

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 497 OF 2001

THE REPUBLIC

VERSUS

VICTOR CHIBISA KAPACHIKA

From the First Grade Magistrate's Court Sitting at Midima Road
Being Criminal Case No. 9 of 2001

CORAM: HON. MR JUSTICE F.E. KAPANDA

Miss Nayeja, of Counsel for the State Advocate
Accused, Present and Unrepresented
Mr Nthole, Official Interpreter

Date of hearing: 17th April 2003

Date of Order : 17th April 2003

Kapanda, J

ORDER IN CONFIRMATION

Introduction

The two prisoners were charged with three offences *viz* house breaking, burglary and theft. After full trial they were found guilty of the offences they were charged with and convicted accordingly. The court sentenced each one of them to terms of imprisonment as follows: two years for the offence of house breaking, in respect of the offence of burglary they

were each sentenced to five years and for the offence of theft they were ordered to serve a custodial term of imprisonment of one (1) year. The three sentences were to run concurrently and were subject to confirmation by the High Court.

The record from the lower court was reviewed by the judge in chambers. The reviewing judge was of the view that a sentence of five years for burglary was excessive. He therefore set down this case for consideration of the reduction of the sentence. As I shall demonstrate shortly, the sentence of five years for the offence of burglary will not be disturbed. This is the case because it would appear the reviewing judge thought that count two in the charge sheet was in respect of the

offence of theft. In the second count the prisoners were actually charged with the offence of burglary. Hence, this court is of the view that a sentence of five years is not manifestly excessive.

Facts of the case

The relevant facts of this case in respect of the charge for burglary are simple and are as follows: the complainant, Micy

Kachingwe, has a house at Lolo village in the district of Thyolo. On 16th December 2000 her house was broken into and thirty louvres were stolen. During a search of the convict's houses, on 28th December 2000, the convicts were found in possession of the said louvres.

The conviction

The court rightly convicted the defendants. The doctrine of recent possession applied. This doctrine applied in respect of all the three counts. The conviction of the two prisoners can not be faulted. In that event the convictions must be, and are hereby, confirmed.

Sentence

This court is of the view that the sentences that were meted out on the convicts are not excessive. They are actually within the guidelines set by the High Court. Further, we observe that there were more aggravating, than mitigating, factors in respect of the defendants. The aggravating were *viz*

there was partial recovery of the property that was stolen. Further, the offences were committed by more than one person. This means that it must have been well planned. Moreover, the record shows that the convicts had set out to commit these breaking offences. Indeed, there was more than one victim of their criminal enterprise.

For the reasons given above the punishment that was visited upon them is befitting of their conduct. The sentences are therefore confirmed.

Pronounced in open court this 17th day of April 2003 at the Principal Registry, Blantyre.

F.E. Kapanda

JUDGE