



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 41 OF 2017

(Being Blantyre CRM Criminal Case No. 380 of 2017 Before H/W Ligowe)

BETWEEN:

GRACE KAMOTO.....APPELLANT

AND

THE REPUBLIC.....RESPONDENT

CORAM: THE HON. JUSTICE MR S.A. KALEMBERA

Mr Chiwala, Public Prosecutor, of Counsel for the Respondent

Mr Maele, of Counsel for the Appellant

Mrs Chanonga, Official Interpreter

Miss Mombers, Court Reporter

JUDGMENT

Kalembera J

The Appellant, Grace Kamoto, appeared before the Chief Resident Magistrate Court sitting at Blantyre charged with six Counts of corrupt practices contrary to section 24 (1) of the Corrupt Practices Act (CPA). After the prosecution's case, the learned magistrate amended the Charge Sheet in accordance with section 151 of the Criminal Procedure & Evidence Code (CP&EC), substituting the six Counts with two alternative Counts. The Appellant pleaded not guilty to the amended charges.

The particulars of the offence in the 1st Count alleged that Grace Kamoto, being a person employed in the public service as a police officer, in or about 4th June 2011, at Limbe Police Station corruptly solicited K4,000.00 from Patrick Khabaza and/or corruptly obtained K2,500.00 from Patrick Khabaza and K1,500.00 from Pilirani Chimwayi on or about the 7th June 2011 for herself, as inducement for her to release Pilirani Chimwayi on bail, the said release being the concern of the Malawi Police Service.

The particulars of the offence in the 2nd Count alleged that Grace Kamoto, being a person employed in the public service as a Police Officer, on or about the 4th June 2011, abused her office as a public officer by corruptly soliciting K4,000.00 from Patrick Khabaza and/or corruptly obtaining K2,500.00 from Patrick Khabaza and K1,500.00 from Pilirani Chimwayi on or about 7th June 2011 for herself, as inducement for her to release Pilirani Chimwayi on bail, the said release being the concern of the Malawi Police Service.

After a full trial, the Appellant was found guilty and convicted of corrupt practices contrary to section 24 (1) of the CPA. She was sentenced to 12 months IHL suspended on condition that she performs 480 hours Community Service at Limbe Market.

Being dissatisfied with her conviction the Appellant hereby appeals against the same. The Appellant filed the following four grounds of Appeal:

- a. The lower court erred in law in convicting the Appellant of the Charge of corrupt practices under section 24 (1) of the Corrupt Practices Act (CPA) when the same was bad for duplicity.
- b. The lower court erred in law in convicting the Appellant when there was no evidence before the court that the complainant was released on bail on account of the alleged K2,500.00 which was allegedly given to the accused.
- c. The lower court erred in law in convicting the Appellant when there was no corroboration of the allegation that PW 3 had given money to the Appellant.
- d. The trial court erred in law in convicting the Appellant without having regard to section 337 of the Criminal Procedure & Evidence Code.

Thus, the main issues for determination are:

- a. Whether the lower court erred in convicting the Appellant on the amended charges.
- b. Whether the lower court erred in law in convicting the Appellant when there was no evidence before the court that the complainant was released on bail on account of the alleged K2,500.00 which was allegedly given to the accused.
- c. Whether the lower court erred in law in convicting the Appellant when there was no corroboration of the allegation that PW 3 had given money to the Appellant.
- d. Whether the trial court erred in law in convicting the Appellant without having regard to section 337 of the Criminal Procedure & Evidence Code.

This being an appeal from the subordinate court, I am mindful that it is trite that such appeals are dealt with by way of rehearing, that is, I must look at and analyze all the evidence in the court below. However, it is paramount that I should first address the first ground of appeal which contends that the lower court erred in law in convicting the Appellant of the Charge of corrupt practices under section 24 (1) of the Corrupt Practices Act (CPA) when the same was bad for duplicity. I must state from the outset that section 151 (1) of the CP& EC provides that every objection to any charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later. The Appellant herein, was represented by Counsel in the lower court. Regardless of that, no objection was raised against the charges as is required by law under the said section 151 (1) of the CP&EC. In other words, Counsel for the Appellant in the lower court, did not think that the amendment to the charges would occasion an injustice to the Appellant. I therefore see no justification why I should entertain the objection now, on appeal. The first ground of appeal is therefore dismissed.

In the second ground of appeal it is contended that the lower court erred in law in convicting the Appellant when there was no evidence before the court that the complainant was released on bail on account of the alleged K2,500.00 which was allegedly given to the accused. Counsel for the Appellant does not dispute what PW III told the court, that is, that he gave the money to the Appellant, rather, Counsel argues that the release of Pilirani Chimwayi had nothing to do with the money that was given since the Appellant did not have the authority to release the said Pilirani Chimwayi on bail. The authority to release rested with a different officer altogether. Thus counsel argues that there was no evidence that the person who signed for the bail and authorized the release of Pilirani Chimwayi was influenced by the money, for, if that was the case she should have been released immediately the money was paid.

In response, it has been argued by Counsel for the Respondent that under section 47 of the CPA, it is not a defence, for the offences under section 24 of the CPA, that the Appellant did not actually have the power to release the complainant or did not actually release the complainant. The said section 47 of the CPA provides as follows:

“s.47 –Where any public officer has corruptly solicited, accepted, obtained, or agreed to accept or attempted to receive or obtain any advantage, it shall not be a defence in any trial in respect of an offence under Part IV –

- (a) that the appointment, nomination or election of such person or any other person as a public officer was invalid or void; or*
- (b) **that such public officer or any other public servant did not have the power,** authority or opportunity of doing or of forbearing from doing the act, favour or disfavor to which the advantage related, or*
- (c) that the public officer did not actually do any act, favour or disfavor to induce the advantage, or never had the intention of doing so.” (emphasis added)*

A reading of the said section 47 (a) of the CPA clearly shows that in respect of offences under Part IV, lack of authority to do an act or favour promised is truly not a defence. And offences under section section 24 which the Appellant was convicted of are under Part IV of the said CPA. In fact if it were a defence it

would defeat the whole purport of the CPA in its fight against or prevention of corruption or corrupt practices.

It is clear from the evidence of PW I, PW II and PW III that money was allegedly paid to the Appellant for the release of the complainant. It is further clear that this was also due to the fear of paying K10,000 at the court as explained by the Appellant. In total the Appellant received, according to the evidence, and the finding of the learned magistrate, the sum of K2,500.00 as the court further found that the Appellant refused to receive the said balance of K1,500.00 from the complainant. And as already observed herein, it does not matter that the Appellant did not have the authority to release the complainant on bail, what matters is that this money was solicited and obtained by the Appellant so that the complainant could be released on bail. Thus, the second ground of appeal too must fail and it is hereby dismissed.

In the third ground of appeal it is contended that the lower court erred in law in convicting the Appellant when there was no corroboration of the allegation that PW 3 had given money to the Appellant. Counsel has further questioned the involvement of PW III when the complainant's husband was available. It is in PW III's evidence that the complainant is his sister. It wouldn't be surprising therefore, that he was actively involved in trying to secure the release of the complainant on bail. Counsel has strongly argued that the Appellant's conviction is not safe as there was no corroboration of the fact that PW III gave money to the Appellant. It must be noted that except in situations where corroboration is required as a matter of law or practice, an accused person can easily be convicted on the evidence of a single witness. Section 212 of the CP&EC provides as follows:

"Subject to this Code and any other law for the time being in force, no particular number of witnesses shall in any case be required for the proof of any fact."

Thus, it is possible to prove the guilt of an accused person just on the evidence of one witness. The offence under s.24 of the CPA does not require corroboration. That said, however, the totality of the evidence shows that the Appellant demanded the sum of K4,000.00 in order to have the complainant released on bail. And that PW III paid the sum of K2,500 to the Appellant, which resulted in the release of the complainant on bail. The learned magistrate had the benefit of seeing the

witnesses and their demeanor in court, and it was the learned magistrate's finding that the Appellant was not a truthful witness. Thus, the learned magistrate after viewing all the witnesses came to the conclusion that the Appellant indeed solicited K4,000.00 but received K2,500.00 and that in the presence of other police officers she refused to receive the balance of K1,500.00. The third ground of appeal too must fail and it is hereby dismissed.

In the fourth ground of appeal it is contended that the trial court erred in law in convicting the Appellant without having regard to section 337 of the Criminal Procedure & Evidence Code. The said section 337 of the CP&EC provides as follows:

"S.337 -(1) Where in any trial for an offence, the court thinks that the charge is proved but is of the opinion that, having regard to the youth, old age, character, antecedents, home surroundings, health or mental condition of the accused, or to the fact that the offence has not previously committed an offence, or to the nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may -

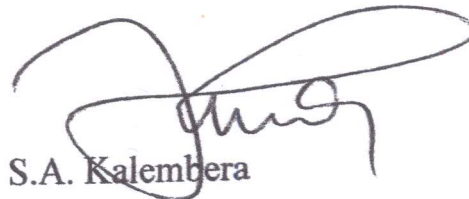
- (a) without proceeding to conviction, make an order dismissing the charge, after such admonition or caution to the offender as to the court seems fit;*
- (b) convict the offender, and if probation is not appropriate, make an order either discharging him absolutely or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified therein;*
- (c) where the court considers it expedient to release the offender on probation -*
 - (i) if the offender express his willingness to comply with the order, after or without convicting the offender, make probation order; or*
 - (ii) convict the offender and direct that he be released on his entering into such bond as is referred to in section 53, with or without sureties, and, in addition to any other condition, subject to the condition that, during such period (not exceeding three years) as the court may direct, he shall appear and receive sentence when called upon and in the meantime shall keep the peace and be of good behavior ."*

The reading of the said section 337 (1) of the CP&EC shows that the court has a discretion to deal with an offender as provided for in this provision or not. The offence under section 24 of the CPA of which the Appellant was charged and convicted is a very serious offences attracting a maximum sentence of 12 years imprisonment. As a country we are grappling with the problem of corruption which is believed to have reached unprecedented levels, and the way the courts deal with those who commit corruption will go a long way in curbing this vice. I am therefore satisfied that the learned magistrate opted to convict the Appellant. However, after considering the mitigating and aggravating factors, the learned magistrate sentenced the Appellant to 12 months imprisonment suspended on condition that the Appellant performs 480 hours of community service.

I cannot therefore fault how the learned magistrate exercised his discretion in that regard. Thus, the fourth ground of appeal must also fail, and is hereby dismissed.

All in all, on the evidence before the lower court, and on the observations and findings herein, I find no reason to tamper with the findings and decision of the lower court. Consequently, having dismissed all the ground of appeal herein, the appeal is hereby dismissed in its entirety. The Appellant's conviction and sentence are hereby confirmed.

PRONOUNCED this 7th day of March 2019, at the Principal Registry, Criminal Division, Blantyre.



S.A. Kalembera

JUDGE