

Namata v. Republic

Summary

Court:	Supreme Court Of Appeal
Bench:	The Honorable Justice R.R. Mzikamanda SC JA, The Honourable Justice L.P Chikopa SC JA, The Honourable Justice A.D. Kamanga SC JA
Cause Number:	MSCA Criminal Appeal No. 13 of 2015 (Being Criminal Case Number 65 of 2013, High Court of Malawi, Lilongwe Registry)
Date of Judgment:	March 23, 2018
Bar:	G. Chipeta, Counsel for the Appellant Mrs M. Kachale - Director of Public Prosecutions, Mr Malunda - Principal State Advocate Ms. Piriminta - Senior State Advocate

The Appellant appealed to the Supreme Court of Appeal against two convictions entered by the High Court for theft and money laundering, arising from allegations that he stole over K24 million from Government of Malawi accounts and laundered the proceeds through a company account. The Appellant challenged the validity of the charges, the sufficiency of evidence, the fairness of the trial, and the propriety of the sentences imposed.

The charges were scrutinised under multiple grounds. The Court held that although both counts arose from the same factual transaction, the charge of duplicity in relation to the second charge did not in itself render the trial unfair under section 5 of the Criminal Procedure and Evidence Code. However, the Court found that the theft conviction could not stand. The funds in question, once issued by government cheques and cashed by the company through Standard Bank, no longer legally belonged to the Government; the requisite proprietary interest to ground a theft charge was absent.

In consequence, the money laundering conviction also fell. The Court held that under section 35 of the Money Laundering Act, a conviction requires the property in question to be demonstrably derived from a “serious crime”. With the predicate theft conviction quashed and no alternative serious crime proven, the laundering charge collapsed for lack of an essential element.

Additionally, the Court condemned the Trial Court’s procedure in summoning a new witness mid-trial under section 201 CP&EC without notifying or accommodating the defence, holding that this violated fair trial rights under section 42(2)(f) of the Constitution. It also faulted the lower court for failing to properly assess whether a prima facie case had been made before requiring the defence to respond.

The appeal was allowed in full. Both convictions were quashed and all sentences set aside. The Court ordered the Appellant’s immediate release unless otherwise

lawfully held. It declined to reverse the restitution order since co-accused Kasamba's conviction still stood.