

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CONFIRMATION CASE NO. 196 OF 1999**

**THE REPUBLIC**

**VERSUS**

**DALLAS FESTINO NGABU**

From the Second Grade Magistrate Sitting at Nchalo, Criminal Case No. 22 of 1997.

CORAM: D F MWAUNGULU (JUDGE)

Manyungwa, Assistant Chief State Advocate

Defendant, absent, unrepresented

Kachimanga, official court interpreter

**JUDGMENT**

The judge who reviewed this case set it down to consider the sentence. The Nchalo second grade magistrate court sentenced the defendant, Dallas Festino Ngabu, to three years imprisonment with hard labour for theft. The reviewing judge thought that the sentence ought to have been enhanced because of the number of mags that were stolen and the value of the cotton that was stolen. The reviewing judge thought that the sentence should have been enhanced to four years imprisonment with hard labour. On the facts of this case the sentence should infact have been reduced.

The facts in this case are not complicated and in so far as they help to decide the sentence are as follows. The Agricultural Development and Marketing Corporation (ADMARC), hires motor vehicles to transport produce. The defendant was a driver to one of the motor vehicles that the corporation hired to carry cotton produce. The defendant loaded 70 bags of cotton to take to a ginnery. There is evidence that he offloaded half the load to another transport. He arrived with only half the load at the ginnery. He was convicted after full trial.

The lower court took a very serious viewing of the offence particularly because it thought there was breach of trust. That is not understandable on the charge which was simply theft. This court has always considered breach of trust in cases where the defendant have been convicted of theft by servant. Only however in those cases where trust is reposed in the office in which the defendant is involved is got has proceeded the fact that breach of trust will not be a serious consideration for servants who steal that are not like for example the bankers, accountants etc in whom much well trust is expected. Obviously, this degree of trust is and should not be expected of instant reason dishonestly like the present where the defendant is only charged of simple theft.

It still remains to consider whether the sentence here was manifestly inadequate to warrant interference. As I have said the sentence ought the fact to have been reduced. It is manifestly excessive. The value of cotton stolen is put at K27,000. In this court we have dealt with thefts involving much of than was involved in this case. Even there our efforts have been moderated by maximum sentence which is five years imprisonment with hard labour. I do not think that four years or three years is an appropriate sentence for theft of cotton only worth K27,000. In any case the defendant here is committing an offence for the first time. He is young. A short and sharp sentence is appropriate. I would have thought that one year imprisonment with hard labour is appropriate in this case.

Unfortunately, the Registrar did not set this case on time. The second grade magistrate sentenced the defendant on the 26th March, 1998. under section 15(4) of the Criminal Procedure and Evidence Code. This case should have been set down at the latest on 26th March, 1999. In any case the Registrar should have considered the possibility of early date in the sentence under section 107 of the Prison Act.

If he had, this case should have been set down before 30th November, 2000. The defendant has already saved the sentence in this case. I therefore make no order.

Made in Open Court this.....Day of

DF Mwaungulu

**JUDGE**