

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

CRIMINAL APPEAL CASE NO. 75 OF 2008

BETWEEN

WISEMAN DONNEX1ST APPELLANT
KACHIDUTSA NG'OMBAYAMOYO.....2ND APPELLANT
CHOVUTA DZAYEKHA3RD APPELLANT
KENALA SHUMBA4TH APPELLANT

AND

THE REPUBLICRESPONDENT

From the First Grade Magistrate Court sitting at Salima. Being
Criminal Case No. 29 of 2008.

CORAM: HON.JUSTICE CHINANGWA,J.

Appellants, present and Unrepresented
Counsel for the Respondent, Miss K. Jere
Court Reporter, Z. Mthunzi
Court Interpreter, S. Baziliyo

JUDGMENT

The four appellants; Wiseman Donnex, Kachidutsa
Ng'ombeyamoyo, Chobvuta Dzayekha and Kenala Shumba

appeared before the First Grade Magistrate Court sitting at Salima on 14th March, 2008. It was on a charge of Destroying indigenous trees by making charcoal without licence contrary to section 64(A) of the Forestry Act.

Particulars of the offence were that the four appellants on or about 11th March, 2008 at Thuma Forest Reserve in Salima district were found burning charcoal without licence.

The appellants were convicted on their own pleas of guilty. The lower court imposed a custodial term of 18 months IHL on each appellant.

The appellants appeal against the magnitude of sentence. The grounds of appeal are as follows:

- 1) The sentence was very heavy.
- 2) The court did not consider that they are first offenders.
- 3) There was no option of fine.

In this court the appellants adopted the same grounds stated above.

The State being represented by Counsel Miss Jere held the view that the sentences were on the higher side. She submitted that the maximum punishment is 2 years imprisonment or K5000 or

both imprisonment and fine. She further submitted that court should consider to reduce the sentence.

My starting point is that there is no assessed value of damaged forest trees. Such assessed value would help determine the appropriate sentence to impose. Observably the trial court omitted to request for such information from the prosecutor.

There is no record that the appellants are hardened criminals who deserve custodial terms than option of fines. I hold the view that 18 months IHL was manifestly excessive. It is set aside. Each appellant to pay fine of K2000.00

Appeal allowed.

Pronounced in open court this 4th day of July 2008 sitting at Lilongwe District Registry.

R.R. Chinangwa
JUDGE