

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY**

CRIMINAL APPEAL CASE NO. 106 OF 2009

BETWEEN

**MANGOCHI KAMBALAME..... 1st APPELLANT
SADYA KAMBALAME 2ND APPELLANT**

AND

THE REPUBLIC RESPONDENT

**CORAM : HON. JUSTICE MZIKAMANDA
 : Unrepresented, Counsel for the Applicant
 : , Counsel for the Respondent
 : Ms Mthunzi, Court Reporter
 : L.C. Munyenyebe – Court Interpreter**

JUDGMENT

MZIKAMANDA, J.

This is an appeal against sentence only. The two Appellants appeared before the First Grade Magistrate sitting at Dowa on a charge of assault occasioning actual bodily harm contrary to Section 254 of the Penal Code. On 1st count and theft C/S 278 of the Penal Code on the 2nd count. After full trial they were found guilty and convicted on both counts. They were sentenced to 12 months Imprisonment with

Hard Labour and 15 months Imprisonment with Hard Labour respectively on the 1st count and 6 months Imprisonment with Hard Labour respectively on the 2nd count. The sentences to run concurrently. They now appeal against the sentences.

I have examined the record and notice that the appellants were not given an opportunity to state their mitigation before sentence was passed. I am of the view that had the court listened and considered the mitigation by the Appellants it would have passed lower sentences. The assault followed a quarrel over a piece of land and it occurred as the Appellants attempted to snatch the hoe the Complainant was using in hoeing the land. They had been in custody since 10th March, 2009.

In the circumstances a sentence of 6 months Imprisonment with Hard Labour for the 1st Offender Appellant on the 1st count is appropriate while one of 9 months Imprisonment with Hard Labour for the 2nd offender Appellant on the first count is appropriate. I impose these sentences while setting aside the sentences imposed by the lower court. On the 2nd count each Appellant is now going to serve 3 months Imprisonment with Hard Labour instead of the 6 months imposed by the lower court. These sentences to ran concurrently and to take effect from 10th March, 2009 when the Appellants were first placed in custody.

PRONOUNCED in Open Court this 23rd day of July, 2009 at Lilongwe.

R.R. Mzikamanda

J U D G E