

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CRIMINAL APPEAL NO. 176 OF 2005**

**(Being Criminal Case No. 99 of 2004 in the First Grade Magistrate Court Sitting at Rumphi)**

**BETWEEN**

**STAMBULI SAIDI-----1<sup>ST</sup> APPELLANT  
MARKO MWAFULIRWA-----2<sup>ND</sup> APPELLANT**

**AND**

**THE STATE-----RESPONDENT**

**CORAM : HON. JUSTICE E.M. SINGINI, SC**

: Mr. Khunga, Senior State Advocate, counsel for  
Respondent  
: Appellant – First Appellant, present but  
unrepresented.  
: Mrs. Kabaghe, Court Reporter  
: Mrs. Mnyenyembe, Court Interpreter

**JUDGMENT**

The appellants in this appeal were convicted by the First Grade Magistrate Court sitting at Rumphi of the offence of armed robbery contrary to section 301 of the Penal Code. They were charged on four counts of the same offence jointly with a third person, one Victor Malunga, who was acquitted after trial. The second appellant, Marko Mwafulirwa, has since passed away before his appeal was heard.

The remaining appellant, Stambuli Saidi, was sentenced following his conviction to ten years imprisonment with hard labour on each count and the court ordered that the sentences were to run concurrently. His appeal is against both conviction and sentence.

Briefly the facts are that on the night of 7<sup>th</sup> to 8<sup>th</sup> March, 2004, at the northern lakeshore resort of Chitimba in Rumphi District, the appellant with others, together numbering about eight of them, while dangerously armed, including with guns, broke into the premises of a resort operated jointly by Mr. John Symthe and Ms. Adila Rahman, both British nationals, and stole, and made away with, a number of valuable items, including cash in Malawi Kwacha and in foreign currency after they threatened violence, assaulted the residents and caused bodily injury to the two partners and to other persons who were at the premises at the time. They damaged property at the premises, including damage to buildings and to a vehicle. They held the premises under siege with threats of violence for an extended period of time. They tied up Mr. Symthe after pointing a gun at him for a period of time. A watchman also had his hands tied up and made to lie down as the robbery went on. They stole a vehicle and drove away with it, but in the process of them going into that stolen vehicle and starting it to drive it off they switched on the lights of the vehicle which further assisted the victims who were the witnesses at the trial to clearly identify some of the robbers.

The accused were eventually arrested through police investigations. They were identified by the owners of the premises through an identification parade at the police station.

The remaining appellant, Stambuli Saidi, has a big scar on his forehead and this was the main mark of his identification during the identification parade. It was largely the evidence in the form of the identification parade that was tendered in the trial against him leading to

his conviction. He disputes that evidence as not being credible, claiming that the identification parade was stage-managed by the police. He was not represented by counsel during trial and in the appeal before me. However, I formed the impression that he was self confident in presenting his grounds of appeal and made the points he needed to make in attacking the identification evidence as the record will show.

The State opposes the appeal and strongly supports both the conviction and sentence.

I have reviewed the evidence on record and I make a summary judgment that I have found no ground for interfering with the findings of the lower court about the strength of the evidence of identification that the court admitted against the appellant in the trial. I therefore dismiss the appeal against conviction.

As regards the appeal against sentence, to the extent that the armed robbery was accompanied with violence causing actual bodily injury to persons, actual damage to property, loss of assets, money and other valuables beyond mere threat of violence, I must be reluctant to reduce a sentence of ten years imprisonment the trial court imposed on the appellant. I therefore also dismiss the appeal against sentence.

PRONOUNCED in open court at the Lilongwe District Registry  
this 5<sup>th</sup> day of June, 2007.

JUSTICE E.M. SINGINI  
**J U D G E**