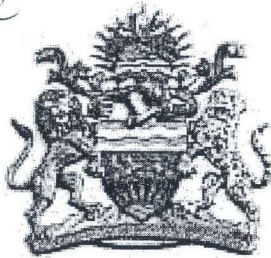


Chief State Advocate



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION
CONFIRMATION CASE No. 192 OF 2017
[being criminal case no. 551 of 2016, FGM, Mulanje Magistrates' Court;]
(eCMS 5366 of 2017)

THE REPUBLIC

v

SINODENI SOMPHO
and
SAMSON SAYENDA

ORDER IN CONFIRMATION

nyaKaunda Kamanga, J.,

The two defendants, Sinodeni Sompho and Samson Sayenda, appeared before the First Grade Magistrate sitting at Mulanje where they were jointly charged, found guilty and convicted of the offence of robbery contrary to section 301(2) of the Penal Code. The defendants were both sentenced to 10 years imprisonment with hard labour.

The brief facts of the case reveal that the two defendants, in company with another one who was still at large during trial, during the night of 30th October 2016, used violence to rob of Mr. Mazunzo Mlatho his Hunter bicycle. The victim was attacked by the three group of men who were armed with panga knives at Chisambalendo bridge as he was coming from Chemaliro village in Mulanje district. Upon being attacked, the victim took to his feet, abandoning the bicycle at the scene and reported his ordeal to the village headman. The bicycle was later found during the night of the incident by members of the community policing in the house of the first defendant. The identification of the defendants was not difficult as the victim and the defendants knew each other very well, since the victim and the first defendant came from the same village and the second defendant was a brother in law of the first defendant.

Having examined the trial record from the lower court this court is satisfied that the convictions of the 36 years old 1st defendant and 32 years old second defendant were appropriate and are hereby confirmed. However, the sentences that were imposed on the offenders need to be reviewed for proportionality.

Section 301(2) of the Penal Code provides for aggravated form of the offence of robbery and its penalty is death or imprisonment for life. The stiff maximum penalty clearly demonstrate how serious the offence of robbery is, and how the law makers show their disapproval for violent forms of the offence of robbery: *Rep v Kampingo and others* [1995] 2 MLR 754 (HC). The *Magistrates' Court Sentencing Guidelines*, Malawi Judiciary *Magistrates' Court Sentencing Guidelines*, (Blantyre: Malawi Judiciary, 2007 at 37), suggests the starting point for the

punishment for simple robbery as five years imprisonment while the punishment for aggravated robbery can begin with imprisonment for 10 years. The aggravating factors in the circumstances of this case reveal the seriousness of the offence of robbery in that a group of three men were involved in the commission of the violent crime at night. It has been observed in the case of *Republic v*, that people who organise each other to commit serious crimes are a 'threat to society'. Secondly, the defendants were armed with *panga* knives, which are dangerous and offensive weapons, which they used to subdue the victim into submission. Thirdly, the circumstances of committing the offence show that the defendants carefully planned the commission of the offence as the evidence reveal a coordinated robbery and plan to hide the stolen bicycle. Fourthly, the first defendant breached trust of the complainant by attacking and stealing from a fellow villager. Fifthly, the first defendant was a subsequent offender.

The main mitigating factors in this criminal matter are that the second defendant was a first time offender and the recovery of the stolen bicycle from the house of the first defendant.

After considering the strong aggravating circumstances and the mitigating factors in light of the sentencing guideline and cases of similar nature this court is of the view that the sentence of 10 years imprisonment that was imposed on each of the defendants was manifestly excessive and that the two defendants ought to have been sentenced differently since one of them was a first time offender. Considering the circumstances of this criminal matter this court exercises its sentencing discretion and reduces the punishments to the following custodial terms: the sentence imposed on the first defendant, Sinodeni Sompho, is reduced to 8 years imprisonment. The 10 years' jail term imposed on the second defendant, Samson Sayenda, is reduced to 7 years imprisonment. The sentences are to operate with effect from the date of arrest.

Any party dissatisfied with this order is at liberty to appeal.

Dated this 6th June 2018 at Chichiri, Blantyre



Dorothy nyaKaunda Kamanga
JUDGE

Case information:

Prosecution
Defendant
Miss Million

Absent.
Absent/unrepresented.
Court Clerk.