

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CONFIRMATION CASE NO. 579 OF 2001**

**THE REPUBLIC**

**VERSUS**

**GEORGE HANYAKUWA AND 4 OTHERS**

In the First Grade Magistrate Court Sitting at  
Blantyre: Criminal Case No. 532 of 1999

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

Miss Nayeja, of Counsel for State Advocate  
Accused, Present and Unrepresented  
Mr Nthole, Official Interpreter

Date of hearing: 17th April 2003

Date of order : 17th April 2003

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**Kapanda, J**

**ORDER IN CONFIRMATION**

The defendants appeared before the court below on charges of burglary and theft. They were convicted on both counts. The court then sentenced them to varying degrees of custodial imprisonment in respect of the burglary and theft offences.

This court was convened to consider the sentences meted out on the convicts in respect of the charge of burglary. The reviewing judge experienced some misgiving about the disparity in the punishment that was imposed on the defendants. He then suggested that the sentences should be

reduced.

We have revisited the facts of the case. The defendants were rightly convicted. They were found in possession of property recently stolen from the complainant. It is observed that the Magistrate gave valid reasons for the disparity in the sentences imposed on the defendants. Indeed, disparity in quantum of sentences is not unknown in our jurisprudence. Those who got higher sentences it was because they have previous convictions. They deserved stiffer sentences.

The sentences imposed on the convicts in respect of the burglary count, are actually on the lower side if measured against the guideline set by the High Court. This court has on more than one occasion stated that the starting point for the offence of burglary is 6 years. The sentence is then to be reduced or enhanced depending on mitigating or aggravating factors. In this case there were more of aggravating than mitigating factors. The aggravating factors were: there were more

than one person involved in the commission of the offence; the defendants did not plead guilty to the charge of burglary; and a majority of the convicts are repeat offenders.

For the reasons given above the sentences ought to have, in point of fact, been enhanced. This court therefore enhances the sentences imposed by the lower court by two years on each of the convicts herein. It is so ordered.

**Pronounced** in open Court this 12th day of April 2003 at  
the Principal Registry, Blantyre.

F.E. Kapanda

**JUDGE**