

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

CONFIRMATION CASE NO. 828 OF 2000

BWANALI MWACHIKHO

VERSUS

THE REPUBLIC

From the First Grade Magistrate at Liwonde Criminal Case No. 99 of 2000

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

Manyungwa, Assistant Chief State Advocate for the State

Defendant, absent, unrepresented

Kachimanga, an official court interpreter

**Mwaungulu J.**

**JUDGMENT**

The Honourable Mr Justice Kapanda set this case down to consider the sentence. The Liwonde First Grade Magistrate sentenced the defendant, Bwanali Mwachikho, to five year imprisonment with hard labour for house breaking and six months imprisonment with hard labour for theft. House breaking and theft are offences under section 309 and 278 respectively of the Penal Code. The conviction is not an issue. The reviewing judge questions the sentence on the burglary count.

The complainant came back from the garden to find his house broken into. The intruder opened a window latch through a broken window. The intruder did not break the window. The window was broken before. The defendant was arrested. He admitted committing the offence at the police and pleaded guilty to the charge.

The reviewing judge thought the sentence should be reduced because of the guilty plea. On this Court's approach in Republic v Chizumila, Conf. Cas.No. 316 of 1994, the sentence is manifestly excessive. In Republic v Cizumila, after reviewing previous sentences and approaches, this Court suggested a starting point for burglary or house breaking of six years. The sentencer can scale upwards or downwards to reflect aggravating and mitigating circumstances. Generally, for an ordinary burglary or housebreaking where the defendant is young, offends for the first time and pleads guilty, this Court approves a sentence of three years imprisonment. There could be other mitigating factors, so consequential, justifying a further reduction. A good example is where, in a mob justice, a defendant has been maimed during arrest. By and large, and subsequent sentences from this Court confirm this, three years is the sort of sentence approved in the circumstances described.

The sentence may be aggravated by the extent of the actus reus or mens rea or other factors extraneous to the offence. If, for example, extensive damage to property or violence to victims or others accompanied the trespass the court may pass an enhanced sentence. These aspects display a high level of criminality that a court cannot ignore. Equally, if the defendant disturbed occupants or occupants were young, elderly or vulnerable, the court may take a serious view of the crime. These are things a court should regard when sentencing for burglary or housebreaking.

The defendant is 20 years. He offended for the first time. The trespass was that just necessary to effect the crime. There was, if any, little of anything aggravating. He pleaded guilty. The guilty plea entitled him to a reduction up to a third of the possible sentence. Five years is manifestly excessive.

I set aside the sentence of five years imprisonment with hard labour. The defendant shall serve three years for the housebreaking offence.

Made in open court this 9th day of March, 2001.

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