



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CRIMINAL REVIEW CASE NO. 12 OF 2017

**(Being Midima SRM Court Criminal Case No. 115 of 2017 and Midima SGM
Criminal Case No. 134 of 2017)**

**UNDER SECTION 42(2)(F)(viii) OF THE REPUBLIC OF MALAWI
CONSTITUTION**

AND

UNDER SECTION 25 AND 26 OF THE COURTS ACT

AND

**UNDER SECTION 360 AND 361 OF THE CRIMINAL PROCEDURE
AND EVIDENCE CODE**

THE REPUBLIC

V

FRANK TCHULANI

CORAM: THE HON. JUSTICE MR. S.A. KALEMBERA

Mr Chitsime, Senior State Advocate, of Counsel for the State

Mr Maele, of Counsel for the Convict

Mrs Mithi, Official Interpreter

ORDER ON REVIEW

Kalembere J

The convict, Frank Tchulani, appeared before the Midima Senior Resident Magistrate Court charged with the offences of Acts intended to cause grievous harm contrary to section 235(a) of the Penal Code; and Obstructing a Police Officer contrary to section 256(b) of the Penal Code. On the charge of Acts intended to cause grievous harm, the particulars of the offence alleged that Frank Tchulani on the 25th day of April 2017 at about 15:30 hours in Limbe Township in the City of Blantyre with intent to do grievous harm to Traffic Sub-Inspector Kalonga unlawfully wounded Traffic Sub-Inspector Kalonga.

On the charge of Obstructing a Police Officer, the particulars of the offence alleged that Frank Tchulani at the same time and place as stated in the first count willfully obstructed a Police Officer namely Traffic Sub-Inspector Kalonga, the said officer in the due execution of his duties.

The convict pleaded guilty to the charges, was found guilty and convicted. He was sentenced to 14 months IHL for the offence of Obstructing a Police Officer; and 6 years IHL for the offence of Acts intended to cause grievous harm. Being dissatisfied with both the convictions and sentences the convict has brought this review.

The convict has filed the following grounds for review:

1. The lower court erred in law in convicting the convict of the offence of Acts intended to cause grievous harm when there was no evidence proving the charge.
2. The lower court erred in law in convicting the convict of the offence of Obstructing a Police Officer contrary to section 256(b) of the Penal Code.
3. The sentence of 14 months IHL for the offence of obstructing a Police Officer is manifestly excessive.
4. The sentence of 6 years IHL for the offence of Acts intended to cause grievous harm is manifestly excessive.

This being a review of criminal proceedings from the lower court, it must be dealt with just like an appeal, that is, I must look at and analyze all the evidence before

the lower court. The convict having pleaded guilty, there were no witnesses other than a narration of the facts by the prosecution. Thus, it has been submitted that the learned magistrate erred in convicting the convict without evidence and without elements of the offence of Obstructing a Police Officer being put to the convict; and that the sentences imposed are excessive. Thus, the main issues for the court's determination are whether the convict's convictions are proper and safe in the circumstances; and whether the sentences imposed are excessive.

In the first ground of review it is argued that the lower court erred in convicting the convict of the offence of acts intended to cause grievous harm when there was no evidence proving the charge. Section 235(a) of the Penal Code provides as follows:

"s.235 –Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person –

(a) Unlawfully wounds or does any grievous harm to any person by any means whatever;..

shall be guilty of a felony, and shall be liable to imprisonment for life."

Counsel for the Convict has argued that the plea was defective in that the elements of the offence were not put to the convict. On the other hand, it has been argued on behalf of the State that the narrated facts as admitted as correct by the convict cured any defects in the plea. I have gone through the lower court record and plea-taking went as follows:

"I admit the charge

Ct Plea of guilty."

The facts stated as follows:

"The complainant is Traffic Sub-Inspector Karonga based at Limbe Police. It was on the 25th April 2017 at 15:30 hours when Karonga and his friends were on patrol at Limbe Township on vehicle. When they reached Limbe depot they found a minibus reg No. MN 6287 Vanesa which was driven by the suspect, it was loading passengers at a prohibited place. When the suspect saw the traffic officer he started running away with the minibus going towards Dalton road. When he

reached at Limbe Police junction he was blocked by vehicles. When the victim found him he told him to stop but the suspect told him that he can't stop. Sub-Inspector Karonga opened the door passenger with the aim of board the minibus. Before sitting he started driving with the aim to overtake the truck. The door of the minibus hit Sub-Inspector Karonga. The cpt fell under the truck which was about to move. The officers.....his.... for a distance where he sustained injuries on both legs. Lucky enough the driver of the truck saw that the cpt fell under the truck he stopped it and the accused speeded with the minibus..."

The convict admitted the facts as correct and he had nothing to add. It baffles me that the convict as per the arguments submitted on his behalf feels that whatever defective there might have been has not been cured by the narrated and admitted facts. The convict could not have failed to realize that his conduct would result in the complainant sustaining injuries or even worse. Section 9 (4) of the Penal Code provides as follows:

"In determining whether a person has committed an offence a court shall not be bound to infer that he intended or foresaw a result of his actions by reason only of its being the natural and probable consequence of those actions, but shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inference from the evidence as appears proper in the circumstances."

It is clear from the facts as narrated and admitted that the convict having committed a traffic offence, and having been found by the traffic officers, he wanted to evade an arrest. In so doing there resulted a car chase with the police in pursuit. When he was cornered, and the complainant wanted to board his minibus, and before he could sit down, the convict again sped off, the complainant fell off and got injured in the process. Thus, on the facts as narrated and admitted, there is no other conclusion other than that the convict intended to cause harm to the police officer in order to avoid being arrested. He did intend to or foresaw that his actions would cause harm to the complainant. Thus, the defective plea herein was cured by narrated and admitted facts. A defective plea can be cured by the narrated and admitted facts –**Republic v Gama [1997] 2 MLR 34 (HC)**.

The first ground of review therefore fails and is hereby dismissed.

In the second ground of review it is argued that the lower court erred in law in convicting the convict of the offence of Obstructing a Police Officer contrary to section 256(b) of the Penal Code. Similarly, it has been argued that the plea was defective as the elements of the offence were not put to the convict. And further, that the facts as narrated and admitted did not cure the said defective plea. That the plea was defective is not in dispute. However the State submits that the same was cured by the narrated and admitted facts. I have gone through the lower court record and the facts as narrated and admitted and am left in no doubt that the convict willfully obstructed the complainant from executing his duties. The complainant was obstructed by the convict from enforcing traffic laws, the convict having been found committing a traffic offence. When the complainant found the convict committing a traffic offence, he sped off. When cornered, and when the complainant tried to board his minibus he sped off and in the process injured the complainant as well as obstructed him from enforcing traffic laws.

The second ground of review therefore fails and is hereby dismissed.


On the sentences imposed both parties agree that they are excessive. I do agree with both parties on this point. However, the offence of Acts intended to cause grievous harm under section 235(b) of the Penal Code attracts a maximum sentence of life imprisonment. I have considered all the mitigating and aggravating factors and I must state that the carnage on our roads and unnecessary loss of innocent lives is caused by disregard for traffic laws. And minibus drivers like the convict are the worst culprits in that regard. It is therefore imperative that meaningful sentences be imposed on those threatening the lives of innocent users of the roads; more so those entrusted with enforcing traffic laws must be protected from such reckless drivers. I will therefore set aside the sentence of 6 years IHL on the charge of Acts intended to cause grievous harm and impose a sentence of 3 years IHL.

As regards the sentence of 14 months IHL imposed on the charge of Obstructing a police officer, I set it aside and impose a sentence of 12 months IHL.

All in all, the convict's convictions are hereby confirmed on both charges. The sentences are reduced to 3 years IHL on the charge of Acts intended to cause

grievous harm; and reduced to 12 months on the charge of Obstructing a Police Officer. The sentences to run concurrently.

PRONOUNCED this 14th day of June 2018, at the Principal Registry, Criminal Division, Blantyre.

A handwritten signature in black ink, appearing to be 'S.A. Kalembera', written over a horizontal line.

S.A. Kalembera

JUDGE