

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CRIMINAL APPEAL NO. 128 OF 2007**

BETWEEN

FELIX NASHO 1ST APPELLANT

JACKSON DAMISON 2ND APPELLANT

-VS-

THE REPUBLIC RESPONDENT

CORAM : HON. JUSTICE A.K.C. NYIRENDA

: Kadzakumanja, Counsel for the Applicants

: Miss Jere, Counsel for the Respondent

: Mrs. Kabaghe, Court Reporter

: Kaferaanthu, Court Interpreter

JUDGMENT

The appellant pleaded guilty to a charge of breaking into a building and committing a felony contrary to section 311 of the Penal Code. He was accordingly convicted and sentenced to 20 months imprisonment with hard labour. He now appeals against sentence.

The gist of his appeal is that being a first offender and having pleaded guilty the trial magistrate should have addressed her mind to sections 339 and 340 of the

Criminal Procedure and Evidence Code. She did not as a result impose a sentence which is felt to be manifestly excessive.

The items stolen were recovered in full. Indeed I bear in mind what has been submitted on behalf of the appellant. He showed remorse and regret by pleading guilty. I must say however the circumstances of the offence speak for something more serious. The appellants had prior knowledge of the place where they went to steal. The first appellant had been a watchman at the place and it seems he knew of the weakness with the locking system. He took advantage of that knowledge and the weakness of the system.

A custodial sentence cannot be faulted. I would however in the entire circumstances of the case reduce the sentence from 20 months imprisonment with hard labour to 12 months imprisonment with hard labour. I order accordingly.

PRONOUNCED in Open Court at Lilongwe this 22nd day of February, 2008.

A.K.C. Nyirenda

J U D G E