

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NUMBER 208 OF 1999

THE REPUBLIC

VERSUS

LACKSON DANIEL NANGWALE

JASTEN MOFOLO

From the First Grade Magistrate Court sitting at Midima Criminal Case Number 232 of 1999

CORAM: D F MWAUNGULU (JUDGE)

Manyungwa, assistant chief state advocate, for the state

Defendant, absent, unrepresented

Ngwata, an official court interpreter

Mwaungulu, J

JUDGEMENT

In this matter the reviewing judge thought a sentence of six years imprisonment for theft of two heads of cattle was manifestly excessive. The assistant chief state advocate agrees. The reasons the lower court gave never justify the sentence. It is a sentence which this Court should affect. The lower court convicted the defendant for theft of cattle, an offence under section 281 of the Penal Code.

The lower court found after trial that the defendant stole two heads of cattle. The defendant was arrested after he slaughtered the cattle and was selling the meat at a market. The defendant offended for the first time. Theft of cattle, at least for actual cattle, is a crime for which this Court

recommends immediate loss of liberty not, of course, to the extent the lower court suggested. The lower court passed the sentence because, in its opinion, the offence is serious.

The offence's seriousness is the only reason why the lower court passed the enhanced sentence. As the lower court pointed out, from the maximum sentence the legislature prescribed, fourteen years imprisonment, the offence is in the top bracket of serious offences. On the particular offence, however, the sentencing court must always consider the crime before it and whether it is an instance requiring a sentence close to the maximum, minding that the maximum sentence is set for the worst instance of the offence which is yet to, and by fiction may never, occur. Consequently, instances of the offence further from the serious instance of the crime that merits the maximum sentence should attract sentences on the lower bracket of the maximum sentence.

The enquiry into the possible worse offence is not supposed to leave the court in speculating and creating fanciful possibilities. The court must be able to look at the offences before it and offences that have been before it and other courts and decide whether the instance before it is really that serious to merit a heavy sentence close to the maximum. In the instant case, only two beasts were involved. The minimum required for commission of this offence is one head of cattle. One above the one, in the face of so much mitigation and no aggravation, cannot be a very serious matter deserving a sentence very close to half the sentence the legislature prescribed. In any case, this Court and other courts have dealt with more cattle. The sentences there have not been as high as the one the lower court proposed to dispose the offender.

The appropriate sentence is one year or slightly over a year. The sentence here is manifestly excessive as to involve an error of principle. I set it aside. I pass such a sentence as results in the defendant's immediate release.

Made in open court this 18th Day of March 2001

D F Mwaungulu

JUDGE

