

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CONFIRMATION CASE NO. 298 OF 2000**

**THE REPUBLIC
Versus
ALUMANDO LYSON**

**From the Second Grade Magistrate's Court Sitting at Bangula
Criminal Case No. 18 of 2000**

**CORAM: THE HON. MR JUSTICE F.E. KAPANDA
Mr Kamwambi, Chief State Advocate of Counsel for the State
Accused, present but unrepresented
Mrs Kachimanga, Official Interpreter/Recording Officer**

Kapanda, J

ORDER IN CONFIRMATION

Introduction

The prisoner was charged with the offence of breaking into a building and committing a felony therein. This offence is provided for under Section 311(1) of the Penal Code (Cap. 7:01) of the Laws of Malawi.

On the 14th day of February 2000 the Second Grade Magistrate's Court, sitting at Bangula, after convicting the prisoner, of the said offence of breaking into a building committing a felony therein, sentenced the convict to thirty six(36) months imprisonment with hard labour. The sentence meted out on the prisoner was made subject to confirmation by the High Court. When the case was brought before the High Court for review the learned Reviewing Judge was of the opinion that a sentence of three years was on the higher side and that it ought to be reduced. I am not in agreement with the Reviewing Judge. So too is the State. In point of fact, it appears the Reviewing Judge was for the reduction of sentence because, inter alia, he thought that the felon is a young offender aged 18 years. As it has turned out the convict is actually not a young offender. He was in fact 36 years at the time he committed the offence.

Facts of the Case

The convict pleaded not guilty to a charge of the said offence of breaking into a building and

committing a felony herein. The lower court judged him guilty and he was convicted after a full trial. It is undisputed that the prisoner broke and entered into his former employer's maize mill building and stole an electric circuit breaker. It is on record that the item, the subject matter of this criminal action, was later recovered in the possession of the prisoner herein.

It is to be observed that the learned Reviewing Judge noted, and I am in total agreement with him, that the question that must be dealt with at this confirmation hearing is that of sentence only. As regards conviction this court is of the view that it can not be faulted. The prisoner was properly convicted. His conviction is therefore confirmed.

Sentence

Regarding the issue of sentence I am of the opinion that the sentence must be enhanced notwithstanding the fact that the convict is a first offender. It must be so enhanced in view of the guideline that has been set by the High Court in respect of this type of offence. Actually, the High Court has said that the starting point for the offence of breaking into a building and committing a felony therein should be four(4) years and should be reduced or enhanced depending a mitigating or aggravating factors in respect of the crime or the offender. There were no serious mitigating factors in this case or in relation to the Defendant. Indeed, it is noted that the convict actually planned the commission of this offence. All things considered, I do not think that there were any good reasons for departing from the minimum quantum of sentence that has been recommended by the High Court in previous decided cases.

For the reasons that I have enumerated above it is my considered judgment that the sentence of thirty-six(36) months meted out on the felon, by the court below, should be enhanced so as for the courts to be seen to be consistent in its approach to the sentencing of persons who have committed similar offences in similar circumstances and where there are no serious mitigating factors. The sentence of thirty-six(36) months with hard labour is hereby enhanced to forty-eight(48) months with hard labour. The convict shall now serve a custodial sentence of four(4) years. It is so ordered.

Made in open Court this 8th day of June 2001 at the Principal Registry, Blantyre.

F.E. Kapanda

JUDGE