IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL APPEAL NO. 134 OF 1996

JOSEPH KUNGWEZO BANDA

VERSUS

THE REPUBLIC

From the First Grade Magistrate's Court at Salima

Criminal Case No. 155 of 1996

CORAM: MWAUNGULU, J

Manyungwa, State Advocate, for the State

Accused, Present and unrepresented

Chilunga, Official Interpreter

Mangisoni, Recording Officer

Mwaungulu, J

JUDGMENT

The defendant, Joseph Kungwezo, appeals against the sentence. He was convicted at the Magistrate Court in Salima of the offence of unlawful wounding contrary to section 241 of the Penal Code. He was sentenced to two years imprisonment with hard labour. The sentence was to be served immediately. It is against the sentence and immediate imprisonment that the appeal is made.

The appellant met the complainant at the bus stage. He accused the complainant of having an affair with the appellant's wife. The complainant refused. The appellant was annoyed. He hit the complainant with a metal bar. The complainant suffered two small pin-sized wounds. He was admitted for three days.

In passing the sentence the Court below did say that the appellant was a first offender. The Court, however, made an unexpected statement, namely, that the appellant had failed to mitigate and it would sentence the appellant to two years imprisonment with hard labour. Most defendants that appear in our Courts are not represented. They are far away from the services of legal aid. Most of them have no access to legal practitioners. Even if they had, they cannot pay for such service. Sentencing is the most serious and crucial aspect of the whole criminal process. Most defendants are unschooled. It is a whole thing to expect them to give an intelligent and intelligible mitigation. The Court should, therefore, in such a case look at every information in its power to enable it to arrive at a sentence that fits the offence, the offender, the victim and the public interest in prevention of crime. Apart from the fact that the appellant was a first offender there was information on the record from which mitigating factors could be discovered.

Even if the appellant had failed to mitigate, the Court was required to look at the facts or, if there was one, evidence during the trial in arriving at the sentence appropriate to the case. The injury caused was not grave. It was described as “pin-sized stabs wounds” by the doctor. In any case the appellant had pleaded guilty and generally cooperate with the police during the investigations. There was, therefore, more in mitigation apart from the fact that this was the appellant’s first offence.

The appellant contends that the Court should have imposed a fine. I do not think so. The offence is serious. It involves bodily harm. Those who commit this offence exude a cruel and sadistic tendency or trait which is abhorrent to civility and a disregard of human suffering. It should be very rare indeed that such conduct should be visited by a fine .The words of Cram, J. in R.v.Gondwe (1964-66) A.L.R. (M) 247) are appropriate. The judge said that to impose a fine for serious offences is tantamount to creating the impression that “grave moral turpitude can be purged by payment of money.” The prison sentence, however, was, in view of what I said earlier, manifestly excessive. The appellant has been in prison since July 1996. I allow the appeal against a sentence. I pass such a sentence as results in his immediate release.

Made in open Court this 14th day of March 1997 at Blantyre.

D.F. Mwaungulu

JUDGE