

IN THE HIGH COURT OF MALAWIPRINCIPAL REGISTRYREVISION CASE NO. 3 OF 1994THE REPUBLIC

- versus -

EDSON CHITIPULA

In the Principal Residence Magistrate Court at Nkhotakota  
Criminal Case No. 74 of 1994

CORAM: Chimasula Phiri, Ag. J.  
Mwenelupembe, Ag. Chief State Advocate for the State  
Mthukane, Official Interpreter  
Namangwiyo, Recording Officer

ORDER IN CONFIRMATION

The accused person was convicted in the Principal Resident Magistrate's Court at Nkhotakota on a charge of theft of a bicycle contrary to section 278 as read with section 282 (h) of the Penal Code. Initially he pleaded guilty and was convicted on his own plea. The Case was then adjourned for sentence. On resumption the accused advised the court that when he first appeared in Court he was frightened hence his initial plea but that he wanted to change his plea to that of not guilty. The Court entered a plea of not guilty. The prosecution called four witnesses while the accused was the only witness for his defence evidence. He was convicted and sentenced to 18 months imprisonment with hard labour.

The Ag. Chief State Advocate submitted that the State supports the conviction. On sentence he submitted that the bicycle was restored to its owner and that the accused was a young first offender. The accused person also pleaded for mercy. He stated that he has a family and other dependants whose livelihood has been disrupted due to his imprisonment.

It has often been stated that family obligations are not a persuasive mitigating factor. The accused person ought to have thought of his family obligations before embarking on his dangerous course. At what point does he realise his responsibility? I would equally attach very little weight to this mitigating factor. I consider the restoration of the bicycle to the owner a persuasive mitigating factor although it was through the untiring efforts of our police force. It would

really have greatly reduced the sentence if the accused had voluntarily surrendered the bicycle to the owner without police intervention. I am of this view because I would consider voluntary surrender to be genuine contrition. I note that the accused initially pleaded guilty but later changed to a plea of not guilty. Technically, if he had maintained his plea of guilty I would have reduced the sentence to 15 or 12 months imprisonment with hard labour following the guidelines in Rep. - Vs - Misoya 7MLR 201. A plea of guilty is a strong mitigating factor. He was convicted after a full trial therefore I would sentence him to the appropriate sentence without any reduction. Thus the conviction and sentence of 18 months imprisonment with hard labour cannot be faulted. I confirm the same.

PRONOUNCED in open Court this 27th day of October, 1994 at Blantyre.



G M Chimasula Phiri  
AG. JUDGE