IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 237 OF 1999

THE REPUBLIC

AND

BULAZIO MUTAWO

From the First Grade Magistrate Court at Limbe Criminal Case No. 1572 of 1998

CORAM: HON. MWAUNGULU, J

Manyungwa, Assistant Chief State Advocate, for the State

The defendant, present, unrepresented

Kachimanga (Mrs.), Official Interpreter

Chingota (Mrs.), Court Reporter

Mwaungulu, J

JUDGEMENT

This case is in this Court under the general revisionary powers under section 25 of the Courts Act and sections 15 and 353 of the Criminal Procedure and Evidence Code. The First Grade Magistrate sentenced the defendant to four and half years imprisonment with hard labour. The First Grade Magistrate convicted the defendant of theft. Theft is an offence under contrary to section 278 of the Penal Code. The judge who reviewed this case thought that the sentence is excessive. He thought that for the maximum punishment of five years for the offence, four and half years the first grade magistrate imposed was manifestly excessive. The reviewing judge also

thought, correctively in my judgement, that the maximum sentence is usually reserved for the worst instance of the offence. He thought, just like the assistant chief state advocate, that the case before the lower court was not one of the worst instances of the crime.

The defendant was convicted for stealing two bales of tobacco, the property of Limbe Standard Tobacco. The defendant was employed by a security company Standard Tobacco Company hired to look after its property and premises. The defendant convinced another and stole two bales of tobacco from the shed. The value of the bales was MK3OO, 000.

The lower court was greatly influenced by the value of the property stolen. The lower court referred to Republic v Missiri, Conf Cas. No. 1392 of 1994, where this Court laid a guideline for theft by servants. The lower court was not very much influenced by the decision. The magistrate thought, however, that, given the amount of stolen property, a heavy sentence must be imposed. He therefore passed the sentence of four and half years imprisonment with hard labour.

I agree with the reviewing judge's observations. The assistant chief state advocate is like minded. The court below should have considered the maximum sentence. On first impression, this court could not normally have interfered with this sentence. The defendant stole a large amount of property. This Court, however, is guided by principle. One such principle is that a sentencing court must reserve the maximum sentence for the worst instance of a crime. K3000, 000 worth of property is considerable. This Court, as pointed out in Republic v Nambazo, Conf. Cas. No 643 of 1999, has considered property worth more than MK3000, 000.

Section 278 of the Penal Code is a general prohibition against theft. One, however, has to consider the types of property that could be stolen. This Court has considered theft of cars, some of considerable value. For these, this Court has passed sentences clear from the maximum sentence.

The maximum is very low. Consequently, for reasons expressed recently in Republic v Nalumo, Conf. Cas No. 490 of 2000, unreported, courts have to pass low sentences for monetary values that would have shattered our imagination few years ago. In Republic v Nalumo, this Court said:

"The limitation is the maximum sentence. Current economic trends reflected in a sinking currency and war time interest rates and inflation can only mean that sentences have to be reasonably low for a considerable part of the lower band of the crime."

There were mitigating factors too. The defendant suffers from tuberculosis. The lower court accepted that. Normally the Court will not take into account a prisoner's sickness particularly where a prisoner could receive treatment while in prison. This Court, however, out of mercy considers illness. This is where illness is likely to affect the prisoner if he remains in prison. In

Republic v Chula, Conf. Cas. No. 155 of 1995 this Court, following Laws, L. J., in R v Leatherbarrow (1992) 13 Cr. App. R. (S) 632 and R v Green, (1992) 13 Cr. App. (S) said:

"Normally where the ailment can be treated while the prisoner is in prison, such a plea avails little. Where the medical condition is acute and threatens the life of the prisoner if there is longer confinement, the courts have taken a merciful course."

The defendant's medical condition is serious and one the court below should have considered.

Of course the defendant referred to domestic matters. These are not matters this Court takes into account. It should be obvious why. Those who commit crimes know they are likely to be sent to prison and that this will affect their children. Sound sentencing policy should be such that it conveys to those who commit that the Court is going to look at the crime rather than their domestic matters. Only if there are exceptional hardships to family will a court, agin out of mercy consider problems to family and dependants. There are no such circumstances in this Court or the court below.

I, if the defendant has not already been released under section 15(4) of the Criminal Procedure and Evidence Code, therefore, reduce the sentence to three years imprisonment with hard labour.

Made in open Court this 1st Day of September 2000.

D F Mwaungulu

JUDGE