

**IN THE HIGH COURT OF MALAWI**  
**LILONGWE DISTRICT REGISTRY**  
**CRIMINAL APPEAL NO. 26 OF 2007**

**BETWEEN**

**ALLAN MAKOWA ..... 1<sup>ST</sup> APPELLANT**  
**INNOCENT NJENJE ..... 2<sup>ND</sup> APPELLANT**

**VS**

**THE REPUBLIC..... RESPONDENT**

**CORAM                      HON. JUSTICE NYIRENDA**

Mr. Nyirenda   Counsel for the Plaintiff  
B. Mchenga Counsel for the D  
Mr. Gonaulinji Court Interpreter

**JUDGMENT**

The court will write a formal judgment in the course of time but in the meantime would determine as follows. The facts show that when the complainant arrived at the house of the two accused to ask for her money she was met with hostility for no apparent reason by both appellants. What is true however in the testimony of the complainant herself it was the second appellant who pushed despite the fact that both appellants were aggressive at the complainant. It seems apart from telling off the complainant and asking her to leave there is nothing else the first appellant did. The second appellant was overzealous and pushed the complainant from the house with the result that she fell and injured her leg.

The circumstances of the case do not and are far from suggesting a common mind to cause harm on part of the two appellants. The actions of the second appellant can not be attributed to the first appellant as well. I therefore allow the appeal for the first appellant and quash the conviction against him.

As for the second appellant his action was clearly unlawful. Perhaps charging the second appellant with causing grievous harm was a tort too harsh but I will not tamper with the conviction which I confirm. The appeals against conviction is therefore dismissed.

As to sentence, having observed that the conviction against the second accused was harsh I ought to give the sentence some consideration because it was probably influenced by the nature of the offence which the appellant was convicted.

The second appellant is a first offender and only 23 years old. It is on record that he was at school when he was convicted. I think he should be given another chance with a stern warning to keep away from assaulting other innocent citizens or indeed from messing up with the law. I set aside the sentence of eighteen months and now sentence the second appellant to such a term as would result in his release from custody today.

**PRONOUNCED** in Open Court today the 1<sup>st</sup> of August 2007.

A.K.C. Nyirenda  
**J U D G E**