

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 1156 OF 1997

THE REPUBLIC

VERSUS

WYSON MWANYAMBO

AND

JAMES WADSON

In the First Grade Magistrate Court at Nchalo Criminal Case No. 232 of 1997

CORAM: MWAUNGULU, J

Accused present, unrepresented

Mangison, Official Interpreter

Banda, Recording Officer

Mwaungulu, J

JUDGMENT

This case was set down to consider reducing the sentence. The Second Grade Magistrate at Nchalo sentenced the defendants, Wyson Mwanyambo and James Wadson, to five years imprisonment with hard labour. The Magistrate convicted the defendants of the offence of theft by a lodger contrary to section 278 as read with section 289 of the Penal Code. The Reviewing Judge thought, properly in my view, that the sentence was manifestly excessive.

On the evening of 9th April 1997 the defendant's booked themselves in Kukhala Motel in Nchalo. They stole mattresses and beddings. They were first offenders. The Court justified the five-year sentence on the seriousness and the commonplace of the offence. Neither of these considerations justifies passing a sentence that is disproportion to the crime, the offender, the circumstances of the crime and the public interest in preventing crime. Theft as a lodger is not in the category of offences considered grave under our Penal Code. Here there was nothing in the circumstances in which the offence was committed to justify such a stern sentence a part, of course, from the fact that more than one person was involved. The property stolen was not considerable. The effect of the crime on the victim was not, therefore, much. The defendants were committing offences for the first time. The sentence of five years was disproportionate. A shorter sentence would have been as effective.

The defendants have been in custody since May 1997. I pass such a sentence as results in their immediate release.

Made in Open Court this 17th day of December 1997.

D.F. Mwaungulu

JUDGE