



MALAWI

IN THE HIGH COURT OF MALAWI

**PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 288 OF 2003
THE REPUBLIC
Vs
HARRY CHIMWETA**

In the First Grade Magistrate's Court sitting at Mwanza
Being Criminal Case No. 87 of 2003

CORAM: HON. JUSTICE F.E. KAPANDA
Phiri (Mrs), Principal State Advocate
Maida (Ms), Official Interpreter
Sinalo, (Mrs), Court Reporter

Date of hearing : 11th November 2004
Date of order : 11th November 2004

ORDER IN CONFIRMATION

Kapanda, J:

The Defendant, Harry Chimweta, appeared before the Mwanza First Grade Magistrate to answer a charge of Robbery as provided for in Section 301 of the Penal Code. The particulars of the offence averred that the Defendant robbed the complainant, W. Napala, a wrist watch.

It was further alleged that immediately before or immediately before the time of the said robbery the convict used or threatened to use actual violence to the said complainant in order to obtain or retain the said wrist watch or to prevent or overcome any resistance from the said complainant.

The Defendant pleaded not guilty to the charge. Consequently there was full trial of the criminal action.

From the witnesses who testified before the court the following facts are not disputed:

The Defendant was one time married to the complainant's wife. As it were they were on separation and the lady entered into another marriage with the complainant. It so happened that during night in question the two men met at the lady's house and a fight ensued. During the said fight the complainant lost his wrist watch. The complainant then went to report to Mwanza Police that he had been robbed of a wrist watch by the Defendant. Hence, the arraignment before the court and the conviction.

This court agrees with both the Reviewing Judge and the State that this conviction is unsafe. The facts do not come anywhere near showing that the Defendant stole a wrist watch from the complainant. It is well to remember that the two people were fighting over a woman and one of them lost a wrist watch. That is not robbery at all. It is unfortunate that the complainant got confused and lost his wrist watch but that is not per se robbery. Accordingly, this conviction must be set aside. It is so ordered. The Defendant is to be set at liberty unless he is being held for some other lawful reasons.

Pronounced in open Court this 11th November 2004 at the Principal Registry, Blantyre.

F.E. Kapanda

JUDGE