



JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION



Confirmation Case No. 1089 of 2016

(criminal case no. 1212 of 2016, SRM, Blantyre Magistrates' Court; CSA/HC/CC/35/2018)

THE REPUBLIC

versus

LASTON FANUEL

ORDER ON CONFIRMATION

UPON hearing the Senior State Advocate on review of the conviction and punishment of Laston Fanuel, who was convicted in this criminal matter of the offences of housebreaking and theft c/ss 309(a) and 278 of the Penal Code, respectively;

NOTING that the convictions were appropriate and are confirmed but that there were inconsistencies in terms of the sentence that were imposed on the two counts. In that for the offence of housebreaking there are three sentences on the record of this criminal matter: the typed judgment states two sentences of 5 years imprisonment and 5 months imprisonment while the warrant of commitment states 7 years imprisonment, and under the heading of finding on the file cover it is indicated that the sentence is 7 years imprisonment. Similarly, for the 2nd count of the offence of theft there are two sentences on the record: the sentence of 6 months imprisonment which appears on page 3 of the typed judgment and the sentence of 12 months imprisonment which appears on the warrant of commitment as well as under the heading of finding on the file cover of the criminal proceedings;

THIS COURT proceeds to set aside the sentences imposed on the two counts on the grounds of irregularity and after considering the aggravating factors (that of betrayal of trust of employer and team work) and the strong mitigating factors (that of youthfulness at 19 years old, pleas of guilty, recovery of the stolen items and

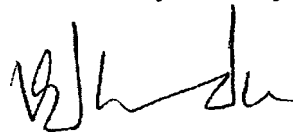
first time offender) this court substitutes them with the following reduced sentences: 48 months imprisonment for committing the offence of housebreaking and 6 months imprisonment for committing the offence of theft. Although the 6 months sentence for theft appearing in the typed judgment is manifestly inadequate this court cannot enhance it due to the absence of the defendant at the confirmation hearing.

FURTHER NOTING that it was not proper and irregular for the magistrate, without stating reasons, to order that the sentences on the two counts operate consecutively when the charge sheet reveals that the offences of housebreaking and theft happened at the same time and place and in principle called for concurrent operation of the sentences: *Maseya v Rep* [1993] 16(2) MLR 588 (SCA); *Kumwenda v Rep* [1993] 16(1) MLR 233 (SCA); *Banda and others v Rep* [1990] 13 MLR 56 (SCA); *Rep v Kamwendo* [1971-72] 6 ALR Mal 379 (HC).

IT IS HEREBY ordered that the sentence of 48 months for the offence of housebreaking and that of 6 months for the offence of theft run concurrently with effect from the date of the arrest of the defendant as was ordered by the magistrate.

This criminal matter reveals the importance of magistrates checking and proof reading their work, as part from the irregularities noted above, it does not accord with the time flow of the stages in a criminal proceeding for a defendant who was convicted on 23rd August 2016 to be sentenced on a date that is indicated to be prior to the date of conviction, on 19th August 2016, as appears in the typed sentence judgment.

Pronounced in open court this 30th day of May, 2018 at Chichiri, Blantyre.



Dorothy nyaKaunda Kamanga
JUDGE

Case information:

Date of hearing	11 May 2018
Mr. Chisanga	Senior State Advocate for the prosecution
Defendant	Absent
Ms. Chiusiwa	Court Reporter.
Ms. Million	Court Clerk.