



**MALAWI**

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY  
CONFIRMATION CASE NO. 930 OF 2003  
THE REPUBLIC  
Vs  
JUSTIN MANDAWALA**

From the First Grade Magistrate's Court sitting at  
Dalton, being the Criminal Case No.187 of 2003

**CORAM: HON. JUSTICE F.E. KAPANDA**  
Phiri (Mrs), Principal State Advocate  
Maida (Ms), Official Interpreter  
Sinalo (Mrs), Recording Officer

Date of hearing : 11<sup>th</sup> November 2004

Date of order : 11<sup>th</sup> November 2004

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**ORDER IN CONFIRMATION**

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**Kapanda, J:**

The Defendant, Justin Mandawala, was convicted of two offences viz burglary and theft. He was convicted after full trial.

When I reviewed the case in my Chambers I did not find anything wrong with the convictions that were entered against the Defendant.

However, it is the sentence meted out on the Defendant on the count of burglary which I found to be manifestly inadequate. The Defendant was sentenced to serve a custodial term of imprisonment of 36 months for burglary. I therefore, caused this matter to be set down to consider the enhancement of sentence on the count in respect of the burglary offence.

The State agrees with this court that the sentence for the burglary is on the lower side. Indeed, it is important to note that the convict grabbed the complainant's son by the neck and threatened to stab the son with a knife that he was carrying with him at the time he committed the offence. Further, this court is alive to the fact that this court has issued a guideline on sentence in respect of the offence of burglary which is to the effect that the starting point in terms of quantum of sentence for such offence is six years. This is either scaled downwards or upwards depending on mitigating or aggravating factors. In the present case the scale tilted towards increasing the sentence in view of the aggravating factor noted above. As a matter of fact there were no serious mitigating factors that would have let one to reduce the sentence from the said starting point of 6 years imprisonment. If anything the starting point should have been increased. Accordingly, this court sets aside the sentence of Thirty-Six months that was imposed on the convict for the burglary offence. In its place this court imposes a sentence of Eighty-Four months. The sentence for the theft will not be disturbed. The sentence herein will run concurrently.

**Pronounced** in open Court this 11<sup>th</sup> day of November 2004 at the Principal Registry, Blantyre.

F.E. Kapanda

**JUDGE**