

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CONFIRMATION CASE NO. 721/2006**

BETWEEN

THE REPUBLIC

-VS-

SITOFALA ANDREA

CORAM : HON. JUSTICE KAMANGA

: Kayuni, Senior State Advocate
Accused, Absent
Mrs. Kabaghe, Court Reporter
Mrs Nakweya, Court Interpreter

JUDGMENT

This matter was set down to consider conviction. The accused Sitofala Andrea appeared before the Second Magistrate at Mtakataka charged with the offence of unlawful wounding contrary to Section 241(a) of the Penal Code and sentenced to a community service order of 480 hours. When the accused first appeared in court he denied the charge. At second appearance the accused pleaded guilty to the charge.

Section 241(a) of the Penal Code defines the offence of unlawful wounding as follows:

“Any person who unlawfully wounds another shall be guilty of a felony and shall be liable to imprisonment for seven years.”

The facts of the matter as per the reading of the prosecutor were as follows: On 13th February 2006 at dawn, a certain man went to the accused's house in order to have a sexual relationship with the accused's wife. The accused managed to block the man. The appellant realized this man's identity and went to report to his father on the same night. The alleged Casanova went to complain to the village headman that the accused had visited his father with the alleged story. At that time accused had gone back home to sleep. When accused woke up at a particular time of the night, he saw some people coming towards his house. Accused took his arrow, threw it at the people. The group comprised of the village headman, the alleged Casanovas and some other. The arrow rested on the village headman. The following day, accused was taken to police where he was charged with the offence of unlawful wounding.

A reading of the caution statement that was tendered in court shows that accused had stated in the caution statement that he had used his arrow because on the night in issue, after reporting the issue to the village headman he went back home to sleep. Then he heard noise at his door step. In thinking that the Casanova had come for a second visit he drew his arrow on the person that he saw, not knowing that it was the village headman. Since it was night.

Much as accused had pleaded guilty in the matter at hand, a reading of the prosecutors facts of the matter should have moved the magistrate to change plea to one of Not guilty. The prosecution's facts of the case do not show that the accused had the requisite mens rea, considering the circumstances in which the arrow was used.

It would therefore be unsafe to conclude that the accused committed the crime of unlawful wounding. Consequently, the conviction is hereby quashed and sentence be set aside.

MADE in Open Court this 12th day of September, 2007.

I. Kamanga (Mrs)

J U D G E