

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL NO. 36 OF 2007**

BETWEEN

**EPHRAIM BULLA1ST APPELLANT
GEORGE MALISON 2ND APPELLANT
LOMOS KAUWA 3RD APPELLANT**

VS

THE REPUBLIC

CORAM HON. JUSTICE NYIRENDA

T. Kaira, Counsel for the State
Nkhono, Counsel for the Appellant
Mr. Kaferaanthu, Court Interpreter
Miss C. Jalasi, Court Reporter

JUDGMENT

A formal judgment of this court will be written in the course of time. The judgment of this court against the first and second appellant is, on the facts and testimony on record, definitely that their convictions were more than established. In fact listening to Mr. Nkhono the appeal by the two appellants is really against sentence. The first appellant pleaded guilty to the charge of theft. The second appellant, although he initially denied he ended up admitting the charge of theft of the goods in question. I am more than satisfied that the charge of theft was established against these two appellants. Their appeals in that regard are therefore dismissed.

I agree with both counsel before me that having charged the appellants and convicting them of the substantive offence of theft there was no need to charge them with the offence of conspiracy. The conviction of the appellants on the first count is therefore set aside. Sentence that was imposed in that regard is set aside.

The evidence against the third appellant entirely came from the first and second appellants, who are co-accused. There was nothing from any of the witnesses for the prosecution. It is trite law that testimony from co-accused persons should be treated with caution and a court should warn itself of the danger of convicting solely on evidence of an accomplice.

As I point out above the only testimony upon which the third appellant was arrested and convicted that of the co-accused and even then his involvement is not clearly spelt out. I will allow the third appellant the benefit of doubt and set aside all the convictions against him. I accordingly do.

As to sentence against the first and second appellant I observe that the first appellant was lucky to have been charged with the offence of mere theft. He should more appropriately have been charged with the offence of theft by servant. As regards the second appellant, I only need to observe that the offence was well planned and although the property was recovered, I have serious misgivings myself for thieves who steal public property. The goods which the appellants stole were for the construction of a public structure. We need a community that has respect for such properties. Infact if it were for me I would have imposed a much higher sentence.

I dismiss the appeals for both appellants against sentence.

PRONOUNCED in Open Court at Lilongwe this 9th day of August
2007.

A.K.C. Nyirenda¹

J U D G E

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