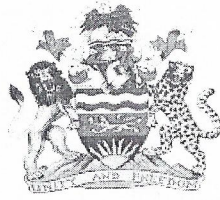


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Rep v Sakayiko

IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION  
sitting at Chichiri



CONFIRMATION CASE No. 107 of 2020  
(being criminal case no. 63 of 2019, FGM, Mwanza Magistrates' Court)

REPUBLIC

v

CHARLES SAKAYIKO

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ORDER ON CONFIRMATION

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nyaKaunda Kamanga, *J.*,

This criminal matter from Blantyre Magistrates' Court was remitted to the High Court for review in line with section 42(2)(f)(viii) of the Constitution, section 25 of the Courts Act and section 15(1) of the Criminal Procedure and Evidence Code (hereinafter the CPEC) to enable the High Court of Malawi verify the legality of the proceedings and whether the defendant was subjected to a fair trial and sentencing by the subordinate court.

On 6<sup>th</sup> February 2019, the defendant, Charles Sakayiko, appeared before the First Grade Magistrate sitting at Mwanza to answer a charge of the offence of grievous harm contrary to section 238 of the Penal Code. After trial the defendant was found guilty and convicted as charged. The evidence revealed that during the night of the 27<sup>th</sup> day of January 2019 at a drinking place in Benjamin Village in the district of Mwanza while he was fighting with the George Josephy he hit the victim with a stone in the left eye. The medical report reveals that the victim was injured and had to be treated at Mwanza District Hospital before he was referred to Queen Elizabeth Central Hospital in Blantyre where the ruptured globe was removed through the process of evisceration. The victim of this violent crime was admitted as a hospital inpatient for over one week.

In mitigation of sentence the prosecution noted that although the convict was a first time offender he had committed a serious offence and deserved a stiff sentence. The defendant informed the court that he had family obligations, being responsible for 5 children, a wife and a mother. On 19<sup>th</sup> March 2019 the Magistrate after considering the maximum penalty in light of the mitigating and aggravating factors he thought the defendant deserving of immediate custodial sentence owing to the seriousness of the offence. The magistrate imposed a

sentence of 132 months imprisonment with hard labour on the defendant with effect from date of sentencing, the 19<sup>th</sup> March 2019.

Section 238 of the Penal Code provides that, any person who unlawfully does grievous harm to another shall be guilty of a felony and shall be liable to imprisonment for 14 years. The 14 years imprisonment is the maximum sentence that has been reserved for the worst cases of causing grievous harm of which the within matter cannot be said to be one such case. The *Magistrates' Court Sentencing Guidelines* (Blantyre: Malawi Judiciary, 2018 at 24) suggests the starting point for the punishment for committing the offence of grievous harm as a sentence of five years imprisonment. However, the sentence guideline can be scaled up or down depending on the aggravating and mitigating factors that can be discovered in various cases. The case law also provides good guidance on sentencing trends in similar cases. In *Jussa Afiki v Republic*, criminal appeal no. 116 of 2007, the High Court set aside a 5 years sentence passed on a charge of causing grievous harm for being outrageous and on the side of excessiveness and substituted thereto 18 months imprisonment sentence. The appeal judge took into consideration the fact that accused person was a first offender, pleaded guilty to the charge and that he was of a youthful at 21 years old. In *Francis Katete v Republic*, criminal appeal no. 55 of 2000, the High Court set aside a 15 months sentence imposed by the lower court on a charge of causing grievous harm and substituted thereto 12 months imprisonment. After finding that the lower court's sentence was excessive, bearing in mind that the accused was a first time offender, was of youthful at 28 years old age and was as much a victim in the fight. In the case of *Demba Zambezi v Republic*, criminal appeal case no. 34 of 2009, the High Court reduced a 12 years sentence passed by the lower court and imposed 8 years imprisonment in its place. In *Naison Lucius v Republic*, criminal appeal case no. 46 of 2008, the complainant was attacked with a metal bar and sustained injury on the right cheek and his collar bone was broken, the accused was sentenced to 8 years imprisonment with hard labour by the lower court. On appeal the High Court reduced the sentence to 5 years imprisonment and noted that the accused was entitled to a measure of leniency due to his age and the fact that he was a first offender. The above mentioned cases are important in shading light on the sentencing trends to consider for this type of offence. However, in offences of this nature one most important factor that is considered in imposing an appropriate sentence to the accused is the degree of injury sustained by the complainant. It must be borne in mind that the degree of injury varies from case to case and hence the variation in sentencing. It is trite law that the sentence must fit the offence, the offender and as well as the public interest.



Having examined the record of the case this court finds that the finding by the lower court of guilty and the conviction of the defendant for the offence of grievous harm contrary to section 238 of the Penal Code, following the defendant's trial, is well founded and is hereby confirmed. A custodial sentence was an appropriate form of punishment for the 30 years old first time offender. The main aggravating factors are that the accused provoked the victim in that when the two were joking and insulting each other the defendant told Mr. Josephy that he had sex with his wife; the victim sustained a traumatic wound which led to him suffering deformation on the face and the loss of the use of one eye. In regard to punishing first time offenders, it is pertinent to refer to sections 339 and 340 of the CP and EC which provide for consideration of a suspended sentence for first time offenders. The court in *Republic v Fatsani Sakhwinya*, High Court / PR Confirmation case no. 359 of 2013 (unreported 24 July 2013) emphasises that for first offenders a sentence can only be as fits the offence and for the purpose of reforming or preventing the offender from committing offences in the future.

After considering the maximum penalty, the guideline sentence of 5 years imprisonment and the sentences in similar cases that have be outlined above this court makes the following three observations: that the sentence of 132 months imprisonment with hard labour that was imposed on the defendant for committing this violent offence is way too close to the maximum penalty of 14 years imprisonment, secondly that it is way above the sentencing guideline and thirdly it is manifestly excessive for the first time offender. If the prosecution had desired a stiffer penalty they had the discretion to charge the defendant with a more serious offence such as the offence of acts intended to cause grievous harm under section 235 of the Penal Code where the maximum penalty is imprisonment for life. This court exercises its sentencing discretion by setting aside the sentence of 132 months that was imposed by the trial magistrate and substitutes it with a reduced sentence of 96 months imprisonment.

Dated this 22<sup>nd</sup> day of April 2020 at Chichiri, Blantyre.



Dorothy nyaKaunda Kamanga  
JUDGE

**CASE INFORMATION:**

The Prosecution	:	Absent
Defendant	:	Absent /unrepresented
Mr. Amos	:	Court Clerk