

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 266 OF 1997**

**THE REPUBLIC
VERSUS
THOMAS BANDA**

In the Second Grade Magistrate Court at Mwanza Criminal Case No. 41 of 1997

CORAM MWAUNGULU, J

Miss Chimwaza, State Advocate, for the State

Accused present, unrepresented

Soka Banda, Official Interpreter

Marsen, Recording Officer

Mwaungulu, J

JUDGMENT

This case was set down by the Honourable Mrs. Justice Msosa to consider severity of the sentence. The Second Grade Magistrate sentenced the defendant Thomas Banda, to two years imprisonment with hard labour. The Court below convicted the defendant of the offence of theft contrary to section 278 of the Penal Code. The Honourable Judge thought the sentence was manifestly excessive.

The sentence is indeed manifestly excessive regard to all that surrounds the matter. The defendant stole property of the mother to her lover. He was put in the mother's house for the night. The defendant took away with property valued at K2, 000 comprising of cash K440.00, three lady suits, a girl's suit, two shirts, two tee shirts, a yellow cloth, a dress, a pair of shoes, a digital wrists watch and a pair of sandals. The defendant pleaded guilty to the charges.

The Court below considered the defendant's plea, the fact that this was the defendant's first offence, the fact that the property was recovered and his age. The Court thought that theft was a serious offence.

In the face of all the ameliorating factors here the extent of the sentence cannot be accepted. In a rural setting the property meant a lot to the complainant. The property was, however, recovered. In the face of a plea of guilty, there should have been a considerable reduction in the possible

sentence. Simple theft is among the categories of offences not considered grave in act Penal Code. I have said before that this is the sort of offence where, without anything in the circumstances in which the offence was committed, courts should deliberately consider suspension. As I have said a while ago, the property that was stolen constituted a measure of saving in a rural setting. For that reason suspension may send wrong signals.

On the facts here the appropriate sentence was a quick and sharp prison term. For first offenders such a sentence might be as effective as a longer one. The defendant has been in prison since February 1997. I pass a sentence as results in the immediate release of the defendant.

Made in open Court this 18th day of November 1997

D.F. Mwaungulu

JUDGE