

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CRIMINAL APPEAL NO. 19 OF 2007**

**SAMUEL WHITE.....1<sup>ST</sup> APPELLANT  
MKOMANJE WHITE.....2<sup>ND</sup> APPELLANT**

**-VS-**

**THE REPUBLIC..... RESPONDENT**

From the Second Grade Magistrate Court sitting at  
Mtakataka being criminal case no. 41 of 2007

**CORAM: HON. CHINANGWA, J**

B. Mchenga Counsel for the State  
Kadzakumanja, Counsel for the Appellant  
B. Chulu, Court Interpreter  
Mrs. Jere, Court Reporter

**J U D G M E N T**

The two appellants Samuel White and Komanje White appeared before the Second Grade Magistrate Court sitting at Mtakataka, Dedza on 26<sup>th</sup> February, 2007. It was on a charge of Unlawful wounding contrary to section 241 of the penal code. Each of them was convicted on a plea of guilty and sentenced to 24 months penal servitude. They are serving this

sentence. They now appealing against both conviction and sentence.

The court record shows that at first counsel Kadzakumanja appealed on their behalf against sentence only. When court convened before Justice Mrs Kamanga on 15<sup>th</sup> August, 2007 counsel sought to add another ground against conviction. An adjournment was granted to enable counsel to make the amendment. Court reconvened before me on 22<sup>nd</sup> August, 2007.

There are now 5 grounds of appeal. The first four relate to sentence. The 5<sup>th</sup> ground relate to conviction. Perhaps, a brief summary at this point would be ideal. Facts state that on 22<sup>nd</sup> July, 2007 the complainant was at his rice garden. At about 5pm he was approached by the two appellants. The 1<sup>st</sup> appellant got hold of complainant by the neck. Complainant enquired what was wrong. No reply was given. Instead 2<sup>nd</sup> appellant armed with a panga knife hacked complainant on the 1<sup>st</sup> shoulder and also near the left eye.

A passer-by one Dyson Pondani came to the rescue of complainant. The complainant referred the matter at Mtakataka police. Thereafter he was treated at Mua mission hospital. He was given a medical report which was later tendered in court as exp1.

The appellants were arrested, cautioned and charged with unlawful wounding. The appellants were brought before court on 26<sup>th</sup> February, 2007. They were convicted on their own plea of guilty and sentenced to 24 months penal servitude. They now appeal against both conviction and sentence. As already said earlier that there are five grounds of appeal. Counsel for appellants began his submission with 5th ground. It reads:

***The learned magistrate erred in law in entering a plea of guilty without properly ascertaining that the appellants admitted the facts as narrated by the state and thereby erred in convicting them.***

Counsel argued that the magistrate did not satisfy him that appellants appreciated the nature of charge against them. Thus the trial court was in breach of its duty according to section 251(2) Criminal Procedure & Evidence Code. Counsel further submitted that court introduced the use of a panga knife which was not mentioned in the appellants' statements. A further point was the observation made by the learned magistrate on sentencing that the appellants were uncooperative.

Counsel Miss Mchenga for the state on this ground submitted that appellants admitted that facts were correct. They did not object to the issue of a panga knife included in the facts. If there was any irregularity that could be cured by section 5 of the Criminal Procedure & Evidence Code.

It is important to reproduce the plea of each appellant:

***“1<sup>st</sup> Accused: I understand the reading of the charge and I admit it. I assaulted the***

***complainant as alleged. Yes, I had an intention to wound the complainant.***

***2<sup>nd</sup> accused: I understand the reading of the charge and I admit the charge. I admit to have wounded the complainant on the left eye”***

On careful examination of these pleas, I take the view that there were unequivocal. The appellants appreciated the nature of the charge against them. On the introduction of the panga knife in the facts. It was upon the appellants to object to the truth of facts by pointing to the court that no panga knife was used or any assault applied on the complainant. On page 5 of the record both appellants admitted that facts were correct.

On the issue that appellants were uncorperative that was stated during sentence. Perhaps, it relates as to the gravity of sentence not conviction. To wind up on this ground it would appear that it is caught by

section 348 of the Criminal Procedure & Evidence Code which provides:

***“No appeal shall be allowed in the case of any accused who has pleaded guilty and who has been convicted by a subordinate court on such plea, except as to the extent or legality of any sentence imposed as a consequence of such conviction.”***

Therefore the ground against conviction fails.

I now proceed to the grounds against sentence. I would condense the four grounds into one. That the circumstances of the case did not merit a custodial term considering the fact that the appellants were first offenders. They deserved consideration under section 339 and 340 of the Criminal Procedure & Evidence Code.

The two appellants attacked the complainant. The 2<sup>nd</sup> appellant used a panga knife to hack him.

The medical report states:

*“23/02/2007*

**Medical Report**

***Upon thorough examination, the bearer sustained a cut about 1cm deep on the Rt shoulder with bruises on upper left eyelid. Complain of general pains, more especially back side. Has been managed accordingly.***

***Sigd: ADD Kamwanya***

***For Medical Officer”***

Counsel submitted that the trial court did not give reasons for opting for a custodial term. I reproduce the relevant part reads:

*“The court therefore will impose meaningful sentences which will be punitive to the offenders and at the sametime deter those would want to commit similar (offences). The court will prefer custodial sentences to the*

*offenders so that it can achieve public safety because they told this court that they have grudges against the complainant.*

*The court will, however, be lenient to the offenders due to their admission and they are first offenders.....”*

The trial court gave reasons for preferring custodial terms. It also considered the fact that the appellants were first offenders. Although the trial court did not expressly refer to sections 339 and 340 Criminal Procedure & Evidence Code. It had these provisions in the back of its mind.

The medical report referred earlier does not give much detail on the severity of the injury sustained. But a panga knife is a leathel weapon. The complainant was lucky because Dyson Pindani rescued him before much injury was inflicted on him. I would therefore uphold that a custodial sentence was merited. However the quantum was manifestly excessive. I reduce sentence to 6 months penal servitude.

Appeal allowed to this extent only.

PRONOUNCED in Open Court on this 10<sup>th</sup> October,  
2007 at Lilongwe.

R.R CHINANGWA

**J U D G E**