

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 608 OF 1997

THE REPUBLIC

VERSUS

LOJASI NANGWIYA

In the Second Grade Magistrate Court at Mangochi Criminal Case No. 151 of 1997

CORAM: MWAUNGULU, J

State not represented

Accused present, unrepresented

Marsen, Official Interpreter

Soka Banda, Recording Officer

Mwaungulu, J

JUDGMENT

This case was set down by the Honourable Mr. Justice Kunitsonyo on the 3rd of June 1997 to consider the sentence. The defendant, Lojasi Nangwiya, was sentenced to twenty-four months imprisonment with hard labour for the offence of burglary and three months imprisonment with hard labour for theft. He was convicted by the Second Grade Magistrate Court sitting at Mangochi. The reviewing Judge thought that these sentences were meaningless. He ordered that the Court should convene to consider enhancing the sentence to appropriate and meaningful levels.

On the 2nd of March 1997 the complainant, White Osman, who was on a night shift at Mbambande Bakery where he works, went home to find the house broken into. He lost household items worth K995.00 comprising of eight plates, a wrist watch, a pail, a flask, a

blanket and a bed sheet. Although the defendant pleaded not guilty, he was convicted after a full trial in which a confession statement made at the Police was part of the evidence against him. The defendant was, therefore, properly convicted in the Court below. The only issue before this Court relates to the sentences passed against the defendant.

This was the defendant's first offence. He is aged 24 years. The Court below noted that the offence of burglary is a serious offence punishable with death or life imprisonment. The sentence passed, however, reflected very little of that observation and in fact ignores the trends that this Court has established.

I recognise the practical difficulties that there are in arriving at a proper sentence in each case. There is no scientific relationship between criminality, reflected in the state of mind required and actual act under the penal provision, and the sentence to be imposed. The Court must in each case hazard the sentence which, in its best judgment, meets the justice of a particular case. In so doing, the sentence passed must be just to the offender, the offence and the victim and should reflect the public interest in prevention of crime. The sentencing court does well to look at the nature of the offence, the personal circumstances of the offender and the effect of the crime on the victim. The sentence passed is to be looked at in the light of sentences normally imposed for the crimes in similar circumstance by that court or courts of concurrent and superior jurisdictions.

This Court for a long time now has said that long and immediate imprisonment for burglary. This is for reasons that have been aptly explained by many Judges before and after the case of **The Republic v. Chizumila and others** (1994) Conf. Cas. No. 316). Then previous sentences were reviewed. The court concluded that the common places of the offence could only mean that the levels of sentences imposed hitherto fell short of achieving the intended results. It was in the public interest, therefore, to increase the levels of sentences across the board to reflect the Court's new attitude to the crime. It was said in that court that the starting point for burglary should be six years. The starting point could be scaled to cater for aggravating and mitigating circumstances.

Here the burglary was not of the serious kind. There was no damage to the premises. There was no disturbance to the victims. This is the sort of burglary to which the sentence of three years could be appropriate. I set aside the sentence of two years imprisonments with hard labour for burglary and substitute therefor a sentence of three years imprisonment with hard labour.

The sentence for theft is increased to six months imprisonment with hard labour. Although the property stolen was not considerable, the offence occurred in a rural setting. The property stolen constitutes a substantial saving of somebody in that setting.

Made in Open Court this 26th day of August 1997.

D. F. Mwaungulu
JUDGE