

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 196 OF 1997**

**THE REPUBLIC
VERSUS
BANDAWE AKISHONI**

From the Second Grade Magistrate's Court at Nchalo Criminal Case No. 2 of 1997

CORAM: MWAUNGULU, J

Manyungwa, State Advocate, for the State

Accused, Present and unrepresented

Mangisoni, Official Interpreter

Chilunga, Recording Officer

Mwaungulu J

JUDGMENT

This case was set down by the Honourable Mr. Justice Tembo to consider the severity of sentence. The Second Grade Magistrate at Nchalo sentenced the defendant, Bandawe Akishoni, to twelve months imprisonment with hard labour, whom he convicted of the offence of theft of cattle contrary to section 278 of the Penal Code. The Judge who reviewed this matter thought that the sentence is manifestly excessive.

When passing sentence the Court below said that the offence which the defendant committed could not be condoned. The Court below considered the fact that the maximum sentence for the offence was fourteen years imprisonment. It imposed the sentence of twelve months imprisonment to deter others from committing this offence.

The defendant was convicted when he pleaded guilty to stealing one goat. At the time the defendant was arrested he had slaughtered the goat. Only a small part of it remained. The complainant, therefore, suffered total loss.

This Court has always said that it should be really seldom that first offenders should receive sentences whose purpose is to prevent others from crime. Consequently, a first offender should only receive him from further mischief. This will be achieved if the sentence fits the crime, the offender, the plight of the victim and the public interest in preventing crime. First offenders should not be used as scapegoats for general deterrence. The Court below was obviously overly infatuated with the quest for general deterrence that, in my judgment, it passed an overly sentence on the defendant.

A sentence of one year imprisonment for theft of a goat is manifestly excessive even if, as the Court below did, regard the maximum sentence. Theft of cattle is a composite offence encompassing several beasts amongst which the goat is far from being the largest or most exotic. Then one has also to worry about numbers. It is not unoften that this Court has to deal with larger numbers than one goat. The maximum sentence is reserved for the worst instance of the offence. In the panorama between the worst instance of the offence and the ordinary will be many instances which the Court will have to decide what is the appropriate sentence. The starting point for theft of a goat should be six months imprisonment with hard labour. This sentence can then be scaled upwards or downwards to reflect mitigating or aggravating circumstances.

Here there were mitigating factors. The defendant had pleaded guilty. He is a first offender. The sentence of one year imprisonment with hard labour in the face of these mitigating factors, factors which were not considered by the Court below, is manifestly excessive. I agree with the Reviewing Judge.

The defendant has been in custody since 6th January 1997. I pass such a sentence as results in his immediate release.

Made in open Court this 24th day of April 1997 at Blantyre.

D.F. Mwaungulu

JUDGE