



**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY**

**CRIMINAL DIVISION**

**CONFIRMATION CASE NO. 682 OF 2019**

**(Being Criminal Case No. 588 of 2018 in the First Grade Magistrate Court  
sitting at Dedza)**

**THE REPUBLIC**

**and**

**LUWIZI CHAPENDEKA**

**CORAM: HON. JUSTICE ANNABEL MTALIMANJA**  
Mr. Msiska, Senior State Advocate, of Counsel for the State  
Ms. Ngoma, Senior Legal Aid Advocate, of Counsel for the Convict  
Mrs. Namagonya, Court Reporter  
Mrs. Choso, Court Interpreter

**ORDER ON CONFIRMATION**

1. Luwizi Chapendeka, aged 47 at the material time, was charged in the First Grade Magistrate Court sitting at Dedza with two counts of Trafficking in

Persons, contrary to section 14 (1) of the Trafficking in Persons Act, Cap. 7:06 of the Laws of Malawi (hereinafter referred to as the “Act”). The particulars of the offence averred that on or about 13<sup>th</sup> October, 2018, he was found trafficking DL and RF from Malawi to Mocambique for the purpose of exploiting them.

2. He was convicted as charged on his own plea of guilty and sentenced to a custodial term of 14 years imprisonment with hard labour (IHL). Upon review, the conviction was confirmed, but the matter was set down to consider enhancing the propriety of the sentence considering all the circumstances of the case and the applicable sentencing principles.
3. In mitigation of the sentence, it was submitted that the Convict deserves a lenient sentence on account of the fact that he is a first offender and also that he pleaded guilty and therefore did not waste the Court’s time.
4. The State submitted that the Convict premeditated the offence and had intention to traffick the minors for his own benefit. Further, it was submitted that the offence of trafficking is becoming more prevalent in our society, as such, sentences imposed should be meaningful to deter would be offenders. On this premise, the State prays that the sentence of the lower Court should be confirmed.
5. As indicated, the Convict was charged with two counts of the offence of Trafficking in Persons contrary to section 14 (1) of the Act. This Court observes from the record of the proceedings in the lower Court that the victims that the Convict trafficked were aged 18 and 17 years old at the time the offence was committed. On account of the ages of the victims, the Convict ought to have been charged with the offence of Trafficking in children contrary to section 15 (1) of the Act and not Trafficking in persons contrary to section 14 (1) as he was.
6. The significance of charging the Convict under section 15 (1) is that the offence of Trafficking in children carries a maximum penalty of 21 years imprisonment whilst the offence of Trafficking in persons carries a penalty of a maximum of 14 years imprisonment.

7. A perusal of the order on sentence at page 21 of the record of the proceedings shows that notwithstanding the fact that the Convict was charged under section 14 (2), the lower Court assessed and arrived at the sentence that was meted out on the premise of section 15 (2). This was erroneous. The sentence of the lower Court ought to have been determined on the premise of the law under which the Convict was convicted.
8. As indicated, the maximum penalty prescribed for the offence of Trafficking in persons with which the Convict was charged is 14 years, without the option of a fine. By imposing the sentence of 14 years IHL, the lower Court imposed the maximum sentence on the Convict.
9. It is a well settled principle of sentencing that the maximum sentence is reserved for the worst offender. Now, whilst being fully cognizant of the fact that the offence of Trafficking in persons is a heinous offence, and also of the circumstances of this case, it cannot be said that this was a worst case of trafficking. In this Court's considered view, this case does not merit imposition of the maximum sentence of 14 years.
10. Considering the aggravating and mitigating factors herein, a sentence of 8 years is appropriate. This Court therefore sets aside the sentence of 14 years IHL meted by the lower Court and substitutes therefore, a sentence of 8 years IHL, with effect from the date of his arrest.

Pronounced in Open Court this 24<sup>th</sup> Day of September, 2021.

  
Annabel Mtalimanja  
**JUDGE**