



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CRIMINAL DIVISION**

**CONFIRMATION CASE NO. 660 OF 2021**

**(Being Criminal Case No. 2255 of 2020 before the Senior Resident Magistrate Court sitting at Blantyre)**

**THE REPUBLIC**

**V**

**MANUEL JEKE**

**Coram: Justice Vikochi Chima**

**Ms Kumwenda, Senior State Advocate**

**Mrs Kasambara, Senior Legal Aid Advocate**

**Mrs Moyo, Court Clerk**

**ORDER IN CONFIRMATION**

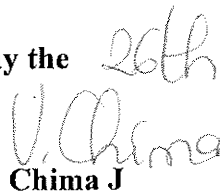
**Chima J**

1. Manuel Jeke was convicted of burglary contrary to section 309 (a) of the Penal Code and theft contrary to section 278 of the Penal Code, after a full trial. He was sentenced to 30 months imprisonment with hard labour for the burglary and six months's imprisonment with hard labour for the theft. The complainant is an agent for Airtel and TNM. On the night of 30 November 2020 around 9 p.m. at CheMussa location broke into the house of the complainant's house. While she was chatting with her children in the sitting room, her daughter saw the convict coming out of the complainant's bedroom and moving into the corridor. The convict had phones in his hands. Her daughter and the convict struggled in the corridor. The complainant found them and shouted for help. People came on the scene and started beating the convict. The phones were worth about K118, 000. The complainant also states that there was cash worth K350, 000 and also airtime worth K85, 000 that went

missing at the same time. When the convict was caught and asked where the money was, he replied that he had left it in the bathroom, however, it was never found.

2. The convict probably gained access into the house through the outside door which had not been locked as of yet. One of the windows in the house was found to have been opened and most likely by the convict.
3. Section 301 of the Penal Code states thus:
  - (1) Any person who—
    - (a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit a felony therein; or
    - (b) having entered any building, tent or vessel used as a human dwelling with intent to commit a felony therein, or having committed a felony in any such building, tent or vessel, breaks out thereof, shall be guilty of a felony termed “housebreaking” and shall be liable to be punished with death or with imprisonment for life.
  - (2) If the offence is committed in the night, it is termed “burglary” and the offender shall be liable to be punished with death or with imprisonment for life.
4. The court did not make a specific finding on the breaking. What is unmistakable is that the convict entered the house. According to PW1, the door was open. By PW2’s version, the door was not locked. If the convict just went through an open door and did not have to push it even a bit, then he cannot be said to have broken into the house. That would be an issue of just plain theft. However, the convict must have opened the window and probably took out the money through it—that is breaking out of the building. On that count then, the burglary stands.
5. There was no damage to the points of entry. The phones were recovered except for the cash plus the airtime which had the higher value. The convict is a first offender. The matter went for full trial, thus the convict showed no remorse. The convict is aged 40 years, a full adult, at an age where he would have to face the full extent of a sentence—there can be no discounting of his sentence on account of his age. Considering all factors obtaining in the matter, the sentence of thirty months (two and a half years) imprisonment and six months imprisonment with hard labour, though slightly on the lower side, do not seem out of place for the convict. I confirm them.

Made in open court this day the 26th of April 2022

  
Chima J