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MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY
CRIMINAL DIVISION

*(Being Criminal Case No. 18 of 2016 before the First Grade Magistrate Court 1
Sitting at Chitipa)*

Between

The Republic

-v-

Estin Sinkhala and Victor Simwambi and Jatrick Sichela

CORAM:

HONOURABLE JUSTICE D. A.DEGABRIELE

Mr. D. Shaibu

Mr. N. Mdazizira

Zimba Bondo

Mrs Msimuko

Counsel for the State

Counsel for the convict

Official Interpreter

Court Reporter

DeGabriele, J

ORDER ON CONFIRMATION

The 3 convicts were convicted of the offence of cattle contrary to section 281 of the Penal Code. They pleaded guilty to the charge. The 1st and 3rd convicts were handed down a prison term of 30 months IHL, while the 2nd convict was ordered to be on Probation for a period of 18 months, with effective from 26TH February 2016, which was the date of arrest. The convict stole the bull at night and were intending to sell it off. They were arrested and the bull was recovered.


On review, the Judge set down the matter to consider a reduction of the sentence bearing in mind the mitigating factors, which were that the bull was recovered, the convicts pleaded guilty and the convicts were first offenders, and the 2nd convict was of tender age, as he was 14 years old at the time of commission of the offence. The aggravating factors were that the convict stole from his neighbour at night and that the MK60,000 he collected from a buyer of the cow was never recovered.

In its submission, the State argues that the sentences meted out were manifestly excessive in light of the mitigating factors and prays that the prison term for the 1st and 3rd convicts be reduced from 30 months IHL to 24 months IHL. The State further prays that the probation order for the 2nd convict be confirmed. Counsel for the convicts argues that the sentences be reduced and agrees with the State that the 1st and 3rd convicts be handed down a 24 months prison term; and that the probation order be reduced to 8 months.

Generally, first offenders are not to be given custodial sentences, except in exceptional circumstances, see *Republic v Mereka 1 ALR 201*. Having looked at the facts and submissions before me, I am of the considered opinion that the mitigating factors outweigh the aggravating factors. I find that bearing the circumstances of the case, a custodial sentence is appropriate, but it must be a sentence that is "blended with a measure of mercy according to the circumstances of the case, see *Republic v Shauti Confirmation Case No 175 of 1975 (unreported)*).

I therefore sentence the 1st and 3rd convict to 24 months IHL. The probation order is reduced from 18 months to 8 months, which reduction leads to an immediate release of the juvenile who is the 2nd offender.

Made in Chambers at Mzuzu Registry this 21st day of April 2017


D.A. DEGABRIELE
JUDGE