



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION**

CONFIRMATION CASE NO. 227 OF 2022

(Being Criminal Case No. 512 of 2021 before the First Grade Magistrate Court sitting at Chisenjere)

**THE REPUBLIC
V
LAJACK JACKSON**

Coram: Justice Vikochi Chima

Mr Mphepo, Senior State Advocate

Mrs Kasambara, Senior Legal Aid Advocate

Mrs Moyo, Court Clerk

ORDER IN CONFIRMATION

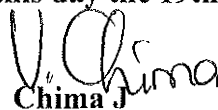
Chima J

1. Lajack Jackson, a 24 year old man, was convicted on three counts of breaking into a building and committing a felony therein contrary to section 311 (1) of the Penal Code. The convict broke into three shops that are semi detached and which belong to one owner. The shops comprised a saloon, a barber shop and a butchery. The complainant had employed the convict as a guard of these premises. He was putting up in a room behind the building that contained these shops. He removed the box containing the CCTV camera. The convict removed the burglar bars from three windows, one window for each shop, using a crowbar to gain entry into the shops.
2. On the first count, where it was alleged that he broke into the butchery, it was proved that he stole from there a car wash machine, a car wash sprayer, two trays of mince meat, soft drinks and K52, 000 cash. He was sentenced to 48 months' imprisonment with hard labour on this count. On the second count, the allegation was that he broke into the barbershop, he stole a TV set, a decoder, sterilising machines, five barber machines and K17, 000 cash.

On being convicted on this count, he was sentenced to 42 months' imprisonment with hard labour. On the third count, where he was stated to have broken into the saloon, he was convicted of having stolen eleven dresses, some hair driers, a straightener, cosmetics, an electric kettle, soaps, petroleum jelly, hair oil, a bag of jewelry and K4, 500 cash. He was sentenced to 36 months' imprisonment with hard labour on this count. All these sentences were to run concurrently with effect from the date of arrest.

3. In the butchery, he also broke the scale for weighing the meat. He failed to bring out the soft drinks.
4. The car wash machine, the car wash sprayer, the sterilising machine, two hair blowers (driers), some weaves, three barber machines, the CCTV camera, the television, decoder and DVD player, two dresses, assorted cosmetics, were recovered from the convict.
5. All the property stolen was estimated at around one million three hundred thousand kwacha.
6. The state and the defence submit that the sentences be confirmed. Among other things, they both point out that the convict pleaded guilty and showed remorse. It is not true that the convict pleaded guilty. All the prosecution witnesses had testified and the court had ruled that the convict had a case to answer. The convict elected to testify. He thus testified that he indeed broke into the building and stole the items because the complainant was not paying him his wages. Those kinds of utterances do not show remorse. In the first place, it is not a defence for one to steal from their employer because their master is not paying them nor would it qualify as a mitigating factor, if at all it could be one, in the face of clear evidence that the convict was being paid his dues. There was thus no contrition shown on the part of the convict.
7. Nevertheless, I would agree with both the state and the defence that the sentences are fair. The first aggravating factor I see is that the offences were premeditated and the offences involved quite a bit of damage to the premises. Secondly, there was a serious breach of trust on the part of the convict for he was the complainant's employee. The property stolen too was quite substantial and must have been quite valuable to the owner. On the other hand, it can be seen that the convict is a first offender and a young man who deserves a second chance at life. Further, some of the items were recovered. I thus confirm the sentences.

Made in open court this day the 19th of July 2022


Chima J