

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL NO. 116 OF 2006**

BETWEEN

JUSSA AFIKI APPELLANT

VS

THE REPUBLIC

CORAM HON. JUSTICE NYIRENDA

B. Mchenga Counsel for the State
Nkhono Counsel for the Appellant
Mr. Kaferanthu Court Interpreter
Miss C. Jalasi Court Reporter

JUDGMENT

The appellant, Jussa Afiki appeals against sentence on a charge of causing grievous harm contrary to section 238 of the Penal Code. He was convicted on his own plea of guilty and sentenced to five years imprisonment with hard labour.

In speaking for the sentence, Counsel Nkhono submits that the sentence was completely out of measure for several reasons. The appellant pleaded guilty to the charge. He is only 21 years of age. He is a first offender.

The circumstances of the case are trivial. The appellant and the complainant exchanged a few bad words and a quarrel ensued. The two happened to have roughed each other up in the process of which the complainant's arm was twisted.

I must say at the onset that the sentence was no doubt manifestly excessive.

The real problem with this case is that the appellant was charged with an aggravated offence which the facts did not merit. This was not a case of causing grievous harm. Most appropriately the appellant should have been charged with assault occasioning actual bodily harm contrary to section 254 of the Penal Code.

The appellant having pleaded guilty to causing grievous harm leaves this court with little choice than to look at the sentence which as I observed earlier is completely outrageous on the side of excessiveness. I set the sentence aside and in place thereof now sentence the appellant to 18 months imprisonment with hard labour.

PRONOUNCED in Open Court at Lilongwe this 26th day of June, 2007.

A.K.C. Nyirenda
J U D G E