



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY
CRIMINAL DIVISION

CRIMINAL APPEAL NO. 133 OF 2017

BETWEEN:-

BLESSINGS KAUYE..... PLAINTIFF

AND

THE REPUBLIC.....DEFENDANT

CORAM: THE HONOURABLE JUSTICE .T.R. LIGOWE

D. Shaibu, Counsel for the State

Newton Mdazizira, Counsel for the Appellant

Ganizani Msukwa, Official Interpreter

Edwell Kanyika, Court Marshal

J.N. Chirwa, Court Reporter

Ligowe, J

JUDGEMENT

1. The appellant was convicted by the Magistrate's court at Rumphi of theft by trick contrary to section 321 of the Penal Code, upon his plea of guilty. He had by trick stolen K14,000.00

from Mr. Nicholas Ndibwa. He was sentenced to two years imprisonment with hard labour.

2. In this appeal, he argues that two years is excessive in view of the maximum of three years for theft by trick. He further argues that as a first offender, he should have been considered for a suspended sentence, and the court should also have considered that the offence is a misdemeanor and that he refunded K50,000.00, per page 14 of the lower court's record, and the amount stolen, K14,000.00, is minimal.
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3. The state agrees that the sentence is excessive but that the money was not refunded.
4. This court has read the record at the said page 14. The lower court had given the appellant the opportunity to refund the stolen money and costs the complainant had incurred with regard to the case. The total was K71,000.00. At that page he states that he has been informed that K50,000.00 was available. In its sentence the lower court stated that the appellant did not pay back the money despite having been given ample time to repay.
5. Because the appellant had been informed about the availability of the money and it seems he did not have the money at the time he made that statement and he was not actually repaying it, I choose to take what the Magistrate later said in the sentence that he had not repaid.

6. That notwithstanding I agree that the sentence given by the Magistrate is excessive.
7. Our sentencing practice is settled that for a timely plea of guilty, the offender should be allowed a reduction of up to a third of the sentence.
8. Suppose this offender required to be sentenced to the maximum, he should have been sentenced to two years on account of his plea of guilty. There are other mitigating factors besides that. He is a first offender and the amount involved, even including the complainants expenses is small. His sentence should have been lower than two years imprisonment.
9. Considering that he has been in prison from 25th April, 2017, I reduce his sentence to that as would result to his immediate release.
10. Made in open court this 11th day of July, 2018.


T.R. Ligowe
JUDGE