

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL NO. 150 OF 2007**

BETWEEN

WILSON JOHN BANDA APPLICANT

AND

THE REPUBLIC RESPONDENT

**CORAM : HON. JUSTICE A.K.C. NYIRENDA, J.A.
: Thabo Nyirenda, Counsel for the Applicant
: Kahaki Jere Counsel for the Respondent
: F.H. Njirayafa, Court Interpreter**

JUDGMENT

The appellant, Wilson John Banda, appeals against both his conviction and sentences on three counts namely armed robbery in the first court, illegal possession of live ammunition in the second count and being found with offensive weapons contrary to sections 301 of the Penal Code, Regulation 7 of Firearms (Public Security Regulations) and section 313 of the Penal Code respectively. He was sentenced to 8 years imprisonment with hard labour for robbery, 3 months imprisonment for illegal possession of ammunition and 12 months Imprisonment with

hard labour for being in possession of offensive weapons. The sentences were made to run concurrently with the result that appellant is serving eight years imprisonment with hard labour.

The appellant and three others had their fate in the hands of PW1, Mr. Jekiteni who met them along a path at 3.00 am on the 21st August 2007. Mr. Jekiteni was driving an ox-cart along a path in Kasiya Area in Dedza District on his early morning chores. He met with the appellant with five others and just by merely looking at the group he became suspicious and was scared. He was allowed to pass through but as he did so he overheard the group quarrelling and one of them accused the other of having delayed in firing the gun. In the mind of the witness this conversation confirmed his suspicion and he knew he had met a criminal gang.

Jekiteni rushed ahead of the group and when he reached a nearby village he alerted the Chief of the village. The Chief diligently mobilized the community police who awaited the group. When the group arrived in the village it was quickly rounded up but one of them slipped off and ran away. The group was searched and to confirm the suspicions of the villagers dangerous items were found on them namely panga knives, masks, one antique-rifle, live ammunition, axes, gloves and torches.

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Upon arresting the suspects everyone around linked them to the robbery at Bulazala's house. The group was taken to Kasiya Police for questioning and statements were recorded from them. Suffice to say all the accused persons including the appellant admitted to committing several armed robberies in the Kasiya area.

More critically though to this case is the testimony and evidence of PW3 Inspector Manganya of Kasiya Police station. He investigated the crimes.

In the course of his investigation one of the things that he did was to ask the accused persons including the appellant to take him to the places where they had committed some of the crimes.

The appellant and one of the accused, Mateyo Saviele led the Policeman to the house of Bulazala. They were photographed pointing at and confirming that that was the house they broke into. Indeed at the scene police recovered used cartridges and broken glass of Bulazala's vehicle.

Despite such revealing testimony, none of the accused cross examined Inspector Manganya.

Thus far I am aware that the evidence against the appellant and indeed the rest of his group was circumstantial except against one of them who pleaded guilty. But putting together the quarrel that PW1 Jekiteni overheard from the appellant and his group, followed by the dangerous and offensive weapons and other items stated above that were found on the appellant and his group and finally the appellant and his gang leading police to the house of Bulazala where a robbery had been committed, I am more than satisfied myself that it was the appellant and his gang that committed the armed robbery during the night of 1st to 2nd June 2007 at Bulazala's house and went away with K180,000.00 in cash and a cell phone.

The other offences for which the appellant was convicted related to the firearm and the offensive weapons that were found on them when they were arrested. I would therefore dismiss the appeal against all the convictions.

As regards sentence all I should say is that the appellant should consider himself lucky to have gotten an ultimate sentence of eight years imprisonment with hard labour. It is clear to me that the appellant and his gang were heavily armed when they were committing the robbery. Everything around the gang points to a dangerously organized mob that terrorized Kasiya according to the testimony of all the witnesses.

I would have imposed a much heavier penalty on the appellant and the rest of his gang. I therefore dismiss the appeal against sentence. The entire appeal is therefore dismissed.

PRONOUNCED in Open Court at Lilongwe this 24th day of July 2008.

A.K.C. Nyirenda

J U D G E