

**IN THE HIGH COURT OF MALAWI**

**CRIMINAL DIVISION**

**MZUZU REGISTRY**

**CONFIRMATION CASE NO. 525 OF 2017**

Being Criminal Case No. 76 of 2017 in the FGM's Court Sitting at Karonga

**REPUBLIC**

**VERSUS**

**PEREKANI CHIUMIA**

CORAM: HON. JUSTICE T.R. LIGOWE

W. Nkosi, of Counsel for the State

C. K. Phiri, of Counsel for the Respondent

G. Msukwa, Official Interpreter

R. Luhanga, Court Reporter

**JUDGMENT**

Ligowe J

- 1 I acquitted the respondent immediately after hearing of the review in this case and reserved the reasoned judgment to a later date. Here is the judgment.
  
- 2 Perekani Chiumia and Gift Kuyokwa were charged with two counts in the First Grade Magistrate's Court sitting at Karonga. The first being burglary, contrary to section 309 (2) of the Penal Code, for allegedly breaking and entering the dwelling house of Miss Catherine Chaguzwa with intent to steal, during the night of 1<sup>st</sup> January 2017, at Karonga District Hospital houses in Karonga. The second was theft, contrary to section 278 of the


Penal Code, for allegedly stealing a laptop computer, Nokia Lumia cell phone and cash amounting to K60 000, at the same time and place stated in the first count.

- 3 The evidence shows that the house was indeed broken into and the items were stolen. The cell phone was recovered from one Gilbert Ngwira in Lilongwe around March 2017. Gilbert is related to Perekani Chiumia and he said he bought it from him in Karonga in December 2016. Perekani Chiumia confirmed having sold the phone to Gilbert. His evidence was however, that he got the phone from his friend Emmanuel in December 2016, when Emmanuel wanted to sell it to find money for transport from Karonga to Mzuzu.
- 4 The police came with Perekani to Emmanuel's house in Mzuzu but did not find him. They found his neighbour, Gift Kuyokwa, and arrested him so he and Perekani could explain everything at the Station. The lower court rightly found Gift Kuyokwa with no case to answer as there was no any evidence connecting him to the burglary. It however convicted Perekani Chiumia wrongly.
- 5 The court held that Gilbert Ngwira and Perekani Chiumia were probably mistaken as to the date they sold the phone to each other. It also did not believe Perekani Chiumia's explanation that he got it from Emmanuel. And then, held that Perkani Chiumia came into possession of the phone soon after it was stolen.
- 6 I agreed with Counsel for both sides during the hearing, that the conviction is unsafe. Gilbert Ngwira and Perekani Chiumia could possibly have been mistaken about the date, such that it was indeed stolen from the complainant's house on 1<sup>st</sup> January 2017. But there is no basis in the evidence for disbelieving Perakni Chiumia's explanation that he got the phone from Emmanuel. There is also no evidence of the exact date when he sold the phone to Gilbert Ngwira to be able to determine how recent that was to the date of the burglary. It is also important to bear in mind that a cell phone can easily change hands.
- 7 There is a statement of principle in *Rep v. Chizumila and others* [1994] MLR 288 on this point, where the Judge says at page 303-304: -

“When we come to thefts and burglaries, the court is called upon to infer the commission of these crimes from the fact that goods have been found in possession of an accused person shortly after they were stolen. Where the possibility of the accused person handling stolen goods is disproved, the accused may be convicted of theft and burglary if the defendant offers no explanation to account for his possession of the property or if the court is satisfied that the explanation given by the accused which is consistent with innocence is not true. The fact of recent possession raises a presumption and if the accused gives an explanation which is reasonably true, a conviction will not stand.”

8 The respondent herein is acquitted.

9 Made in chambers this 1<sup>st</sup> day of April 2012.

  
T.R. Ligowe  
**JUDGE**