another shortage of 160 litres due to tank leakage. There after a 186 litres leakage followed. When he got 4000 litres of paraffin he reported to his boss that there was a 889 litre shortage that was due to tank leakage. He lamented that he

would even go to the Head Office to report of the leakages seeking solutions but none were forthcoming. Instead of dealing with the leakage problem, they would advise him to transfer sales to accommodate the leakage from the daily sales. This is what resisted in the sum being unaccounted for. As to the post dated cash sales, it was the company policy to issue postdated cash sales to cover shortage.

This was the evidence in the trial Court which led the Court to make a finding as observed above.

From the evidence, it comes out clearly that the appellant does not deny receiving the money K104,206.70. This is the money that was supposed to be found in the safe. He does not dispute that only K27,280.00 was found. He does not dispute preparing post dated cash sales. He gives justification for the same as being company policy. I have difficulties appreciating this type of company policy that would allow an employee to enter false information on record. The evidence of all prosecution witnesses clearly indicate that the appellant failed to account for the money and goods as tabulated. And the evidence also shows that he was making false statements as to the money received. And when he was interviewed by PW1, PW2 and PW3, he admitted to having misappropriated the money.

My finding is therefore that the appellant herein did misappropriate the money amounting to K110,611.70. The appeal against conviction is therefore dismissed.

As to appeal against sentence, that maximum sentence for this offence is fourteen (14) years. After considering for the appellant is a first offender who is very young, a sentence of thirty-six (36) months imprisonment was meted. Appreciating the circumstances of this case, where the complainant company was in a habit of taking a

taxed attitude towards its management and administration. I reduce the sentence to twenty-four (24) months imprisonment.

Made in open Court this day of January 2008

I.C. Kamanga (Mrs)

J U D G E