



JUDICIARY

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NUMBER 64 OF 2007

THE REPUBLIC

VERSUS

DANIEL MALEKANO

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

Miss Kayuni, of Counsel for the State

Appellant – present unrepresented

Miss S P Moyo – Official Interpreter

J U D G M E N T

Twea, J

This is an appeal against both conviction and sentence.

The appellant was charged with theft contrary to Section 278 of the Penal Code. He was found guilty and sentenced to 4 years imprisonment with hard labour.

The facts of the case were that the appellant was a security guard employed

by a Security Company known as G4Securicor. He was assigned to guard the house of the complainant on night shift.

On the night in issue, the lower court found that intruders came to the house of the complainant. One broke and entered a vehicle which was parked outside by the bedroom window of the complainant. The complainant heard the car alarm and woke up. She peeped and saw an intruder tampering with her car. Further, she noted that the appellant stood at a distance observing the intruder. When she tapped on the window to attract the attention of the appellant, the appellant picked a stone and threw it at the window. The window got shattered. She then went to press the security alarm to alert the security company. The lower court also found that the appellant who, as a security guard, was aware that the premises was armed with three security call alarm systems never attempted to press the alarm. It therefore, found that he had connived with the intruders who stole the car audio system and ran away when the complainant pressed the alarm.

The appellant's argument was very short. He alleged that the lower court contradicted itself when it held that he did not press the alarm, when in fact it found that the complainant was awakened by an alarm.

Clearly, the appellant misled himself. The lower court record is clear. The alarm which woke the complainant was the car security alarm which was triggered by the intruder when he broke into the car. This alarm system is different and separate from the security alarm systems for the premises. There was, therefore, no contradiction in the findings of the lower court.

In the absence of any other evidence to the contrary I find no merit in the argument of the appellant. This ground of appeal must therefore fail.

As to the appeal against sentence, the State agrees that notwithstanding, that the value of the property stolen was K83, 000.00, four years was excessive in the circumstances. I agree with the State and, thereby, the appellant that the sentence is excessive. Bearing in mind that the maximum sentence for theft is 5 years, one cannot say that this was the worst kind of theft, or worst mode of committing a theft to warrant such a sentence.

I therefore set aside the sentence of 4 years and substitute therefor a sentence of 3 years imprisonment with hard labour.

It is my judgment therefore that the appeal against conviction fails and the appeal against sentence succeed as earlier stated.

Pronounced in Open Court this 20th day of November 2007.

E. B. Twea

JUDGE