

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL APPEAL NO. 91 OF 1997

THE REPUBLIC

VERSUS

MCHACHA MPAKULA

AND

THAVE MPAKULA

In the Second Grade Magistrate Court sitting at Bangula
Criminal case No. 109 of 1997

CORAM: MWAUNGULU, J

Kapanda, State Advocate, for the State

Appellants, present, unrepresented

Chilunga, the official interpreter

Mangwana, the recording officer

MWAUNGULU, J

JUDGMENT

This is an appeal from the judgment of the Second Grade Magistrate sitting at Bangula. That court convicted the appellants, Mchacha and Thave Mpakula, of the offence of theft of cattle. This is an offence under section 281 as read with section 278 of the Penal Code. The Second Grade Magistrate sentenced the appellants to two years, imprisonment with hard labour. The appellants query the conviction and the sentence.

The appeal against conviction is incompetent. The appellants pleaded guilty when they appeared before the second Grade Magistrate Court. There is no suggestion in the grounds of appeal or in the record that they did not appreciate the proceedings in the court below, the plea or the nature of the offence preferred against them. Section 348 of the Criminal Procedure and Evidence Code limits appeals where the defendant pleaded guilty to the charge in the court below. I dismiss the appeal against conviction.

There is so much to say about the sentence. On this aspect both appellants contend that the sentence imposed is manifestly excessive for first offenders. They are right. Stealing cattle, as the court below observed, is a serious offence if one considers the sentence that the legislature prescribed. Even for serious offences, one has to look at the actual instance of that crime and decide whether it is that kind of instance where a heavy as opposed to a light sentence would be the proper way of dealing with the offence and the offender. In **Republic v Phiri(Kaziputa)** (1997) Conf. Cas. No. 801 this Court said:

“ The court should pass a sentence that compares well with sentences usually passed for offences more serious, less serious or comparable. Sentences passed for theft, for example must compare with those passed for robbery, burglary, rape and the like. The court has also to compare the extent and nature of the conduct complained of to the possible and proven conduct on the same offence. A sentence for grievous bodily harm, for example, that involves morbid injury has to compare reasonably to a sentence involving superficial injury.”

Theft of cattle is a composite offence that covers all sorts of beasts on four or two legs. There are animals so large the theft of which would be higher. Yet there are other beasts albeit small yet exotic. Their theft is a serious matter. Then there are all sorts of beasts which by comparison should attract lesser sentences. In this category would be theft of sheep and goats. Even here one has to look at the number of beasts involved. Here only one beast was involved. The beast is neither large nor exotic. Two years is manifestly excessive.

Anyway the appellants pleaded guilty. Such pleas should be encouraged. The way to do that, I think, is to meet such pleas with a meaningful reduction in a sentence. In **Republic -v- Chikoko**, (1997) conf. Cas. No. 776, the Court said:

“It has been said in this court often that such a plea should merit the defendant a reduction of up to a third of the possible sentence. This is for condign and benign reasons. Court’s time and

energy are preserved for deserving cases. To the victim reliving the ordeal through a court process is avoided. This is especially true where the crime involves violence or indecency.”

The appeal against the sentence succeeds. The appellants have been in custody since April. I pass such a sentence as results in their immediate release.

Made in Open Court this 7th Day of November 1997.

D.F. Mwaungulu.

JUDGE