



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION**

**CRIMINAL APPEAL NO. 13 OF 2018**

**OLIVA JAFALI.....APPELLANT**

**AND**

**THE REPUBLIC.....RESPONDENT**

**Coram: Hon. Justice M L K amwambe**

Chisanga of counsel for the State

Lemucha of counsel for the Appellant

Ngoma....Official Interpreter

**JUDGMENT**

**Kamwambe J**

The Appellant (together with two others) was convicted after full trial of malicious damage and common assault contrary to section 344 (1) and 253 of the Penal Code and was sentenced to 15 months and 6 months imprisonment respectively. She appeals against both conviction and sentence under section 355 (1) of the Criminal Procedure and Evidence Code.

Counsel for the defendant explained that the accused who is village headwoman Phulanya was incarcerated at Mulanje prison

and sometime in April she was released by the Prison Inspectorate, hence, she was not brought to court. Counsel requested that despite her release court do proceed. The court obliged but observed that there was no record before the court to show that she was released and under what circumstances. The court saw it appropriate to proceed.

Facts of the case were that on or about the 3<sup>rd</sup> March 2017 the office of the District Commissioner for Mulanje delivered its ruling over a chieftaincy dispute between the Phulanya clan and the Likong'a clan and the Phulanya emerged victorious. This victory prompted members of the Phulanya clan to break into celebrations immediately after the ruling. The Applicant being the reigning Village Headman Phulanya authorized her subjects to go round the village whilst celebrating. It is alleged that the offence herein was committed in the course of the said celebrations and the complainants were in fact members of the losing side, the Likong'a clan and the Applicant was arrested on the following day by officers from Mphalombe Police Station together with her co-accused.

The State does not support the conviction and sentence against the convict. I perused through the file and I noted that indeed the convict was not at the crime scene. When judgment was passed by the District Commissioner in favour of Phulanya village, Appellant upon being requested allowed her followers to go and celebrate. There is no evidence that the Appellant instructed the celebrants to damage some property and to assault some people. These actions by mischievous people cannot be connected to the Appellant. One cannot be convicted on mere suspicion, however strong the suspicion may be. In any case there is no reason to suspect her just because she was the village headwoman. I do not even think that there was any circumstantial evidence to be relied upon. She cannot be convicted of aiding and abetting because there are no supporting facts to that effect.

It is difficult to fathom how the lower court convicted the Appellant when no one of the prosecution witnesses saw her at the crime scene. The burden of proof by the prosecution was not fully

fulfilled. No wonder the State does not support the conviction and sentence. The standard of proof as required by law to be beyond reasonable doubt was not met, as such, I allow the appeal.

**Pronounced** in open court this 8<sup>th</sup> day of November, 2018 at Chichiri, Blantyre.

A handwritten signature in dark ink, appearing to read 'M L Kamwambe', written in a cursive style.

M L Kamwambe

**JUDGE**