

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

Confirmation Case Number 245 of 2001

THE REPUBLIC

Versus

JEFREY ZWANGETI

In the Second Grade Magistrate court sitting at Midima Criminal case number 179 of 2002

**CORAM:** DF MWAUNGULU (JUDGE)

Kalaile, Senior State advocate, for the state

Defendant, present, unrepresented

Kamanga, Official Interpreter

**Mwaungulu, J**

## **JUDGMENT**

The judge who reviewed this matter set it down to consider the sentence. The court below convicted the defendant, Jeffrey Zwangeti, of unlawful wounding. Unlawful wounding is an offence under section 241 (a) of the Penal Code. The lower court sentenced the defendant to five years' imprisonment. The judge thought the lower court's sentence for unlawful wounding manifestly excessive.

The defendant, for no reason and unprovoked, stabbed the complainant in the belly with a knife. The complainant had to undergo a surgery. The defendant admitted the charges at the police. He pleaded not guilty in the lower court. The defendant is 18 years old. The defendant admitted to a

relevant previous conviction. The lower court's reasoning on the sentence is meager. The lower court considered the offence's gravity from the sentence the legislature prescribed. Clearly, however, the lower court imposed a heavier sentence because of the defendant's previous conviction

The sentencing approach is the same for unlawful wounding as with other offences. The sentencing court must regard the nature and circumstances of the offence, the offender and the victim and the public interest

Sentences courts pass, considering the public interest to prevent crime and the objective of sentencing policy, relate to actions and mental component comprising the crime. Consequently, circumstances escalating or diminishing the extent, intensity or complexion of the actus reus or mens rea of an offence go to influence sentence. It is possible to isolate and generalize circumstances affecting the extent, intensity and complexion of the mental element of a crime: planning, sophistication, collaboration with others, drunkenness, provocation, recklessness, preparedness and the list is not exhaustive. Circumstances affecting the extent, intensity and complexion of the prohibited act depend on the crime. A sentencing court, because sentencing is discretionary, must, from evidence during trial or received in mitigation, balance circumstances affecting the actus reus or mens rea of the offence.

Besides circumstances around the offence, the sentencing court should regard the defendant's circumstances generally, before, during the crime, in the course of investigation, and during trial. The just sentence not only fits the crime, it fits the offender. A sentence should mirror the defendant's antecedents, age and, where many are involved, the degree of participation in the crime. The defendant's actions in the course of crime showing remorse, helpfulness, disregard or highhandedness go to sentence. Equally a sentencing court must recognize cooperation during investigation or trial.

While the criminal law is publicly enforced, the victim of and the effect of the crime on the direct or indirect victim of the crime are pertinent considerations. The actual circumstances for victims will depend, I suppose, on the nature of the crime. For example for offences against the person in sexual offences, the victim's age is important. An illustration of circumstances on indirect victims is the effect of theft by a servant on the morale of other employees, apart from the employer.

Finally, the criminal law is publicly enforced primarily to prevent crime and protect society by ensuring public order. The objectives of punishment range from retribution, deterrence, rehabilitation to isolation. In practice, these considerations inform sentencing courts although helping less in determining the sentence in a particular case.

Applying these principles to unlawful wounding under section 241 (a), unlawful wounding

involves an unlawful act that wounds the victim. First, the sentence a court may impose depends, everything being equal, on the nature and extent of the unlawful act. That in turn depends on whether and what type of weapon the offender used. Generally, depending on how the offender used the bare hands, a sentencing court will pass a lesser sentence where no weapons were used than where weapons are used. The sentence will be higher depending on the weapon used. Secondly, the sentence will depend on the nature, extent and effect of the injury. The sentencing court will be sensitive to whether the injury involved fractures or deformity. Just as the sentencing court should respond to that the injuries may be permanent or transient. The court may enhance the sentence where there were more crimes or more than one person participated in the crime. A sentencing court may also have to pay particular attention to factors such as provocation or intoxication which, though not defenses to the crime, should influence the sentence imposed.

In this matter five years imprisonment was manifestly excessive. Of course, from the evidence the injuries were in no way not serious. The complainant had to undergo surgery. The injuries however were not such as justified the sentence the lower court imposed. Courts have handled worse injuries. Moreover the lower court should have considered trends emanating from this Court on this offence and injuries involved. If the lower court had done that it would not have imposed the sentence it imposed.

Moreover, a sentencing court must always regard the maximum sentence the legislature prescribed for the offence. The maximum sentence for the offence is seven years imprisonment. The maximum sentence is reserved for the worst instance of the offence. By fiction, that offence has not occurred and may never occur. A sentencing court, faced with a serious instance of the crime must regard the instances before the courts and decide whether the offence this time around deserves a sentence very close to the maximum. Five years is very close to the maximum and the instance for its invocation is far from the worst instance courts have had to handle.

Of course, the defendant had a relevant previous conviction. It was only one. The defendant, in my judgment, had not lost his whole right to leniency. The sentence of four months indicates the previous conviction was petty. In an appropriate case, and this was one, a sentencing court may overlook petty previous convictions (*Rendall-Day v Republic* (1966-68) ALR (Mal) 155). Moreover, previous convictions are no reason for a sentence higher than one for the offence and the offender, after considering the circumstances of the victim and the public interest, deserve. Decisions of this Court (*R v White* (1923-61) 1 ALR (Mal) 401; *Bwanali v R* (1964-66) ALR (Mal) 329) and the Supreme Court (*Maikolo v R* (1964-66) ALR (Mal) 584) are to the similar effect.

The sentence of five years imprisonment is, as the reviewing judge and the state observed, inappropriate. I set it aside. I sentence the defendant to two years imprisonment.

Made in open court this 3<sup>rd</sup> Day of October 2002

D F Mwaungulu  
JUDGE