

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 1665 OF 2001

THE REPUBLIC

VERSUS

GIBSON LIYAWO

From the Principal Resident Magistrate's Court Sitting at
Blantyre
Being Criminal Case No. 12P of 2001

CORAM: THE HON. MR JUSTICE F.E. KAPANDA

Mr Kamwambe, of Counsel for the State
Accused, Present but Unrepresented
Mr Nthole, Official Interpreter
Mr Kabvina, Recording Officer

Date of hearing: 18th January 2002
Date of order: 18th January 2002

Kapanda,J

ORDER IN CONFIRMATION

Introduction

The prisoner was charged with the offences of burglary and theft. The offence of burglary is stipulated in Section 309 of the Penal Code (Cap. 7:01) of the Laws of Malawi, and the crime of theft is provided for under Section 271 as read with Section 278 of the said Penal Code.

On the 12th day of April 2001 the Principal Resident Magistrate, after convicting the defendant of the said offences of burglary and theft, sentenced the felon to three(3) years imprisonment with hard labour in respect of the offence of burglary, and in connection with the other offence of theft the convict was sentenced to serve a custodial sentence of two(2) years imprisonment with hard labour. The two sentences were to run consecutively and they were subject to confirmation by the High Court.

In view of the observations that I made, and indeed after perusing the record for the second time, this court will concern itself with the case of burglary at this confirmation hearing.

Facts of the case

The dwelling house of the complainant, Mr Hastings Nsoma, was broken into during the night of 21st February 2001. The person who did this stole the complainant's TV screen. On the following day the complainant reported the incident to Blantyre Police Station. The defendant was found in possession of the TV screen. The prisoner was found in possession of the TV screen on 25th February 2001.

The defendant was arrested and later taken before court to answer the said charges of burglary and theft. He pleaded not guilty to both counts. After full trial he was found guilty

and convicted accordingly.

The conviction

There is no doubt in my mind that the convictions that were entered in respect of the prisoner are in order. In point of fact the convictions can not be faulted having regard to the doctrine of recent possession that is clearly applicable to the facts of this case. For this reason both convictions must be, and are hereby, confirmed.

Sentence

Regarding the sentence it has already been observed that the court below imposed on the prisoners a term of imprisonment of thirty-six(36) months for breaking into the house of the complainant. It must be noted that the offence of burglary carries with it the penalty of death or imprisonment for life. Just by looking at the punishment that is provided for the offence it will be obvious that burglary is very serious offence. It is in this regard that the High Court has said that the starting point, in so far as the penalty for this offence is concerned, should be six(6) years and the sentence should either be increased or reduced depending on aggravating or mitigating circumstances in respect of the crime or the defendant.

Coming to the instant case, it is my view that the sentence of thirty-six months that was meted out on the defendant

cannot be sustained. It is well outside the guide line set by the High Court. I am of this view albeit there was recovery of the item that was stolen. The sentence on the burglary count must be disturbed so as to bring it closer to the guideline. I will enhance it to six years. The penalty for the theft count will not be disturbed. However, the two sentences will run concurrently and not consecutively as was earlier ordered by the court below. An illuminating authority on why the sentences should run concurrently is that of **R vs.Wayera** [1923-1960]ALR Mal. 945. This means that the convict shall now effectively serve a custodial term of imprisonment of six(6) years. It is so ordered.

Made in open Court this 17th day of January 2002 at the Principal Registry, Blantyre.

F.E. Kapanda
JUDGE