

KN/CR/218/06/2007

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL NO.136 OF 2007**

JERE PHIRIAPPELLANT

-AND-

THE REPUBLICRESPONDENT

From the First Grade Magistrate sitting at Mkukula. Being
Criminal Case No. 439 of 2007

CORAM: HON.JUSTICE CHINANGWA, J

Miss Jere, Counsel for the State
Appellant, Present/Unrepresented
L. C. Munyenyembe, Court Interpreter
Mrs Namagonya, Court Reporter

JUDGMENT

The appellant Jere Phiri appeared before the First Grade Magistrate Court sitting at Mkukula, Dowa on 1st August, 2007. It was on a charge of Robbery contrary to section 301 of the penal code. He was convicted on his own plea of guilty and

sentenced to 30 months penal servitude. He appeals against the severity of sentence.

The appellant has set down three grounds of appeal as follows:

1. That he pleaded guilty to the charge therefore he did not waste court's time
2. That he is a first offender.
3. That the sentence is excessive

Prosecuting the appeal appellant submitted that due to the conviction he has lost his job. He was supporting his grandmother and 4 orphaned children of his late brother. He also submitted that he was protecting the place against violence.

Counsel for the state submitted that the custodial sentence was on the highside. She left it to the court to consider reducing it.

Facts on the court record show that on 28th June, 2007 the complainant first went to drink beer at Queens Park bottlestore at Kanengo. From there he went to Linda's bottlestore within the same locality.

At the door he met appellant. Appellant denied complainant entry into the bottlestore. They picked up a quarrel which developed to a fight. Thereafter when it was over, complainant realised that he had lost K3000. Appellant was the primary suspect. Complainant reported the matter at Kanengo police station. Appellant was arrested and charged with Robbery. In his caution statement appellant denied committing the offence. No money was found in appellant's possession.

I have carefully examined the facts in this case. I am not satisfied that the offence of robbery was proved beyond reasonable doubt.

First there was a misunderstanding between appellant and complainant. Appellant according to facts demanded to know why complainant wanted to enter into the bottlestore. Complainant wanted to force his way in the bottlestore. They started to fight. The bottle collectors joined assaulting the appellant.

It was after the fight was over that complainant realised that he had lost his money. From the facts it would appear that this was more a public fight so that those interested joined without any hinderance. That is why the bottle collectors joined. Appellant was arrested immediately which meant that money should have been found in his possession. Chances

are that money should have fallen from him or stolen in the course of the public fight by other participants.

Secondly, although appellant pleaded guilty I am not satisfied that he appreciated the nature and consequences of his plea. Lack of legal representation was to his detriment. It would be a miscarriage of justice to uphold the conviction in the light of the loopholes just because it is an appeal against sentence only. The law has to equally protect the appellant. The conviction is quashed and sentence of 30 months IHL set aside. Appellant to be released forthwith unless held on other lawful ground.

Appeal allowed.

Pronounced in open court on 19th day of December, 2007 at Lilongwe.

R.R CHINANGWA
JUDGE