



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION
CONFIRMATION CASE NO. 18 OF 2016**

**THE REPUBLIC
V
PILILANI KAMWENDO
CHARLES GOVATI**

CORAM: THE HON. JUSTICE MR. S.A. KALEMBERA

Miss Munthali, Senior State Advocate, of Counsel for the State

Convicts, present and unrepresented

Miss Chimang'anga, Official Interpreter

ORDER ON CONFIRMATION

Kalembere J

The convicts, Pililani Kamwendo and Charles Govati, appeared before the Mwanza First Grade Magistrate court jointly charged with the offence of breaking into a building and committing a felony therein contrary to section 311(1) of the Penal Code. The particulars of the offence alleged that Pililani Kamwendo and

Charles Govati on or about the 6th day of January 2016 at Tchereni Village in the District of Mwanza broke and entered a warehouse belonging to Justin Kamwendo and stole therein 3 bags of fertilizer weighing 50 kgs each and 24 kgs of maize all to the total value of K66,000.00. After a full trial, they were found guilty, convicted and sentenced to 24 months IHL. As a reviewing judge, I was of the view that the sentence needed enhancement. The State made their representations, and the convicts gave their representations too. Hence this Order on confirmation.

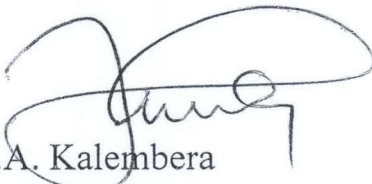
The main issue for the court's determination is whether sentence of 24 months IHL be enhanced.

The State is of the view that the sentence is on the lower side and be enhanced. The State argues that although the convicts are first offenders and the door was recovered, this offence is a felony which attracts a maximum sentence of 10 years imprisonment. The State has further cited case authorities to support their argument. In the case of **Republic v Patrick Gabriel, Confirmation Case No. 40 of 2016**, the convict who broke into an inhabited house and stole a door which was recovered, his sentence was reduced from 36 months to 30 months. He was a first offender and pleaded guilty. In the case of **Republic v Simao Dick, Confirmation Case No. 24 of 2016**, the convict broke and entered into a shop and stole property worth K1,366,000.00 most of which was recovered, but broke the wall. He pleaded guilty and was a first offender, He was sentenced to 42 months IHL. At confirmation it was reduced to 30 months IHL because he was only 18 years old at commission of the offence.

I cannot agree more that the offence of breaking into a building and committing a felony therein is a serious offence which carries a maximum sentence of 10 years imprisonment. I have considered that the property was recovered, and that the complainant, Mercy Kamwendo, and the 1st convict, Pililani Kamwendo, are blood relations, that is, the complainant is his grandmother. Though, I do not condone what the 1st convict and his friend did, I have come to the conclusion that enhancing the convicts' sentence won't help in mending fences between the complainant and the convicts. I therefore consider that confirming the conviction and the sentence would be the right thing in the circumstances of this case.

Consequently, I confirm the convicts' convictions and the sentence of 24 months IHL imposed.

PRONOUNCED this 11th day of July 2018, at the Principal Registry, Criminal Division, Blantyre.



S.A. Kalembera

JUDGE