IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL No. 42 of 2006

BETWEEN

DANIEL MZEMBE .....1ST APPELLANT
BRIGHT MKOLONGO .....2ND APPELLANT
CHARLES SIMBA .....3RD APPELLANT

AND

THE REPUBLIC .....RESPONDENT

CORAM: HON. I.C. KAMANGA (JUDGE)

D.P.P Absent
Likomwa, Senior Legal Aid Advocate for Appellants
Mrs Namagonya, Court Reporter
Mrs Nakweya, Court Interpreter

JUDGMENT

The appellants in the matter at hand are **Daniel Mzembe**, **Bright Mkolongo** and **Charles Simba.** They appeared before the First Grade Magistrate Court in Lilongwe charged with the offence of Robbery contrary to Section 301 of the Penal Code. They were convicted after full trial and each person was

sentenced to 8 years imprisonment with hard labour. This appeal is against the sentence only.

The facts of the case which are not in dispute are that in the early hours of the 1st day of January, 2006, the appellants robbed the complainant, Binton Chitseko of a wrist watch, a pair of shoes, a plastic bag of flour and K2,300.00 cash. It was the complainant's testimony that the appellants manhandled him during the time of the robbery in that one of them grabbed him on the neck, another grabbed him by the waist while the third one removed his shoes and wrist watch and disposed him of his cash. The appellants are all secondary school students who at the material time were in forms two and four respectively. There are letters of confirmation from their headmaster confirming that they were indeed students that they were to sit for their public examinations in 2006. These were their ages at the time of arrest: Daniel Mzembe, 20 years old, Bright Mkolongo, 18 years old, Charles Simba 25 years old.

The punishment for the offence of robbery is provided in section 301 of the Penal Code. The legislature recognizes this offence as a felony whose maximum sentence is imprisonment for fourteen years.

If the offender is armed with a dangerous or offensive weapon or is in company with one or more other persons, or uses other personal violence, the sentence becomes more serious and the offender is liable to be punished with death or with imprisonment or life.

The appellants in the matter herein were in company of each other and had used personal violence on the complainant in that they had manhandled him. This is an aggravating factor.

There are however some mitigating circumstances that the court should have taken into consideration in sentencing the appellants. The first one which was considered being that the appellants are all first offenders. The other mitigating factor that the sentencing court should have taken into consideration are the ages of the appellants. The appellants appear very young. Their ages are in the young adult category. It has been submitted on their behalf that much as the crime is a serious one, the circumstances in which they committed the same indicates that this was an opportunistic crime, is that they committed the crime in a drunken state as they were celebrating the New Year's Day. Hence it was submitted that the crime was not premeditated.

In the criminal matters when it comes to the part of sentencing the court is challenged with the issue of balancing

the interests of the offenders and victims as well as the public. More so in this era where we talk of these human rights. Human rights or no human rights, the principles of sentencing include that the sentence has to fit the offence, the offender, the victim and the public. The public views the offence at hand as a serious offence because it has been defined that if it is committed where offenders are more than one, and they molest the victim, the sentence be life imprisonment. However, the appellants are young first offenders who are also students. In ***R v Phiri and another*** (1997 2 MLR at 92), the accused were convicted of theft of cattle. An offence whose maximum sentence is 14 years. The trial court sentenced them to 7 years. On confirmation it was reduced to 1 year. The confirming court took into consideration the fact that the offenders were first time offenders and were in their late twenties and noted that for such offenders a long and disproportionate sentence is a violation of their fundamental right under the constitution not to be subjected to any cruel and unusual treatment. As noted above the sentence has to fit the offender. And usually, much as long sentences should be meted for the serious offences, the same has to be meted with diligence and after taking all factors into consideration. In ***Rep v Mwatama and Willa*** (Confirmation Case No 1137 of 1998) the court noted that :-

"long sentences should be reserved for habitual criminals. Heavy sentences are suitable for worse offences where injury has been inflicted upon innocent victim. It should be passed where loss of property is colossal."

The appellants herein are not habitual criminals. The circumstances of the commission indicate that it was not the worst offence and the property that the complainant lost is not colossal.

The appellants however needed to know that the state cannot condone such unbecoming behaviour even if it comes from over excited immature adults who do not know how to hold the bottle. Public interest demands that the appellants and other potential candidates who fall in the appellants' age group, and are students and are learning to partake alcohol should know that the consequences of partaking alcohol can be dire in that the influence of alcohol can lead to commission of crimes. And the state will not condone that our young adults should be committing crimes for if the state indulges in leniency, to young offenders without making them take responsibility for their actions, the state will be heading for a future that will be chaotic. That we do not want. Hence public interest mandates that the applicants herein take

responsibility for their actions. Consequently, they should undergo some punishment. As was noted by Justice Mwaungulu in ***R v. Kabichi*** (conf. case No 294 of 1997), a short and stint span in prison can teach them a lesson. In the case aforesaid, the judge noted that longer and sterner sentences may not achieve the desired goal of deterrence to young offenders but may only result in resentment and resignation and ultimately a life down the road to repeated crime. Ultimately the longer sentence may backfire on serving the public interest. In that vain and appreciating that the appellants herein have a future that they need to take care of in the present, a short, sharp stint in prison was more appropriate.

Consequently, I reduce the sentence of eight years imprisonment with hard labour to a sentence of one year imprisonment with effect from the date of their arrest

MADE in Open Court this 28th day of March, 2007.

I.C. Kamanga (Mrs)

J U D G E