

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 37 OF 1996**

**THE REPUBLIC
VERSUS
MABVUTO VILLA BANDA**

From the Principal Magistrate's Court at Balaka Criminal Case No. 18 of 1995

CORAM: MWAUNGULU, J

Chikonga, State Advocate for the State

Accused, present and unrepresented

Mangisoni, Official Interpreter

Ngwira, Recording Officer

Mwaungulu, J

JUDGMENT

The case was set down to consider the conviction and sentence. The defendant, Mabvuto Villa Banda, was convicted of the offence of robbery with violence contrary to section 301 of the Penal Code. The defendant was sentenced to five years imprisonment with hard labour. The matters, as I understand them, are whether on the facts the defendant was properly convicted of robbery and, if he was, the sentence of the lower Court was proper.

The evidence on what took place on the 12th of November 1995 comes from the complainant. On that evening she was on duty at Thukuta hostel where she works. A guest wanted to stay at the hostel. The guest gave her money and she went out to look for change. She was out to pass water when, just outside the hostel, she was met by three boys among whom she identified the defendant. Her story is that the defendant with his friends took K40 from her. She shouted for help. Her friend came. She managed to take the K40 away. She threw it at a distance. The defendant managed to take it away again. After this, the defendant and his friends started assaulting the complainant and her friend.

On these facts it is easy to see why the Reviewing Judge suspected the conviction. Our section

301 of the Penal Code and indeed similar Codes in England where ours has its origin are a codification of the common law. Robbery comprises in the use or threat of use of force or violence to obtain the thing stolen. On the evidence as was before the Court there was no suggestion of violence or force being used or a threat of it. The defendant and his friends came on the complainant and took the money. If anything the force used was just to snatch the money. This will not suffice for robbery. Of course later, after the money had been taken, the defendants started assaulting the complainant's friend who had come to rescue the money. This assault was after the defendant had already taken the money. It is clear from the record that the subsequent assault had nothing to do with the intention to retain the money.

Where the property that is to be stolen is in the physical possession of a victim any theft will imply the use of force to obtain the property. The use of such force as is necessary to obtain the thing stolen is not sufficient to find a conviction of robbery under our Penal Code. Our section 301 requires that there must be violence or threat of violence to obtain or retain the thing stolen. On the facts of this case there was no evidence to justify a conviction for robbery. I quash the conviction for robbery contrary to section 301 of the Penal Code. I convict the defendant of the offence of theft from a person contrary to section as read with section 282(a) of the Penal Code. I set aside the sentence of five years imprisonment with hard labour. The defendant will serve three years imprisonment with hard labour.

Made in open Court this 15th day of February 1996 at Blantyre.

D.F. Mwaungulu

JUDGE