

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY**

CRIMINAL APPEAL NO. 71 OF 2009

BETWEEN

SAMSON MASSAH APPELLANT

AND

THE REPUBLIC RESPONDENT

CORAM : **HON. JUSTICE MZIKAMANDA**
: Unrepresented, Counsel for the Applicants
: Mrs. I. Namagonya, Court Reporter
: Mrs. Munyenyembe, Court Interpreter

JUDGMENT

MZIKAMANDA, J.

This is an appeal against the decision of the 1st Grade Magistrate sitting at Mapuyu where the Appellant was convicted of breaking into a building and committing a felony therein C/S 311(a) of the Penal Code. He had pleaded not guilty but was found guilty after full trial. He was sentenced to six years imprisonment with hard

labour. He now appeals against both conviction and sentence. However during his arguing the appeal he appeared to emphasise on the harshness of the sentence. He had been jointly charged and convicted with another.

The facts of the cases were that on the night of 3rd April, 2009 at Mkonkha Trading Centre in Mchinji District a shop belonging to Kayikani Chilumba was broken into and various items including two cartons of hardware, 17 bicycle tyres, 5 bicycle rims, 4 ladies suits, K70,000.00 cash Dynamic radio Casselle, showel, 5 litres Kukoma Cooking Oil, Zitenje clothes all valued at K130,000.00 were stolen. The culprits were not seen or arrested immediately. But within a short space of time the appellant was found with some of the items in question at his house. When he learnt that the police were looking for him he disappeared. He was subsequently arrested and question on the matter. He responded by saying that he bought the items from unknown persons brought to him by a friend. That story turned out to be unbelievable and was rejected by the lower court. The lower court came to the innevable conclusion that in all the circumstances of the case the appellant is the one who broke into the shop and stole the items. I have examined the record and the judgment of the lower court. I am left in no doubt that the lower court came to the right conclusion. There was ample circumstantial evidence to lead to one and only conclusion, namely that it was the accused who stole the things. He was found in possession of recently stolen property. When he learnt he was being looked for he disappeared. When he was subsequently arrested he said he bought the things from people he did not know. His defence story is unbelievable and was rightly rejected. I uphold the conviction.

The sentence of 6 years is quite harsh for young first offenders in circumstances obtaining here. I am aware that most of the items stolen remain unrecovered. However, I notice that the lower court did not receive any mitigation from the appellant. Had the lower court considered the mitigating factors present in this case it would have imposed a lower sentence. I think that a sentence of 3½ years Imprisonment with Hard Labour in these circumstances is appropriate. I set aside the sentence of 6 years Imprisonment with Hard Labour. The appellant will now serve 3½ years Imprisonment with Hard Labour. The second person who has not appealed will have his sentence reduced to 3½ years Imprisonment with Hard Labour as well.

PRONOUNCED at Lilongwe this 2nd day of September, 2009.

R.R. Mzikamanda

J U D G E