



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION

sitting at Chichiri

CONFIRMATION CASE No. 271 of 2020

(being criminal case no. 648 of 2019, SGM, Limbe Magistrates' Court)

REPUBLIC

v

FRANK JONAS

AND

BETON WAYA

ORDER ON CONFIRMATION

nyaKaunda Kamanga, *J.*,

This criminal matter from Blantyre Magistrates' Court was remitted to the High Court for review in line with section 42(2)(f)(viii) of the Constitution, section 25 of the Courts Act and section 15(1) of the Criminal Procedure and Evidence Code (hereinafter the CPEC) to enable the High Court of Malawi verify the legality of the proceedings and whether the defendants were subjected to a fair trial and sentencing by the subordinate court.

On 7th January 2020, the defendants, Frank Jonasi and Beton Waya as well as Hara Magaletta who was late acquitted, appeared before the Second Grade Magistrate sitting at Limbe to answer a charge of the offence of breaking into a building and committing a felony therein contrary to section 311(a) of the Penal Code. Initially the first accused pleaded guilty and after the prosecution had failed to secure some exhibits in support of the plea they opted to parade witnesses. After trial the first two defendants were found guilty and convicted on his own plea of guilty as charged. The particulars of the offence are that the two defendants on the 9th day of October 2019 at around 2:00 am in Limbe township in the city of Blantyre broke and entered Easy Pack offices and stole assorted electronic items and cash of several currencies all valued at K6,215,000.00 being the property of Farook Kassam. The offence was committed by more than five culprits who overpowered the guards at the company premises in Mapanga area.

In mitigation of sentence the prosecution noted that the convicts were a first time offenders while the defendants emphasised the need for the court to consider them since they had family obligations. On 13th December 2019 the Magistrate after considering the penal provision and the *Magistrates' Court*

Sentencing Guidelines he imposed a sentence of 108 months imprisonment with hard labour on the two defendants with effect from 14th October 2019.

Having examined the record of the case this court finds that the finding by the lower court of guilty and the conviction of the defendants for the offence of breaking into a building and committing a felony therein contrary to section 311(a) of the Penal Code, following the defendants' trial, are well founded and are hereby confirmed. Custodial sentences were also an appropriate form of punishment for the first time offenders who were both 30 years old. The main aggravating factors are that the crime was committed at night and that the offenders ganged people to commit the offence in a group thereby managing to overpower the security guards at the premises.

Section 311(a) of the Penal Code places the maximum penalty for committing the offence of breaking into building and committing a felony therein at 10 years imprisonment. As was correctly noted by the trial Magistrate the *Magistrates' Court Sentencing Guidelines* (Blantyre: Malawi Judiciary, 2018 at 39) suggests the starting point for the punishment for committing the offence of breaking into building and committing a felony as a sentence of three years imprisonment. After considering the maximum penalty, the guideline sentence and the cases of *Wycliff Mussa v Republic*, Criminal Appeal No. 44 of 1995, where the High Court confirmed a sentenced of 5 years imprisonment for the offence of breaking into a building and committing a felony therein and the *Republic v Robert Masinja*, High Court / PR Confirmation case no. 402 of 2011 (unreported 18 July 2013), where the High Court confirmed a sentence of 30 months imprisonment for a first time offender who broke and entered a shop and stole from therein a mobile phone device, a computer set and scanner, which properties were valued at K450,000, this court is of the opinion that the sentence of 108 months imprisonment with hard labour that was imposed on each of the defendants for committing this felony is way too close to the maximum penalty and manifestly excessive for the first time offenders. This court exercises its sentencing discretion by setting aside the sentence of 108 months that was imposed by the trial magistrate and substitutes it with a reduced sentence of 84 months imprisonment.

Dated this 21st day of April 2020 at Chichiri, Blantyre.



Dorothy nyaKaunda Kamanga
JUDGE

CASE INFORMATION:

The Prosecution	:	Absent
Defendant	:	Absent /unrepresented
Mr. Amos	:	Court Clerk