

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 309 OF 2000**

**THE REPUBLIC
Versus
1. BERNALD NAMASITA
-and-
2. RICHARD JUMBE**

In the First Grade Magistrate's Court Sitting at Midima - Limbe Criminal Case No. 155 of 2000

**CORAM: THE HON. MR JUSTICE F.E. KAPANDA
Mr Kamwambi, Chief State Advocate of Counsel for the State
Accused, present but unrepresented
Mrs Kachimanga, Official Interpreter/Recording Officer**

Kapanda, J

ORDER IN CONFIRMATION

Introduction

The prisoners were charged with the offences of burglary and theft. The offence of burglary is stipulated in Section 309 of the Penal Code (Cap. 7:01) of the Laws of Malawi, and the crime of theft is provided for under Section 271 as read with Section 278 of the said Penal Code. On the 14th day of February 2000 the First Grade Magistrate's Court sitting at Midima-Limbe after convicting the two Defendants of the said offences of burglary and theft, sentenced the two felons to four(4) years imprisonment with hard labour in respect of the offence of burglary, and in connection with the other offence of theft the convicts were sentenced, each one of them, to serve a custodial sentence of six(6) months imprisonment with hard labour. The sentences were made subject to confirmation by the High Court.

The learned Judge who Reviewed the case, when the matter was brought before him, was of the view that the case should be set down for consideration of the sentence that was passed in respect of the case of burglary. Unfortunately, the learned Judge never gave an indication as to what was wrong with the penalty that was imposed on the Defendants in respect of the said charge of the offence of burglary. In view of the observations by the learned Judge, and indeed after perusing the record myself, this court will concern itself with the case of burglary at this confirmation hearing.

Facts of the Case

The Defendants pleaded guilty to the charge of the offence of burglary and they were convicted accordingly. It was the prosecution's case, according to the statement of facts given to the court below, which facts were accepted as correct by both felons, that on the night of 29th September 1999, at around 8 .00 pm the complainant closed the doors to his dwelling house and went to sleep. Further, it was put as a fact that the complainant later woke up with view to go out and answer a call of nature. He was surprised to find the door to his said house wide open and his personal items stolen.

The matter was eventually reported to police who carried out an inquiry that led to the arrest of the two convicts herein. At police they both confessed to committing the offences of burglary and theft. It is also pertinent to observe that the 1st Defendant, Bernard Namasita, admitted that he has a previous conviction.

There is no dispute about the convictions that were entered in respect of the two prisoners. In point of fact the convictions can not be faulted having regard to the fact that all the elements of the offence, and the facts of the case, were put to the convicts and they accepted them to be correct. For these reasons the convictions must be, and are hereby, confirmed.

Sentence

Regarding the sentence it has already been observed that the court below imposed on the prisoners a term of imprisonment of forty-eight(48) months for burgling into the house of the complainant. It must be noted that the offence of burglary carries with it the penalty of death or imprisonment for life. Just by looking at the punishment that is provided for the offence it will be obvious that burglary is very serious offence. It is in this regard that the High Court has said that the starting point, in so far as the penalty for this offence is concerned, should be six(6) years and the sentence should either be increased or reduced depending on aggravating or mitigating circumstances in respect of the crime or the Defendant.

Coming to the instant case it is my view that the sentence that was meted out on the second Defendant can not be faulted. It is within the guide lines set by the High Court. Indeed, there were strong mitigating factors in favour of the second convict viz the plea of guilt and that he has no previous record. The sentence on the second Defendant is therefore confirmed.

However, the first Defendant did not deserve to be treated leniently due regard being had to the

fact that he has a previous record of conviction. In fact this said previous conviction relates to an offence that involves dishonesty as well. The first Defendant, it appears to me, has taken to the life of crime and thinks that crime does pay dividends. I wish to put it on record that the offence of burglary has become so rampant in our society. It is therefore necessary that the courts must respond to society's need for protection from habitual offenders like the first Defendant. In view of the observations that I have made above the sentence that was imposed by the court below must be disturbed. The penalty meted out on the first Defendant will have to be enhanced. It is hereby enhanced to 168(one hundred and sixty-eight) months. The first convict will now serve a custodial sentence of fourteen(14) years instead of the 4 years that was imposed by the lower court. It is so ordered.

Made in open Court this 8th day of June 2001 at the Principal Registry, Blantyre.

F.E. Kapanda

JUDGE