



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CONFIRMATION CASE NO. 246 OF 2022

(Being Criminal Case No. 528 of 2022 before the First Grade Magistrate Court sitting at Chisenjere)

THE REPUBLIC

V

HAPPY BANDA

Coram: Justice Vikochi Chima

Mr Mphepo, Senior State Advocate

Mrs Kasambara, Senior Legal Aid Advocate

Mrs Moyo, Court Clerk

ORDER IN CONFIRMATION

Chima J

1. Happy Banda aged 37 years old was convicted of robbery contrary to section 301 (2) of the Penal Code after a full trial and was sentenced to seven years' imprisonment with hard labour.
2. The complainant was driving his car a Mazda Verissa around Kameza roundabout in Blantyre around midnight. Across the graveyard road, there were heaped stones to block the road. The complainant stopped the engine and went out to remove the stones. As he was doing this, he heard a crash on the rear windscreen. He then saw four men coming from the graveyard. One of the men sat in the front passenger seat. The second was brandishing a Panga knife and warned him not to shout for help. The third and fourth man searched for items in the back seat of the car. The convict was the one who had wielded the Panga knife. The complainant stated that he pleaded with the convict not to kill him. The convict told him that he could not heed such pleas for the complainant was not his relation. The robber on the front passenger seat started the engine while the complainant

was busy struggling with the convict. The three robbers that were in the car drove the car away.

3. The complainant managed to take away the knife from the convict and in the process it cut his fourth finger on his right hand. He struggled with the complainant close to five minutes. When the convict saw that he was overpowered, he bit the complainant on the finger in order to escape. In the vehicle, there was a wallet containing K109, 000 cash, an ITEL cellphone, an ATM card, a National Identity Card, a driving licence, a Football Association of Malawi Identification Card, a handbag containing two cellphones, K20, 000 cash and a memory card.
4. The car was abandoned at Mwachande in Chirimba where there is a dead end. The most valuable item that was stolen was the car and it was recovered. Nonetheless, robbery sentencing hinges more on the aggravating factors that are listed in the provision that creates the offence than on the items stolen. It states:

‘(1) Any person who commits the felony of robbery shall be liable to imprisonment for fourteen years.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes, or uses any other personal violence to any person, he shall be liable to be punished with death, or with imprisonment for life.’ (emphasis supplied)

5. The robbers were more than one and they were armed with at least one offensive weapon, a Panga knife. The robbers crashed the rear windscreen. They physically wrestled with the complainant such that the complainant got cut on the hand. The convict is a full grown man who should know that crime does not pay. A sentence of seven years’ imprisonment with hard labour is inadequate in the face of the circumstances of this robbery. It is enhanced to fourteen years’ imprisonment with hard labour.

Made in open court this day the 21st of July 2022


Chima J