

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CONFIRMATION CASE NO. 160 OF 2021

(Being Criminal Case No. 693 of 2020 before the Senior Resident Magistrate Court Sitting at Blantyre)

THE REPUBLIC

V

SAMSON MAGALASI

Coram: Justice Vikocho Chima

Mr Rodney Mkweza, Senior State Advocate

Ms Laureen Mputeni, Senior Legal Aid Advocate

Mrs Moyo, Court Clerk

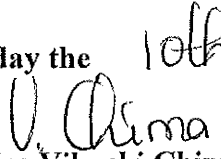
ORDER ON CONFIRMATION

Chima J

The accused was charged and convicted, before the Senior Resident Magistrate Court sitting at Blantyre, of burglary contrary to section 309 (a) of the Penal Code, and theft contrary to section 278 of the Penal Code. He was sentenced to five years imprisonment with hard labour for the burglary and nine months imprisonment with hard labour for the theft. The sentences were to run concurrently. On review in confirmation under section 15 of the Criminal Procedure and Evidence Code, the conviction was confirmed but the matter was set down for consideration of enhancement of sentence.

The complainant was getting ready for bed in her bedroom when she heard a noise from the other room. She thought it was her husband who had come home around 10 p.m. and who at the time was taking a bath. She spoke to her husband that he was making noise. She then walked to the sitting room only to see the accused coming from another bedroom and fall down in the sitting room. The house was well-lit with electric lights. The accused then got up and ran out of the door to the outside. The accused was someone that the complainant knows even by name and they stay

in the same neighbourhood. He stole some bags valued at K180, 000. As quoted by the magistrate: “in relation to burglary or hosebreaking, the real wrong is the criminal trespass: the invasion of premises, the invasion of privacy...A man’s or woman’s house is his or her castle...”¹ Burglary causes people to live in fear in their own home. Burglary or housebreaking are very serious crimes with maximum sentences of life imprisonment. The case of *Rep v Mkwezalamba*² gave the guideline that the starting point in sentencing in these offences should be six years. The magistrate took into account the fact that the convict was a first offender and also that he was young as he is aged 25 years, citing the case of *Rep v Ghambi*,³ for the proposition that being young counts as a mitigating factor, youth being the ages between 18 and 25. There appears to have been no damage done to the complainant’s house since the accused gained access through the door which must have been left unlocked by the husband who was taking a bath. The court below also considered that all the stolen property were not recovered. The convictions came after a full trial. I find that the magistrate weighed all the aggravating and mitigating factors correctly and came to an appropriate sentence that fit the crime, the victim, the offender and the protection of the society. The sentence is confirmed.

Made in open court this day the 10th of September 2021

 Justice Vikochi Chima

¹ Per Mwaungulu J (as then was) in *Rep v Mkwezalamba and another* Confirmation Case No. 461 of 2013

² Ibid

³ [1971-72] ALR Mal 457