

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 150 OF 1997**

**THE REPUBLIC
VERSUS
MATEBULE BATSON**

In the First Grade Magistrate Court sitting at Limbe Criminal case No. 24 of 1997

CORAM: MWAUNGULU, J

**Manyungwa, Principal State Advocate, for the State
Defendant, present, unrepresented
Marsen, the official interpreter
Soka Banda, the recording officer**

Mwaungulu, J

JUDGMENT

The judge who reviewed this matter set it down to consider the severity of the sentence. The First Grade Magistrate at Limbe convicted the defendant, Matebule Batson, of the offence of theft by servant contrary to section 286 as read with section 278 of the Penal Code. The First Grade Magistrate sentenced the defendant to eighteen months imprisonment with hard labour. I and the Principal State Advocate are agreeing that the sentence of the court below was manifestly excessive.

On 16th June, 1996, the defendant, a watchman employed by the complainant, stole the complainant's property worth K1, 300. The defendant pleaded guilty just as he admitted the

charge at the police. When sentencing him the court below did not give reasons for the sentence it imposed.

The lower court gave no reasons for the sentence it imposed. This is not proper. A sentencer should always give reasons for the sentence he is imposing. Sentencing is exercise of a discretion across the range of a sentence prescribed by the Legislature. The exercise of the discretion is reviewable both as regards the actual sentence passed and the reasons for it. The discretion, like any other, should be exercised judicially. The Court exercising the discretion must consider all the circumstances before it and the law on the matter. It is a wrong exercise of the discretion to overlook or de-emphasize a material factor. The court reviewing the exercise of the discretion will interfere with a wrong exercise of the discretion. It is very important, therefore, that a sentencing court should give reasons for the sentences it is imposing. Moreover the beneficiaries of our penal policy are entitled to know why and how a sentence has been arrived at. The victims of the crime will be appeased by the reasons and can walk tall in the firm understanding that the felon has received deserved justice. Equally, the public, which funds the criminal system to curb crime, are entitled to know how and why a certain approach was preferred. Ultimately, the reasons advanced by the court may be the better lessons to the offender and others who are on the doorstep of entering a life of crime(Republic v. Banda(Patrick), (1996) Conf. Cas. No. 735; Republic v. Kanthula, (1995) Conf. Cas. No.1151).

I realise how difficult it is to arrive at an appropriate sentence in a particular case. Good sentencing practice is a product of long experience at the trade. Much of that experience is achieved by comparing sentences that courts with a concurrent jurisdiction and similar locality impose. If uniformity is a quality of justice comparison becomes imperative. There must be included in that panorama the peculiarities of each case and individual personal factors. Equally much assistance is available in decisions of superior courts who from time to time assess the national temperament. Sentencing courts are not bound by such sentences. Where sentences of superior courts establish a trend, departure has to be explained or justified on the evidence.

This court has tried to lay a guideline for theft by servants. In Republic v. Missiri, (1994) Conf. Cas. No. 1392 it was said:

“In Malawi, after looking at sentences that have been approved by this Court on appeal or review, I would suggest the following guideline. Where the amount is less than K10, 000 two years would be appropriate. Cases involving sums between K10, 000 and K30, 000 would attract a sentence of up to three years. Where a greater sum is involved of let us, say between K30, 000 and K70, 000 four years would be appropriate. Six years would be appropriate for sums between K 70,000 and K100, 000.”

Here property stolen is worthy K1, 300. The guideline envisaged a full trial. The defendant actually pleaded guilty. He has been in prison since December 1996. I pass a sentence as results in the defendant’s immediate release.

Made in open court this 13th Day of November 1997

D.F.Mwaungulu

JUDGE