



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CRIMINAL DIVISION**

**CONFIRMATION CASE NO. 210 OF 2021**

**(Being Criminal Case Number 985 of 2019 in the SRM Court sitting at Blantyre)**

**THE REPUBLIC**

**VS**

**JAMES CHIMERA and AFIKI BENENGA .....CONVICTS**

**CORUM: HONOURABLE R.M CHINANGWA**

Kulesi	State Advocate
Penama	Legal Aid Advocate
Convicts	Present
Amos	Court Clerk

**ORDER ON CONFIRMATION**

1. This matter has been set down for consideration of enhancement of sentence.
2. The convicts were charged with the offence of aggravated robbery contrary to section 300 as read with section 301 of the Penal Code. Upon hearing the state and defence witnesses the Senior Resident Magistrate Court found the convicts guilty and sentenced the convicts to 10 years imprisonment with hard labour.
3. The brief facts of the matter are gathered from the second prosecution witness, who was one of the guards who witnessed the robbery. He said, ' I know the 2<sup>nd</sup> Accused (Afiki Benenga). I came to know him because on 1<sup>st</sup> November, 2020 at around 23:53 I heard breaking of something, we alerted three of us (guards) leaving out the 4<sup>th</sup> guard. We went to the place and found two people who were armed with a Panga and metals and they were

breaking the Plywood. When one of the two thieves saw us at a distance, he ran away. We managed to arrest the other through struggles, he traded a punch on one of us (the three) and fell to the ground and the Accused also fell. The guard that fell is called “Zeze” and the Accused who punched Zeze is the 2<sup>nd</sup> Accused (Afiki Benenga). We apprehended and tied him with leads, we sent a message to our boss, Mr Wisiki and then he called Limbe Police Station. The Police came and took the 2<sup>nd</sup> Accused. Upon investigating, we discovered that thirteen Plywoods had been stolen’.

4. At the hearing on enhancement of sentence the State, defence and the convict made submissions. Both the State and the defence argued that the mitigating factors are that the convicts are first offenders; the first convict is an orphan; the second convict lost his wife and is on ARV treatment. On the otherhand, the aggravating factors listed were the offence is common and serious; violence was used; stolen items were not recovered and the offence was well planned having been committed in a group. psychological trauma; the offence was planned; force was used to procure submission; the offence is a serious offence attracting a maximum sentence of life imprisonment. The accused repeated the mitigating factors as listed.
5. This court has to determine the appropriate sentence for the convict.
6. In arriving at the appropriate sentence the court has to examine both the mitigating and aggravating factors. “This will always involve a consideration of the extent and the circumstances in which the crime was committed, the personal circumstances of the defendant, the impact of the crime on the victim and the public’s interest in the prevention of crime”: **Rep v Nazombe** [1997] 2 MLR 105 (HC).
7. In **Rep v Kampingo and others** [1995] 2 MLR 754 (HC) it was held that courts have discretion in sentencing and are not compelled to impose the maximum penalty. The court in addition held that when sentencing at all times it is important for a court to take into account the trends in the levels of penalties actually imposed.
8. Section 301 (2) of the Penal Code provides that where an accused person is armed with any dangerous weapon or is in the company with one or more persons and at the time of the robbery wounds or beats any person, the offender is liable to be punished with life imprisonment.

9. Both the State and the defence have cited several cases showing the sentencing trends. In **Republic v Chrispine Mfuno** Confirmation Case Number 839 of 2013, a sentence of 10 years was confirmed where the victim was hacked with a panga knife on the head; goods stolen were not recovered; the offence was committed in a group; the accused person was a first offender.
10. This case is no different from the case cited above. However, this court observes that leniency may not always automatically be deserved in cases where the convict is a first offender and youthful. The circumstances of each case would determine if such mitigating factors would impact the final sentence. As can be observed, youthful offenders behave as any adult criminal offender. Their concern is the loot and not getting caught at all cost. Family matters and personal circumstances are only taken into account to a limited extent: **Rep v Chimbelenga** [1996] MLR 342 (HC). The convicts should have had those considerations in mind before committing the offence.
11. The sentence is enhanced to 12 years. The convicts are at liberty to appeal against both conviction and sentence.

Pronounced this 6 day of December.....2022 at BLANTYRE

  
R.M CHINANGWA

JUDGE