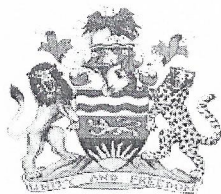


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IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION

sitting at Chichiri

CONFIRMATION CASE No. 33 of 2020

(being criminal case no. 170 of 2019, SGM, Mbulumbuzi Magistrates' Court)

REPUBLIC

v

MATHEWS KAIPA

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ORDER ON CONFIRMATION

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nyaKaunda Kamanga, J.,

This criminal matter from Mbulumbuzi 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 CP and EC) 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 12<sup>th</sup> November 2019, the defendant, Matthews Kaipa, appeared before the Second Grade Magistrate sitting at Mbulumbuzi where he pleaded guilty and was convicted of the offence of theft contrary to section 278 of the Penal Code. He admitted to stealing and selling the property of his 68 years old mother, which among other items included a blanket, 2 travelling bags, seven *zitenje*, two pairs of shoes, a hoe and a scumber, all valued at K30,000.

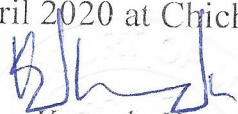
In mitigation of sentence the prosecution called for a stiffer sentences as the convict who was a first time offender was in the habit of 'terrorising' his old mother by stealing her property. They also noted that some of the stolen property was recovered. The 35 years old defendant requested for a lenient sentence due to his medical condition and due to the fact that he had children to take care of. The defendant in his caution statement stated that he used the money realised from the sell of the stolen property to buy beer and maize flour. On 15<sup>th</sup> November 2019 the Second Grade Magistrate after considering the provisions of section 340 of the CP and EC which talks of leniency towards first time offenders as well as the defendant's plea of guilty, his medical condition, his children and the recovery of the items noted that the poor relationship that existed between the defendant

and his aged mother. The court observed that although the victim was ill-treated by his son she withdrew several complaints that she had lodged with the police and decided to put him away from society for some-time in order to reform by sentencing him to 24 months imprisonment with effect from date of arrest.

After examining 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 theft contrary to section 278 of the Penal Code is well founded and is hereby confirmed. In terms of sentencing a custodial sentence was not appropriate form of punishment for a first time offender who stole property valued at K30,000 and in light of the other aggravating and mitigating factors as well as the maximum penalty of 5 years imprisonment for the punishment for the offence of theft. The *Magistrates' Court Sentencing Guidelines* (Blantyre: Malawi Judiciary, 2007 at 29) suggests a starting point of 6 months imprisonment and the case of *Republic v Kotamu*, HC/PR Confirmation Case 180 of 2012 (unreported 27 June 2013), provides good guidance on how the punishment for the offence of theft should be calculated. In the present case the 24 months imprisonment which was imposed was also manifestly excessive considering the value of the stolen property and sentences that were meted out in similar cases. In *Republic v Mwaiwawo Kaputeni*, HC/PR Confirmation Case no. 770 of 2013 (unreported 13 November 2015), a repeat offender who stole a camera and blanket valued at K78,000 and had a sentence of theft reduced from 24 months to 12 months imprisonment. Further, in the case of *Republic v Smart Kandodo and two others* HC/PR Confirmation case no. 240 of 2013 (unreported 21 August 2013) the defendants who were convicted of burglary and theft of household property worth K160,000 had the punishment of 24 months IHL for theft reduced to a period of six months imprisonment.

This court is of the view that in sentencing the defendant an order that the defendant perform certain hours of community service would have been more appropriate. Having noted the above issues, this court exercises its sentencing discretion by setting aside the sentence of 24 months that was imposed by the trial magistrate and substitutes it with a reduced term of imprisonment that which the defendant has already served, which is about 6 months, thereby resulting in the immediate release of the offender from custody.

Dated this 20<sup>th</sup> day of April 2020 at Chichiri, Blantyre.

  
Dorothy nyakaunda Kamanga  
JUDGE

**CASE INFORMATION:**

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