

**IN THE MALAWI SUPREME COURT OF APPEAL
AT BLANTYRE**

MSCA CRIMINAL APPEAL NO. 4 OF 2006

(Being High Court Criminal Cause No. 260 of 2000)

BETWEEN:

HENRY KATSEKERA 1ST APPELLANT

MOSES POFERA 2ND APPELLANT

WYSON WALO 3RD APPELLANT

PACHIKANI MATEYU 4TH APPELLANT

MARTEN KUDYA 5TH
APPELLANT

FELIX FOSTER 6TH APPELLANT

- AND -

THE REPUBLIC RESPONDENT

**BEFORE: THE HON. JUSTICE H.M. MTEGHA SC, JA
THE HON. JUSTICE J.B. KALAILE SC, JA
THE HON. JUSTICE A.S.E. MSOSA SC, JA**

Chisama, Counsel for Appellants
Mrs Phiri, Mbano, Philipo for the State
Mr Selemani, Official Interpreter

SYSTEMS UNIT
SUPREME REGISTRY

21 DEC 2009

P.O. BOX 30244, CHICHIRI
BLANTYRE 3, MALAWI

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24 DEC 2007

P.O. BOX 30244, CHICHIRI
BLANTYRE 3, MALAWI

REGISTRAR
SUPREME COURT

24
PC

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PC

J U D G M E N T

KALAILE, SC, JA

The six accused persons were convicted in the High Court sitting at Ntcheu with the offence of murder contrary to section 209 of the Penal Code (Cap. 7.01). The principal witness to this case was Ellena Katsekera who was the wife to the first accused, Henry Katsekera. It was her evidence that on the night Witty Mlandeni was murdered, her husband came to her house during the night with a bag full of weapons which included a panga knife and his shirt was blood stained. Whilst asleep he kept having nightmares. This evidence corroborates what her husband stated in his confession statement and what Pachikani Mateyu also stated in his confession statement to the police.

Then there is the evidence of constable Kanyowa who tendered a Panga knife which also corroborates what was stated by Katsekera and Mateyu in their confession statements.

On 15th June 2007, this Court reserved its judgment with regard to Pachikani Mateyu who, as stated earlier, was convicted of murder together with five others, namely, Henry Katsekera, Wyson Walo, Martin Kudya and Felix Foster. This Court quashed the convictions against the five co-accused persons on the grounds that their convictions could not stand because they did not adopt the confession statement made by Henry Katsekera which implicated them.

Section 176 (2) of the Criminal Procedure and Evidence Code provides that no confession made by any person shall be admissible as evidence against any other person except to such extent as that **other person may adopt it as his own.** The four co-accused did not adopt Katsekera's confession

statement. Furthermore, the four raised the defence of **alibi** in their caution statements. However, at the trial, they chose to exercise their right to remain silent pursuant to the provisions of section 42 (2) (iii) of the Constitution.

Since the four did not adopt the confession statement by Henry Katsekera which implicated them, we quashed their convictions on 15th June, 2007. We should also indicate that according to Counsel for the State, Henry Katsekera died whilst in custody before his appeal was heard by this Court.

We now remain with one appellant, to wit, Pachikani Mateyu. The evidence implicating him is the confession statement which he made to the police. The injuries which were inflicted on the deceased also corroborate what is stated in the confession statement as well as the post mortem report.

At the trial hearing, the appellant did not retract the confession statement and like the rest chose to remain silent. Counsel for the State cited a dictum by Skinner CJ. In the case of **Republic - v - Nalivata** 6 ALR Mal. 100 at 103 where he stated that *“Since the enactment of section 176 of the Criminal Procedure and Evidence Code, it is no longer a correct approach to consider retracted confessions with caution and in practice to seek corroboration of them; any confession may now be taken into account if the Court is satisfied beyond reasonable doubt that it is materially true,”*

Another useful English authority in this regard is the case of **R. - V - Baskerville** [1916] 2 K.B. 658 at 667 where Lord Reading observed that *“evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it.”*

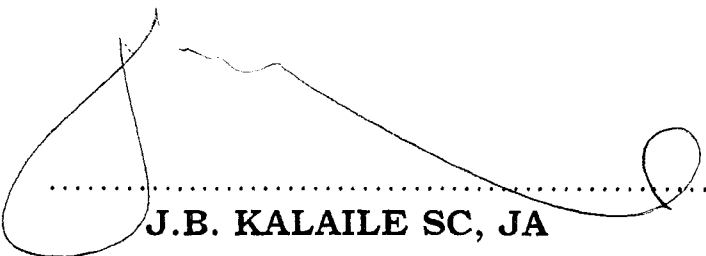
All in all, we are satisfied beyond reasonable doubt that the appellant, Pachikani Mateyu, was properly convicted of murder as charged because his confession was materially

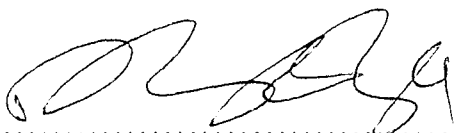
true. The conviction is accordingly confirmed as the appeal has failed.

DELIVERED in Open Court this 15th day of June, 2007, at Blantyre.

Signed:

H.M. MTEGHA/SC, JA

Signed:

J.B. KALAILE SC, JA

Signed:

A.S.E. MSOSA, SC, JA