

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL APPEAL CAUSE NO 53 OF 2007**

BETWEEN

DAVIE CHELEWANI APPELLANT

AND

THE REPUBLIC RESPONDENT

**Being Criminal Case No. 45 of 2007 in the First Grade Magistrate
Court sitting at Dedza.**

CORAM : Chombo, J.

: Chinula, Counsel for the Appellant
: Kayira, Counsel for the Respondent
: Chulu, Court Interpreter/Operator
: Mbewe, (Mrs) Court Reporter

RULING

The brief facts of the case are that the appellant is a headmaster of a primary school in Dedza and has a potato garden. He had been losing part of his produce to thieves and he decided to protect the fruits of his labour by guarding his property. He armed himself with panga knife, small axe and a stick. In the early hours of that evening he saw the complainant and her children carrying potatoes and he immediately concluded that these must have stolen the potatoes from his garden. Without stopping to find out any details of the source of the potatoes he pounced on the complainant's daughter whipping her with the stick. The girl cried out for help and the

complainant rushed to rescue her daughter only to be faced by a panga knife that landed on her finger. She, thinking that the appellant had not recognized her, identified herself to him, but even after this he proceeded to cut her on the leg with the panga knife and beat her – when she was most vulnerable and defenseless. As a result the complainant's finger was amputated and she had to spend weeks in hospital. These, no doubt are serious matters. I have no doubt that only if the appellant had stopped to question the complainant and her daughter about the matter he could have saved himself all this trouble. It is not that it was too dark for him to see – the complainant saw him and identified him. Indeed one would think that he was determined to cause grievous harm at any cost.

The lower court made an order that in addition to the custodial sentence the appellant pays compensation of K20,000.00 to the complainant. I note that the two sentences put together are quite steep. Counsel for the appellant argued that the Magistrate did not follow the principles laid down by *Bolt, J in Rep v Sidiki 3 ALR Mal at 577*.

It should be noted however that the facts of the Sadiki case are different from the facts of this case. In the Sidiki case the court looked at an accused person or his relatives or family members repaying the money stolen after enriching themselves with the illegal gains. I am afraid I find the circumstances different. Section 32 of the Penal Code simply looks at the harm caused to the complainant and considers it just for the complainant to be compensated in some way. I find therefore, after taking into account the circumstances of this case that I must confirm the payment of K20,000.00 as compensation to the complainant but reduce the custodial sentence to 18

months IHL effective from the date of arrest. However, if the compensation will not be paid the appellant will serve the whole 30 months in prison.

MADE in Court this 7th day of February, 2008.

E.J. Chombo
J U D G E