

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CONFIRMATION CASE NO. 1605 OF 1998**

**THE REPUBLIC  
VERSUS  
ELIAS MAPIRA**

**From the First Grade Magistrate Court at Limbe Criminal Case No. 269 of 1998**

**CORAM: D F MWAUNGULU (JUDGE)**

**Chimwaza, Principal State Advocate, for the State**

**Defendant, absent, unrepresented**

**Kachimanga, court interpreter**

**Mwaungulu, J**

**JUDGEMENT**

This case was set down by His Lordship Mr Justice Tembo to consider the severity of sentences on the house breaking and burglary charges. His Lordship Mr Justice Tembo considered the sentence the Midima First Grade Magistrate imposed manifestly excessive. His Lordship thought that the sentence the First Grade Magistrate imposed could not have been because the defendant pleaded guilty, was young and offending for the first time. I and the Principal State Advocate agree that the sentences are manifestly excessive. The First Grade Magistrate concerns are, however understandable and justifiable. They were however concerns to be released by applying some principles this court has been emphasizing for quite some time now.

That must have really bothered the lower court who the number of offences which the defendant, at 21 years of age, committed in a period under 3 months. On the 3rd of June, 1998 the defendant broke into Miss Kameza's house in Dzungu village in Thyolo district. He stole some beddings and a parrel which valued at K250. On the 25th and 26th of July, he turn on the house of Mrs Nalivata and stile various house hold items valued at K4,000. On 15th August, 1998 he went again to Mrs Nalivata's house this time he stole K4,300 worth of property. As if that was not enough on the 19th August, 1998 he went to Mrs Nalivata's house again this time he stole K4,545 worth of property. At a very young age therefore and in a spirited debut in a short time and in a quick succession the defendant burgled four times. This is a sort of experience which even if me in the short period in which I sat a a trial magistrate and the short time I have been Judge have never had to deal with. In a situation like this one the offender committed several offences and the chances are that the sentencing court will order, and we establish principles and sentences to run concurrently. Justice requires that the sentences on the individual account should be enhanced to reflect that the defendant has committed several offences. In practice this means that the sentencing court must add a premium period above that would be acceptable sentence on the particular account after taking into account all the circumstances of the case.

What this means therefore in view of the comments of His Lordship Mr Justice Tembo is that the Midima court should have made up its mind and the appropriate sentence for burglary taking into account the facts that His Lordship has raised namely the plea of guilty, the youthful age of the defendant and that the defendant was offending for the first time. On the approach that this court has laid since the Republic versus Chizumila Conf. Cas No. 316 of 1994 the sentence could not have been 8 years on any of the burglaries that the defendant committed. On the burglary of 25th July, 1998 the there is no indication of the trespass. The complainant was not in the house when the offence was committed. This was therefore the sort of instance of the offence for which this court approves three years imprisonment with hard labour where the defendant has pleaded guilty. On the burglary of the 16th August, 1998 again the complainant was not in the house when the offence was committed. There is no description of the extent of the trespass and the house that has been set on the breaking of the 25th July applies to this burglary neither was the complainant present when the defendant burgled her house on the 19th August, 1998 again there is no facts to the extent of the trespass. Therefore the burglaries the defendant committed were several ways the occupants were not  $\frac{1}{14}$  therefore the defendant having pleaded guilty 3 years imprisonment with hard labour was a sort of sentence to pass and must however add that the court below could have effect the facts that the defendant was young and first offender.

The important point however is what I stated earlier that the defendant had committed several crimes in a quicker succession the premium should be dealt if this affect obviously and the sentence that the lower court passed that premium would be 5 years imprisonment with hard labour that would be manifestly excessive. The sentences in my view should very well be enhanced by anything within 1 to 2 years and therefore set aside the sentence to 8 years with hard labour . On all the burglaries accounts I substitute therefore 4 years imprisonment with hard labour . This sentence would have been appropriate even if this court had taken an approach laid in Chizumila case and Millo versus the Republic Cr. App. No. 30 of 2000. Starting at 6 years the sentence would have been increased by a year or two to 7 years or 8 years to take into account the guilty plead. The resultant of the sentence would have been further reduced to take into account the fact that the defendant was young and offending for the first time.

**D F Mwaungulu**  
**JUDGE**