IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

Confirmation Case number 431 of 2002

REPUBLIC

Versus

MISSI MANYOZO

From the First Grade Magistrate Court sitting at Soche Case number 20 of 2003

CORAM: DF MWAUNGULU (JUDGE)
Chimwaza, Deputy Chief State Advocate, for the State
Defendant, present, unrepresented
Kamanga, court interpreter

Mwaungulu, J

JUDGEMENT

The judge who reviewed this matter set it down to consider the sentence the lower court imposed on the defendant. The Soche First Grade Magistrate Court convicted the defendant, Missi Manyozo, of theft. Theft is an offence under section 278 of the Penal Code. The lower court sentenced the defendant to three years imprisonment with hard labour. The reviewing judge, correctly in my judgment, thought the sentence manifestly excessive. In my judgment, the sentence errs on the side of principle too.

The facts are not complex and, to the extent they resolve matters the judge raises, are as follows. The defendant stole a cell phone worth K7, 000 from the person of the complainant. He pleaded

guilty in the lower court. The lower court approached the matter from the perspective that theft is a very serious offence. Of the crimes in our Penal Code, the law indicating offences involving high moral turpitude, simple theft is not even in the top or middle bracket of serious crimes under our criminal law. On the contrary, among the felonies, a classification still persisting in our criminal law, theft is the lowest of offences, attracting a maximum sentence, as the lower court observed, of five years imprisonment. The sentence may however be higher where the offence occurred in aggravating circumstances. Although, the defendant stole from the person of the complainant, the prosecution did not charge the defendant of the aggravated offence. Circumstances justifying an aggravated offence should influence the sentence of the simple offence provided, of course, the sentencing court minds the risk of sentencing the defendant for which the prosecutor has not charged the defendant. Even with that the sentence passed here is manifestly excessive.

The lower court also approached the matter from that the defendant had a previous conviction. The lower court thought the defendant was not entitled to leniency at all. The lower court should not have approached the matter that way. First, the offence was quite different from the one the lower court convicted the defendant for this time around. Generally, and the case of R v Chang'ono (1964-66) ALR (Mal) 415, suggests it, it is previous convictions the similar offence charged that the court should consider. This Court in Republic V Kamuna, Conf.Cas. No. 669 of 2002, unreported, followed R v Chang'ono. Moreover, the defendant had only one previous conviction. In Republic v Zwangeti Conf. Cas. No. 179 of 2002, unreported, this Court said:

"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."

Thirdly, previous convictions are not a reason for passing a sentence higher than one justified by the nature and circumstances of the offence, the circumstances of the offender and the victim and the public interest. There are decisions of this Court: see Bwanali v R (1964-66)3 ALR (Mal) 329. There is also a decision of the Supreme Court: Maikolo v R (1964-66) ALR (Mal) 584. The sentencing court must arrive at the right sentence deserved by the crime. After that, previous convictions are reasons for maintaining the right sentence (R v White (1923-61) 1 ALR (Mal) 401; and Bwanali v R. Moreover the lower court just accepted the prosecutor's assertion that the offence was unrelated to the one the defendant stood charged for. The lower court should have called for its record to ascertain what the offence was and whether it was not similar to the offence the defendant answered in the lower court. There is another reason why the lower court should have called the record: the court had to be sure the offence and therefore the conviction was previous. The offence the defendant answered in the lower court this time around could have been committed earlier or at the same time as the present offence only that the latter was prosecuted later. More importantly, if the offences were committed around the same time and could have been charged together, the sentences could have run concurrently. A lower court, must, therefore, in the circumstances obtaining here call for the record from the court that first convicted the defendant.

The offence, theft of property worth K7, 000, even factoring in the victim's station in life, is manifestly excessive. Moreover, the defendant is young, pleaded guilty to the offence and, given the difficulties just considered, is offending for the first time. It is wholly inappropriate for sentencing courts to pass long and heavy sentences for young offenders committing otherwise not serious offences. For first and youthful offenders, a short and a quick prison sentence, if deserved, may just be as effective. Sentencing courts must take pleas of guilty seriously. Apart from saving courts resources, time and space, such pleas redirect the court's effort to more deserving cases. Moreover, such pleas are the surest proof that avoids miscarriages of justice possible through the trial process. These matters were stressed in Kamuna V Republic. Lower courts should, when dealing with first offenders follow the suggestions this Court made in Bobat v Republic Criminal Appeal case number 29 of 1994, unreported. This is a sure way to arrive at the right sentence. In my judgment a sentence lower than six months was appropriate. The lower court should have ordered community service or suspended the sentence. I pass a sentence as results in the defendant's immediate release.

Made in open court this 24th Day of July 2003.

D F Mwaungulu

JUDGE