

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 812 OF 1996**

**THE REPUBLIC
VERSUS
AFIKI PAKHALEKHALE**

**From the Principal Resident Magistrate's Court at Balaka
Criminal Case No. 60 of 1996**

CORAM: MWAUNGULU, J

**Manyungwa, State Advocate, for The State
Accused, present and unrepresented
Chilunga, Official Interpreter
Mangisoni, Recording Officer**

Mwaungulu, J

ORDER

The case was set down to regularise the offence for which the defendant was charged and ultimately convicted for. The defendant, Afiki Phakhalekhale, was charged on two counts, one burglary and the other of theft. The latter does not concern us. He was sentenced to three years and one and half years respectively on the two counts. The sentence imposed does not concern us. It is confirmed. It is the burglary count which caught the attention of the judge.

The defendant broke and entered the complainant's house at 3.00 o'clock p.m. It was during the day. Burglary is, according to our law, a nocturnal activity. The offence must be committed in the night. Housebreaking covers the same conduct during the day. Housebreaking is a diurnal activity. The count is, therefore, altered to housebreaking.

Made in open Court this 16th day of March 1997 at Blantyre.

D.F. Mwaungulu
JUDGE