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IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY
CONFIRMATION CASE NO. 296 OF 2017
Being Criminal Case No. 240 of 2016 in the FGM Court sitting at Karonga

THE STATE

VERSUS

ABRAHAM SIKWESE

ORDER

Ligowe J,

- 1 Abraham Sikwese was convicted of breaking into a building and committing a felony therein contrary to s. 311 of the Penal Code. He was sentenced to 30 months imprisonment. The particulars were that he together with Raphael Kaloloksha broke and entered a shop belonging to Ruth Sichura at Karonga one night in February 2016 and stole a 14 inch TV.
- 2 Abraham Sikwese was found with the TV in November 2016 which Ruth Sichura identified as hers. There was no direct evidence connecting the convict with the offence by the time the prosecution closed their case. But the trial Court still found him with a case to answer and acquitted Raphael Kaloloksha. All there was were caution statements in which Abraham Sikwese stated that he bought the TV from a person he could not remember and Raphael Kaloloksha

stated that he knew nothing about the offence. And that the shop was broken into and the TV stolen on 29th February 2016. Abraham Sikwese's own evidence in defence was that he bought the TV from Raphael and Justice Harawa end February 2016. He was not cross examined so his evidence could be discredited regarding Justice Harawa.

3 In its judgement the trial court found the convict guilty of the breaking on account of his recent possession of the TV from the time it was stolen. It did not believe his account for lack of detail.

4 However, as there is no direct evidence regarding the breaking and the theft that it is Abraham Sikwese who did it, this case hinges on circumstantial evidence. The law is that a court of law can only convict an accused person on circumstantial evidence if one inference and one inference only compatible with his guilt, is possible. If other inferences compatible with his innocence are possible the court cannot convict. See *Viyaviya v The Republic* [2002-2003] MLR 423. In the absence of anything to discredit him regarding Justice Harawa, it is also possible that Justice Harawa may have committed the offence. Thus it is not safe to convict Abraham Sikwese in the circumstances. The conviction is quashed and the sentence set aside.

5 Made this 4th day of January 2018.


T.R. Ligowe
JUDGE