

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL APPEAL NO. 73 OF 1997**

**SUNGENI MKOKA  
VERSUS  
THE REPUBLIC**

**From the First Magistrate Court sitting at Limbe Criminal Case No. 641 of 1997**

**CORAM: MWAUNGULU, J**

**Nkhoma, for the appellant**

**Mazoe, State Advocate, for the respondent**

**Sokabanda, Interpreter**

**Marsen, Recording Officer**

**MWAUNGULU, J**

**JUDGMENT**

This is an appeal from the judgment of the First Grade Magistrate sitting at Limbe. The magistrate convicted the appellant of two offences against the Penal Code: common assault and malicious damage contrary to sections 253 and 344 respectively. The appellant was sentenced to one month's imprisonment on the first count and two weeks imprisonment on the second count. The sentences were ordered to run concurrently and immediately. The appellant pleaded guilty to the charges. He is therefore only appealing against the sentence.

The appellant, unrepresented in the Court below, appears in this Court by counsel. Three grounds have been urged on his behalf. On each of them the appeal ought to be allowed. First, it is said for him that the Court below erred in sentencing him to a custodial sentence. Further it is urged that the Magistrate did not comply with the provisions of section 340 of the Criminal Procedure and Evidence Code. Finally it is contended that the sentence imposed by the Magistrate is manifestly excessive.

On the 23 rd. of June 1997 there was a funeral at the appellant's house. The complainant sat at her house next door. It appears she never went to the place where the funeral was. This did not please the appellant. He swooped on her, assaulted her and destroyed her dregs. The appellant was taken to the police. He admitted the two charges at the police and the Court below.

The Court below unfortunately gave no reasons for the sentences it imposed. There is no harm in repeating what this Court has said several times. It is important that sentencers at first instances should give reasons for the sentences arrived at. Admittedly what sentence to impose is a matter entirely in the discretion of the Court sentencing the offender. It is, however, a discretion which, like all others, must be exercised judicially. It must be exercised by the law and after due regard of all the circumstances of the case. The exercise of the discretion is subject to review on appeal or review. It is important therefore that sentencing Courts, to assist this Court on review or appeal, give reasons for sentences passed.

Apart from the benefits to this Court, it is important that the defendant knows why he is punished to the extent chosen by the sentencing Court. One purpose of punishment is to deter the particular offender from committing crime in future. The reasons elaborated by the Court will go quite some way in helping the offender appreciate the effect of his crime and the sentence imposed by the Court. The result will be the same on others who are tempted to think that crime pays. More importantly, the Criminal is publicly enforced on public funds. It is important that the public knows how its public institutions are handling matters before them.

The first ground of appeal is a criticism which could have been avoided if the Court below had considered the decision of this Court in Rep. V. John (1978-80) 9 M.L.R. 207; and Bobhat V. Rep (1994) C.A. No.29. The appellant is a first offender. Section 340 of the Criminal Procedure and Evidence Code, referred in the second ground of appeal, provides:

“(1) Where a person is convicted by a court other than the High Court of an offence (not being an offence the sentence for which is fixed by law) and no previous conviction is proved against him, he shall not be sentenced for that offence, otherwise than under section 339, to undergo imprisonment (not being imprisonment to be undergone in default of the payment of a reasonable fine) unless it appears to the court, on good grounds (which shall be set out by the court in the record), that there is no other appropriate means of dealing with him.”

A Court faced with a defendant who has been convicted of an offence for the first time must by the process of elimination decide that he other non-custodial sentences are not the appropriate way of dealing with him. The Court must discount a fine, probation, public works and absolute and conditional discharges. In arriving at this the Court may have regard to the matters raised in section 337 of the Criminal Procedure and Evidence Code: youth, old age, character, antecedents,

home surroundings, health or mental condition of the accused, or to the fact that the offender has not previously committed an offence, or to the nature of the offence, or to the extenuating circumstances in which the offence was committed.

The appellant in this matter is nineteen years of age. Up to this point, he was of good character. There is no suggestion that his surroundings were squalid or despicable. The appellant was

committing an offence for the first time. Both common assault and malicious damage to property are misdemeanours. They are not serious offences after all. The assaults and malicious damage were not grave by all standards. The offences were committed in sombre setting. The belief in witchcraft was unreasonable but very critical in assessing the circumstances which should affect the sentence. In my judgment this was not a case where a custodial sentence was called for. If a custodial sentence was justified, it should have been suspended on the same principles that have lately been considered in Bobhat's case.

I allow the appeal. I pass such a sentence as results in the immediate release of the prisoner.

Made in open Court at Blantyre this 24th Day of July 1997.

**D.F. Mwaungulu**

**JUDGE**