

**IN THE HIGH COURT OF MALAWI**  
**PRINCIPAL REGISTRY**  
**CONFIRMATION CASE NO. 912 OF 1997**  
**THE REPUBLIC**  
**VERSUS**  
**MCLOUD BANDA**

**In the First Grade Magistrate Court at Mchinji**  
**Criminal Case No. 344 of 1997**

**CORAM: MWAUNGULU, J**

**Mwaungulu, J**

**JUDGMENT**

This case was set down to consider the sentence, the Honourable Mrs. Justice Msosa, thought, correctly in my view that the sentence of three years imprisonment with hard labour was manifestly excessive for the offence that the defendant committed. The First Grade Magistrate at Mchinji convicted McCloud Banda of the offence of theft. This is an offence under section 278 as read with section 282(h) of the Penal Code. The defendant was convicted on his own plea of guilt, the Principal State Advocate, Mr. Manyungwa agrees that the sentence is manifestly excessive.

On the 24 of June 1997, the complainant sent the defendant to sell groundnuts for him at Nkhoka market in Mchinji. He gave the defendant a bicycle to carry the groundnuts. The defendant never came back. The complainant started looking for him he found him with the bicycle several days thereafter. The defendant admitted the charge at the police, he also pleaded guilty when he appeared before the First Grade Magistrate at Mchinji.

The defendant is 36 years old this was the first time he was in trouble with the law unfortunately, the Court below did not give reasons for the sentence it arrived at. It is very important that trial Courts give reasons for sentences they impose. The defendant is entitled to know the reasons. The reasons given by the court may be all that the prisoner wants to learn from the wrong committed. More importantly, on review the sentence actually passed the reasons for such a sentence are apt for consideration. I have no doubt in my mind that if the Court below had tried to justify its sentence with reasons it would not have arrived at the sentence of three years

imprisonment with hard labour.

First the sentence is well above the guidelines that has been set by this Court for this offence this Court approves sentence of up to 18 months where a bicycle has been recovered or there is a plea of guilt, shorter sentence have been passed. Both these aspects are present in this case. The sentence of three years imprisonment with hard labour is set aside the defendant will serve 12 months imprisonment with hard labour.

Made in Open Court this 14th day of March 1997.

**D. F. Mwaungulu**

**JUDGE**