

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CRIMINAL APPEAL NO. 111/2006**

**BETWEEN**

**JAMES CHAZUKIRA PHIRI**

**-VS-**

**THE REPUBLIC**

**CORAM : HON. JUSTICE NYIRENDA**

: Miss Khembo, Counsel for the Appellant  
: Mr. Kayira, Counsel for the State  
: F.H. Njirayafa Court Interpreter

**JUDGMENT**

This is an appeal against both conviction and sentence by Jameson Chazukira Phiri who was convicted of robbery contrary to section 301 of the Penal Code and sentenced to six years imprisonment with hard labour. The summary of his grounds of appeal against conviction is that the conviction was against the weight of the evidence. As to sentence it is his appeal that it is manifestly excessive having regard to the mitigating factors put forward before the lower court.

The facts of this case are very simple. During the evening of 25<sup>th</sup> March 2006 the complainant, Duncan Mkonkholo Chirwa was walking his way through Kawale 2 Township when a group of thugs attacked him and went away with his cell phone. He went to report the incident to police. By some luck the following day police arrested the appellant in connection with

other offences. When the appellant was searched he was found with a cell phone which was later established to belong to the complainant. The only explanation the appellant gave to the police was that the phone was given to him by his friends. He named the friends but did not want to call them as his witnesses.

Quite honestly I wonder what else the State needed to do to establish the case against the appellant. The complainant's mobile phone was found with the appellant the next day after the robbery. The appellant could not really account for his possession apart from mentioning some names of people whom he declined to bring forward. The appeal against conviction certainly was a waste of time, I dismiss it. The conviction is sustained.

The appellant is a young man. He was only 19 years old when he committed the offence. He is a first offender. Six years imprisonment with hard labour is on the high side. I set aside the sentence and now sentence the appellant to three years imprisonment with hard labour.

**PRONOUNCED** in Open Court at Lilongwe this 19<sup>th</sup> day of September 2007.

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