



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION  
CRIMINAL REVIEW CASE NO. 1 OF 2018**

**THE REPUBLIC.....RESPONDENT  
AND  
TEMBO PARAFFIN.....APPLICANT**

**CORAM: HON Justice M L Kamwambe**

Chisanga of counsel for the State

Maele of counsel for the Applicant

Ngoma....Official Interpreter

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**JUDGMENT**

Kamwambe J

The convict and another person were convicted of theft of 26 heads of cattle at Missi village in Chikwawa district. They were sentenced to 5 years imprisonment. The co-convict confessed to have committed the offence with the Applicant herein. Grounds for review are as follows:

- 1) The lower court erred in law in convicting the Applicant, Tembo Paraffin, of the offence of theft of cattle when there was no evidence proving that he stole the cattle.

2) The sentence imposed by the lower court of 5 years is manifestly excessive as there was full recovery of the stolen cattle.

On page 5-6 of the record PW 1 stated that:

*On the 20<sup>th</sup> May in the morning my cattle missed from the kraal. I reported to neighbours and members of the public. The first accused was found with all the 26 heads of cattle. I confronted the first accused and he said the second accused was with him.*

The second accused is the Applicant herein. PW 2 who first saw 1<sup>st</sup> accused person with the cattle said he was alone with the cattle. PW 3 said that when they arrested 1<sup>st</sup> accused person he implicated the Applicant. PW4 testified that when they arrested the Applicant, both confessed wilfully that they committed the offence.

It is said that the Applicant confessed before the chief, but the chief was not called to testify in corroboration.

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. This was reiterated in **Phiri and others v Republic [1998]** MLR 307 (HC) when it held that a confession is only evidence against the confessor unless the other adopts it, but what a defendant says on oath in a court of law against another is evidence against the other subject to credibility and the rules about corroboration.

In the police formal charge Applicant denied the charge, so too in his caution statement. That he confessed before the chief was watered down by the denial in the caution statement.

Unfortunately the chief was not invited to testify on the confession, especially the circumstances surrounding the confession. It could therefore not be established that the confession was materially true according to s176 (3) of the Criminal Procedure & Evidence Code. It is unsafe to find the Applicant guilty on the basis of a confession of another person which he did not adopt. In the circumstances, I quash the conviction of Tembo Paraffin and set aside sentence.

**Pronounced** in open court this 29<sup>th</sup> day of June, 2018 at Chichiri, Blantyre.



M L Kamwambe

**JUDGE**