

22 FEB 1995

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 993 OF 1994

THE REPUBLIC

versus

REGISON BIZA



From the Resident Magistrate's court sitting at Blantyre Criminal Case No. 64 of 1994

CORAM: **CHIMASULA PHIRI, ACTING J**
Assani, Senior State Advocate for the State
Maulidi, of counsel for the accused
Nkhoma, Official Interpreter
Mkwepu, Recording Officer

HIGH COURT
LIBRARY

ORDER IN CONFIRMATION

The accused person was charged with theft by a person employed in the public service contrary to Section 278 as read with Section 283 (1) of the Penal Code. The particulars stated that Regison Biza on or about the month of May, 1994 at Likangala Secondary School in the Municipality of Zomba being a person employed in the public service as accounts clerk and having by virtue of his employment received or had in his custody or under his control 202 reams of duplicating paper and 4 boxes of stencils to the value of K7,730.00 was unable to produce the said 202 reams of duplicating paper and 4 boxes of stencils to his employer or make due account therefor. He was convicted after a full trial and sentenced to mandatory term of 14 years imprisonment with hard labour. When the matter came before a reviewing judge she had reservations about the conviction.

The facts of the case indicate that the accused was a civil servant working in a capacity of accounts clerk. He was stationed at Likangala Secondary School. One of his duties was to look after stores. Unfortunately he was not the only person who had keys for the store-room. The headmaster had a master key. One day some investigations were done at Zomba Market which revealed that the accused person sold papers and other stationery to some market vendors. Accused was arrested. The police and the headmaster checked the position of stationery in the store-room. The accused was not present. The check revealed loss of stationery listed in the charge sheet. The evidence in the lower court did not conclusively prove that the stationery which the accused is alleged to have been selling was the stationery which belonged to Likangala Secondary School.

During the hearing of this case on confirmation the accused person was represented by Mr. P.J. Maulidi, Sr who forcefully submitted that the learned magistrate erred in placing little or no weight on the fact that the headmaster had access to the store-room and therefore the prosecution could not prove beyond reasonable doubt that the missing items were stolen by the accused. Furthermore, he attacked the lack of proper accounting and recording system at Likangala Secondary School. In summary the learned counsel contended that the evidence was such that it would not safely ground a conviction.

The Learned Senior State Advocate who appeared for the State had no hesitation in submitting that the State did not support the conviction. In a very logical presentation Mr. Assani submitted that there was no problem in finding that the accused was employed in the public service and that by virtue of his employment he had in his custody or under his control the items listed in the charge sheet. However, Mr. Assani submitted that the evidence did not prove that the accused had failed to account for the same to the satisfaction of his employers. The evidence does not link the paper which was stolen and the time when that was done and finally the role which the accused played in that net-work. There was no stock-checking. The Learned Senior State Advocate argued that he was not suggesting that the headmaster was involved but that the evidence leaves a lot of serious doubts as to the culprit.

In the circumstances it would be unsafe to uphold the conviction. Therefore I quash the conviction and set aside the sentence. The accused should be released forthwith unless held for other lawful cause.

Pronounced in open court this 20th day of October, 1994 at Blantyre.



G. M. CHIMASULA PHIRI
ACTING JUDGE

