

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL NUMBER 50 OF 2006

BETWEEN

YUSUFU MWAWA.....APPELLANT

AND

THE REPUBLIC..... RESPONDENT

CORAM: SINGINI, J.

Nankhuni, of counsel for the Appellant

Mwenelupembe and Mkwamba, of counsel for the Republic

Mrs. Mbewe, Court Reporter, Court Reporter

Gonaulinji, Court Interpreter

JUDGMENT

The appellant was charged with four offences of abuse of public office contrary to section 25B (1) of the Corrupt Practices Act (Cap. 7:04) and the Penal Code offences of theft by public servant contrary to section 283, forgery contrary to section 357 and uttering a false document contrary to section 360. He pleaded not guilty to all the four charges. Trial was before the Senior Resident Magistrate Court in Lilongwe. After trial the appellant was convicted on all counts, except that on the charge of theft by public servant the court found that the facts did not establish that he was in control or that he had custody of the public funds in question, but on evidence before it, the court proceeded to convict him instead of the lesser offence of simple theft of those funds contrary to section 278 of the Penal Code. He was sentenced to imprisonment for two years for the offence of abuse of public office, six months for the offence of theft, five years for the offence of forgery and also five for the offence of uttering a false document.

The facts as established by the evidence that was before the trial court show that the appellant, who was Minister of Education in the

Malawi Government, gave orders or instructions for the expenditure of a sum of K160, 550 to be drawn on one of the bank accounts of the Ministry payable to Mount Soche Hotel in Blantyre. A cheque, No.1035, of the Ministry for that amount was made out dated 22nd March, 2005, and was paid to Mount Soche Hotel and the hotel issued a receipt for the amount. The payment was indicated to be for what was officially called an education consultative meeting. The payment however was used to pay for a wedding function held at the hotel four days later on 26th March. This was the appellant's own wedding and he had personally made the booking for the wedding to be held on that day and got a quotation of that amount for the wedding function. Those facts were the basis of the two charges of abuse of office and theft by public servant.

Only a few days after the wedding, there was a story in one of the newspapers about the appellant as Minister having paid for his wedding function with Government funds; and the appellant, who had left the country on a trip abroad, or someone on his behalf is said to have expressed concern to the hotel management about this negative publicity.

When the appellant was back in the country, he made arrangements by which his personal cheque, in the sum of K170, 000, was deposited in the hotel's bank account with the National Bank of Malawi as settlement of the hotel bill for the wedding. The cheque No.001661 was dated 21st March, a date few days before the wedding day on 26th March. The appellant relied on the deposit slip to show that he had used his own money to pay for the wedding function at the hotel. The deposit slip had alterations with regard to the date stamp including erasure of the date of deposit. Those alterations were intended to show that the deposit was made on an earlier date of 21st March. However, according to the details on the deposit slip and the bank records, the cheque was deposited in the hotel's bank account on 26th April, one month after the wedding and it is that date that was sought to be altered on the deposit slip. There was also the question of credibility surrounding this deposit as to how a customer to the hotel could take his own route of making a deposit into a bank account of the hotel in making payment to the hotel for services rendered. The alterations on the deposit slip were the basis of the two charges of forgery and uttering and uttering a false document.

That was basically the material story leading to the prosecution and conviction of the appellant. In its judgment of some 86 pages, the trial court went into what can only be described as the most meticulous analysis of the evidence on each count, unpacking every element of the

offence on each count and finding particulars from the evidence that was before the court proving each of those elements.

The appellant has appealed to this Court against conviction on all charges and against sentences. He has raised several grounds of appeal, numbering ten in all. His appeal on points of fact may be summed up as submitting that the findings of the trial court are not supported by the evidence. This is captured in ground (f) of the grounds of appeal that “The finding of guilty against the Appellant in respect of all counts was against the weight of evidence”. The rest of the grounds of appeal are on points of law on aspects of statutory interpretation and some of a constitutional nature.

In my consideration of this appeal, I do not see the necessity for me to go into an analysis of the evidence beyond the analysis presented by the lower court in its judgment. It is clear to me that the case against the appellant was decisively determined on its facts. Upon the analysis of those facts as made in the judgment of the lower court, I do not see any ground for me to interfere with any of the findings of the lower court. I also see no merit in any of the grounds of appeal on points of law raised in this appeal and argued before me and none of those grounds compels me to consider them in any depth as I am satisfied that they lack merit in substance. I therefore confirm the conviction of the appellant on all counts and I dismiss the appeal against conviction on all counts.

Turning to the appeal against sentence, this Court has on record the medical reports on the appellant showing that he has been and still is in poor health on the basis of which reports this Court, Her Honour Justice Chombo, J. sitting, granted the appellant bail pending appeal on that exceptional circumstance. The order of bail was made on 21st September, 2006, and the appellant has since remained on bail. I heard this appeal sometime back, on 25th July, 2007, and withheld the delivery of my judgment on account of the same exceptional condition of ill health of the appellant to allow him time and chance to recuperate under medication. I have come to the view that in the health condition the appellant finds himself, an overall reduction of the sentences imposed on the appellant would be just and proper.

I accordingly set aside the sentence imposed by the lower court in respect of the conviction for the offence of abuse of public office, the offence of forgery and the offence of uttering and I substitute one uniform sentence of eighteen months imprisonment in respect of each of those offences. I however confirm the sentence of six months imprisonment in

respect of the conviction for the offence of theft. Further, I make the order suspending the operation of the sentences for all the four offences on condition that the appellant is not convicted of the same or a similar offence within two years of the date of his conviction for the offences in this matter.

MADE in Chambers at Lilongwe District Registry this 9th day of June, 2008.

E.M. SINGINI, SC
JUDGE