



**IN THE HIGH COURT OF MALAWI
CRIMINAL DIVISION
CRIMINAL APPEAL CASE NO. 37 OF 2016**

ISAAC SITOLE & ANOTHER

-V-

THE REPUBLIC

Coram: Hon. Justice M L Kamwambe

Miss Munthali of counsel for the State

Mr Maele of counsel for the Appellants

Mr Amosi... Official Interpreter

JUDGMENT

Kamwambe J

This is an appeal by the two Applicants, Isaac Sitole and Emmanuel Cosmas. They were convicted on their own plea of guilty and admission of the facts as true and correct as narrated by the State of robbery and sentenced to 96 months imprisonment with effect from 18th March, 2016. The main ground of appeal is that the lower court erred in law in failing to have regard to the proviso in section 251 of the Criminal Procedure and Evidence Code (CP&ED) before entering a plea of guilty. It goes further to say that the lower court erred in law in failing to give the Appellant an option of a fine.

The second ground is that the sentence of 96 months imprisonment is manifestly excessive.

In respect of the first ground of appeal, section 251 of the CP&ED provides that:

- 1) *"When an accused appears or is brought before a court, a charge containing the particulars of the offence of which he is accused shall be read and explained to him and he shall be asked whether he admits or denies the truth of the charge.*
- 2) *If the accused admits the truth of the charge his admission shall be recorded as nearly as possible in the words used by him and he may be convicted and sentenced thereon:*

Provided that before a plea of guilty is recorded, the court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit without qualification in the truth of the charge against him."

The accused were unrepresented and they pled separately as follows:

"I understand the charge. I admit it. I took the said items....I used and threatened to use violence to complainant."

At least the appellants said that they understood the charge, however, according to strict wording of the proviso, before a plea of guilty is entered, the court is obligated to ascertain that the accused has understood the nature and consequences of his plea. This must be visible on the file. This provision ensures that an accused is protected from making a mistaken plea of guilty through ignorance. This process is rarely followed by many courts. It is often bypassed. It may appear as if it is an unnecessary labour, but it is safer to abide by it because it exists in the statute. All that the court has to do is to inform the accused that he is faced with a serious

