JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CRIMINAL CASE NO. 408 OF 2008

THE REPUBLIC

VERSUS

CHARLES DAMSON

CORAM: THE HONOURABLE JUSTICE E. B. TWEA
Miss Kumitengo, of Counsel for the State
Accused present in person
Mrs S. P. Moyo – Official Interpreter

R U L I N G

Twea, J

This case came up for consideration of sentence. The convict was charged with the offence of causing grievous harm, contrary to Section 238 and theft, contrary to Section 278 of the Penal code respectively. He pleaded guilty and not guilty respectively.

The State proceeded to present the facts on the first count. The court entered a conviction on the first count and sentence the convict to 5 years imprisonment. There was no mention of the second count. This was irregular. It is the duty of the court to dispose of all the charges pleaded before it. In this respect the court should have determined whether the State was withdrawing the charge of theft or whether it did not intend to proceed, enter a discontinuance or simply that it was not offering any evidence in

respect of the offence. It was then for the court to decide whether to discharge or acquit the accused on the charge of theft.

In this present case, the State concluded the case without any reference to the charge of theft. It did not therefore offer any evidence, for the purposes of alter fois acquit or convict plea. It was open to the State to enter a discontinuance or withdrawal under Sections 77 or 81 of the Criminal Procedure and Evidence Code. It did not. I therefore acquit the convict on the charge of theft contrary to Section 278 for want of evidence.

I now come to the charge of causing grievous harm. The review Judge was of the view that the sentence be reduced.

The facts disclosed that the convict, for no apparent reason at all, removed and took away a merchandising bench of the complaint at a flea market. When questioned about his conduct, he challenged the complainant and then picked a quarrel. He then picked a metal bar and struck the complainant on the hand. The Sentencing Guidelines stipulates that the starting point in such cases must be 5 years. I have noted that a metal bar was used, the victim did not provoke the convict, neither was he related to him. These are serious aggravating factors. It is my finding that, for whatever reasons, the convict wanted to pick a quarrel with the complainant with a view to hit him which he did. However, I bear in mind that although the complainant was injured, the injury was not severe. He deserves some leniency.

I therefore concur with the review Judge I reduce the sentence from 5 years to 4 years imprisonment with hard labour.

Pronounced in Open Court this 27th day of February, 2008 at Blantyre.

E. B. Twea
JUDGE