

Ref No SALIMA/SR/23/5/94



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL NO. 37 OF 1994

TRISTRAM ALEXANDER MITCHELL

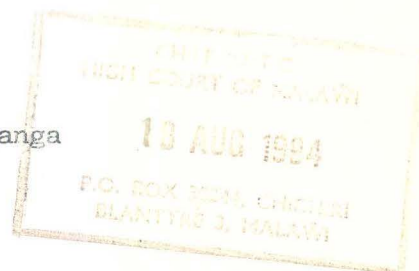
VERSUS

THE REPUBLIC

From the First Grade Magistrate's court at Lilongwe
Criminal Case No. 484 of 1994

CORAM: MTAMBO, J

Appellant present, represented by Chisanga
For the State, Limbe, State Advocate
Law Clerk, Chilongo
Recording Clerk, Mtunduwatha



JUDGMENT

The appellant, a British national aged 22, was on May 25, 1994 arraigned before the First Grade Magistrate's court at Lilongwe on a single charge of illegal possession of Indian hemp under reg. 4(1)(a) of the Dangerous Drugs Regulations as read with S.19 of the Dangerous Drugs Act. He admitted the charge and after his acceptance of the facts which were before the court as correct was convicted and sentenced to suffer imprisonment for 12 months with hard labour. He has appealed to this court against sentence only.

The facts are these: on May 24, 1994, at an unspecified place along the main Salima/Mtakataka road in the district of Salima, the police, who were travelling on that road, became suspicious when they saw the appellant sitting beside the road in a group of Malawians. They stopped and found that his pipe was stuffed up with Indian hemp and when he was searched more of the substance was found in his pockets. He was then and there arrested and when the drug was weighed it weighed 144.10 grams.




- 2 -

I have said that the appeal is against sentence only. He is a first offender. And as I have already said, he is aged 22. He pleaded guilty and thereby saved the prosecution the expense and trouble of a trial. The substance was little and clearly intended for his own consumption. In sentencing, the Magistrate observed that the offence is prevalent especially among tourists and expressed fear that this may give the impression that the country is fertile ground for this type of offence if meaningful sentences are not handed down. I agree. However, I am of the view that this is a proper case in which a fine should have been imposed, considering the circumstances which I have mentioned above. Accordingly, I set aside the sentence of 12 months' imprisonment in open court on June 10, 1994 and substituted therefor a fine of K2,000 or, in default of payment, imprisonment for six months with hard labour.

The appeal therefore succeeded to that extent only.

MADE in Chambers this 16th day of June, 1994 at Lilongwe.


I. J. Mtambo
JUDGE