

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CONFIRMATION CASE NO. 214 OF 2002**

THE REPUBLIC

VS

SAUTSO MPOTO

From the First Grade Magistrate Court sitting at Dedza being
criminal case no. 63 of 2002.

CORAM: HON. CHINANGWA, J

Counsel for the State,
Accused, Absent unrepresented
Simwaka (Mrs) Court Interpreter

ORDER IN CONFIRMATION

The convict Sautso Mpoto appeared before the First Grade Magistrate court in Dedza on a charge of Rape contrary to section 133 of the penal code. He pleaded guilty, facts were narrated and a conviction entered. He was sentenced to nine years imprisonment with hard labour.

It is the nature of the plea of guilty which raises doubt. The plea is reproduced herein for purposes of examination:

Accused: I understand and admit it but I have reasons.

I admit I had unlawful carnal knowledge of Martha Bajda without her consent. She was my girlfriend.

Court: Plea of Guilty

Thereafter the prosecutor narrated the facts.

Whilst convict admitted to the elements which constitute Rape contrary to section 133 of the penal code. He raised a defence to the effect that victim was his girlfriend. Such defence negated the admission. Court ought not to have entered a plea of guilty. A plea of not guilty was most appropriate followed by a full trial. That would have enabled the convict an opportunity to explain the girlfriend issue in his defence. Court would have had an advantage of analyzing the whole evidence. It would have been upon its discretion to accept the defence or reject it.

It is my view that failure to give convict an opportunity to enter defence resulted to injustice. The gravity of the injustice is such that it cannot be cured by sections 3 and 5 Criminal Procedure & Evidence Code. In the circumstances the conviction is quashed and the sentence of nine years I.H.L. set aside. I order a retrial under the provisions of section 362(1) as read with section 353(2) (a)(1) Criminal Procedure & Evidence Code. He should be tried by another magistrate. In the event a conviction is sustained the period spent in prison should be taken into account. Order accordingly.

Pronounced in Chambers on this 31st day of July, 2002 at Lilongwe.

R.R. Chinangwa
J U D G E