

Ref. No. MJ/CR/3/12/92

HIGH COURT  
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IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CRIMINAL APPEAL NO 21 OF 1993

*[Handwritten signature]*

SAMUEL CHILACHILA

VERSUS

THE REPUBLIC

CLERK OF COURT  
HIGH COURT OF MALAWI  
13 AUG 1994  
P.O. BOX 30214, CHICHIRI  
BLANTYRE 3, MALAWI

From the Senior Resident Magistrate's court at Mzuzu  
Criminal Case No 22 of 1992

CORAM: NIAMBO, J

Appellant present, unrepresented  
For the State, Chatsika, State Advocate  
Law Clerk, Chilongo  
Recording Clerk, Mtunduwatha

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JUDGMENT

This appeal is essentially against the sentence of three and a half years in prison with hard labour which the appellant picked up on March 04, 1993 when he appeared before the Senior Resident Magistrate's court at Mzuzu for theft from a person contrary to S.278 as read with S.282(a) of the Penal Code. When arguing the appeal, however, the appellant also appeared to attack the conviction. He generally denied to have been a party to the offence, just like he did during the trial. The court below did not believe him. I have myself carefully reviewed the evidence and with respect, I am unable to depart from the conclusion reached by that court on this point. The appellant was heavily implicated in the crime. Accordingly, the conviction cannot be interfered with - it was well grounded.

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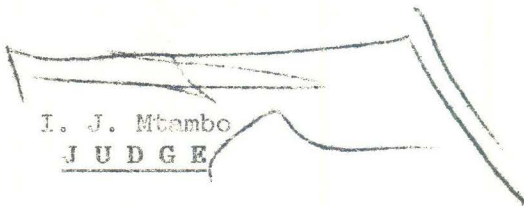
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Referring to the sentence, the appellant was jointly charged with two others who were each sentenced to twelve months' imprisonment with hard labour. They were aged eighteen and nineteen years. The appellant was aged twenty-eight. They were both first offenders. The appellant had a previous conviction for burglary and theft in 1990 and was sentenced to three years in prison with hard labour, which means that he had been out of prison for a very short period when he committed the present offence on December 1st, 1992; and the trial court entertained the view that he was the ringleader.

All the foregoing notwithstanding, it appears to me that although the court was entitled to pass different sentences the disparity of two and a half years is somewhat too pronounced. It tends to suggest that the appellant was being punished not only for the offence he had been convicted but for the previous one as well. That should not be allowed to happen as it obviously amounts to punishing the offender twice for the same offence. Learned counsel was of the view that the disparity was worrying.

Bearing all this in mind and that the appellant had been in custody since December 1st, 1992, I set aside the sentence in open court earlier today and substituted therefor such sentence as would result in his immediate release unless he was held for any lawful reason.

MADE in Chambers this 10th day of June, 1994 at Lilongwe.

  
I. J. Mtambo  
J U D G E