

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 1162 OF 1995**

**THE REPUBLIC
VERSUS
MAXWELL MAGANGA**

In the First Grade Magistrate's Court at Ntcheu Criminal Case No. 297 of 1995

CORAM : MWAUNGULU, J.

Chikonga (Miss), State Advocate, for the State

Accused, present and unrepresented

Mangisoni, Official Interpreter

Ngwira (Mrs.), Recording Officer

JUDGMENT

When this matter came before the Judge who reviewed it he ordered it set down to consider the severity of the sentence. On reading the record it looked as if the conviction was suspect. The defendant was convicted by the Second Grade Magistrate at Ntcheu of the offence of robbery with violence contrary to section 301 of the Penal Code. He was sentenced to 18 months imprisonment with hard labour. The sentence was to be served immediately.

The defendant actually pleaded guilty to the charge of robbery when he appeared before the Second Grade Magistrate. The facts proffered by the prosecution in support of the plea, however, are anything but supportive of the plea and conviction. It is said that the complainant, Tyson Gamaliel, found the defendant at a pub. The defendant and his friend started intimidating the defendant. They wanted his pay. The complainant could not oblige. The defendant took money from the complainant's pocket. The complainant was intimidated further and he left the place. The defendant was arrested. At the police he admitted to snatching money from the complainant with a friend.

Robbery has been defined by our statute, the Penal Code. The statutory provision must be

applied to the facts. Under section 301 of the Penal Code there must be “actual violence” or “threat of actual violence.” These requirements are scarcely, if not, scantily fulfilled by an allegation of intimidation which could be past present or future. There is no indication of the nature of intimidation or what was involved in the intimidation. The conviction for robbery with violence on the facts as preferred was unsatisfactory. It is set aside. There is more to show the offence of theft from a person contrary to section 278 as read with section 282(a) of the Penal Code for which I convict the defendant.

I, therefore, set aside the sentence of the Court below the defendant will serve a sentence of two years imprisonment with hard labour.

Made in open Court this 23rd day of February 1996 at Blantyre.

D.F.Mwaungulu

JUDGE