



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CRIMINAL DIVISION**

**CONFIRMATION CASE NO. 105 OF 2021**

**(Being Criminal Case No. 129 of 2020 before the First Grade Magistrate Court Sitting at Midima Court in Blantyre)**

**THE REPUBLIC**

**V**

**MADALITSO MOSES**

**Coram: Justice Vikochi Chima**

**Mr Rodney Mkweza, Senior State Advocate**

**Ms Laureen Mputeni, Senior Legal Aid Advocate**

**Mrs Moyo, Court Clerk**

**ORDER ON CONFIRMATION**

**Chima J**

The accused was charged and convicted of burglary contrary to section 309 (a) of the Penal Code before the First Grade Magistrate Court sitting at Midima in Blantyre. He had substantially pleaded guilty to the charges. The plea of guilty on the burglary was unequivocal. The accused admitted to having stolen all the items in the second count except for the fourteen rabbits. Since the prosecution did not show an interest in amending the count so as to exclude the items the accused denied to have taken, the magistrate entered a plea of not guilty on that count and thus put the count to strict proof. The count was proved to the requisite standard of proof beyond reasonable doubt and the accused was convicted on it. He was sentenced to two years imprisonment with hard labour for the burglary and six months imprisonment with hard labour for the theft. He stole property worth around K240, 000 comprising thirty iron sheets, ten burglar bars, seven chickens, fourteen rabbits and thirteen eggs. He had committed the offences in the night and the following morning, having been found with seven chickens and ten iron sheets, he was arrested.

The convict's caution statement had stated that he had been walking on foot (having lacked money for transport) from Thyolo to Bangwe. When he got to the complainant's house he needed to relieve himself. He went into the toilet. While in there, he saw stacks of iron sheets in the house through a crack. He widened the crack and got out three stacks of iron sheets and the burglar bars. He also broke into a separate building where the rabbits and the chickens were kept and stole those animals. The accused, however, was only convicted of burglary. The magistrate ought to have amended the charges before section 254 of the Criminal Procedure and Evidence Code had been complied with and should have added the count of breaking into a building and committing a felony therein which is contrary to section 311 of the Penal Code.

It must have been a very busy night for the accused when he committed these offences. The offences seem to have been well-planned. The property stolen was extensive. Of course, all the chickens and all the iron sheets were recovered. Only the rabbits were not recovered. The starting point for burglary has been stated to be six years imprisonment with hard labour, which is to be scaled up or down depending on the aggravating or mitigating factors.<sup>1</sup> The accused in this case had substantially pleaded guilty to the charges. He was aged 23 at the time of the commission of these offences. Still, even in the face of a plea of guilt and his youth (being aged 23 years of age), the premeditation of these offences and the magnitude of the damage done to gain access to the house makes two years on the burglary and six months on the theft an inadequate sentence despite the substantial recovery of the items. The sentence on the burglary is thus enhanced to five years imprisonment with hard labour. The sentence on the theft is also enhanced to 12 months imprisonment with hard labour. The two sentences are to run concurrently with effect from the date of arrest.

Made in open court this day the

10th

of September 2021

  
Justice Vikochi Chima

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<sup>1</sup> *Rep v Mkwezalamba and another* Confirmation Case No. 461 of 2013