



JUDICIARY

Confirmation Case No. 718 of 2016

[being criminal case no. 222 of 2017, SGM, Mulanje Magistrates' Court]

THE REPUBLIC

v

HASTINGS KOMWA

ORDER IN CONFIRMATION

nyaKaunda Kamanga, J.

THIS ORDER IS MADE UPON examining the subordinate court's record of the case of this criminal matter in the process of reviewing the convictions and punishment that were imposed on the defendant, Mr. Hastings Komwa, who was convicted following his pleas of guilty for the offences of burglary contrary to section 309 of the Penal Code and theft contrary to section 278 of the Penal Code. The magistrate sentenced the defendant to concurrent sentences of 24 months imprisonment on the 1st count and 12 months imprisonment on the 2nd count. The defendant admitted and confirmed the facts from the prosecution that during the night of 12th - 13th May 2016 at Chitakale Trading Centre, in Mulanje district he broke and entered a dwelling house of his sister through a window of a kitchen and stole from therein plates, food warmers and cutlery valued at K14,500. The defendant proceeded to sell the items that he had stolen.

THIS COURT FINDS that the convictions were well founded and are hereby confirmed and;

NOTING that since the offender and prosecution are absent from these proceedings and all the sentences expired this court cannot exercise its sentencing discretion to enhance the manifestly inadequate sentence of 24 months imprisonment that was imposed on convicted offender for committing the offence of burglary as was recommended by the reviewing judge. Similarly, the sentence on the count of the offence of theft which was manifestly excessive cannot be reduced as it has already been served.

The main aggravating factor in this criminal matter is the fact that the defendant breached the trust that his sister had in him through the commission of the two offences. The notable mitigating factors are that the defendant pleaded guilty to both counts, he was a first time offender and the stolen items were of low value and were recovered.

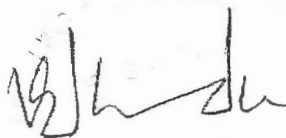
The maximum penalty for committing the offence of burglary or housebreaking is death or imprisonment for life: section 309 of the Penal Code. The *Magistrates' Court Sentencing Guidelines*, (Blantyre: Malawi Judiciary, 2007 at 38), suggests the starting point for the punishment of the offence housebreaking and burglary as a sentence of six years imprisonment. The way to determine a starting point sentence for the offence has been discussed in the cases of *Republic v Mpinganjira Bagala* HC/PR confirmation case no. 24 of 2011 (unreported 11 July 2013) and *Republic v Dingu James Maya*, HC/PR confirmation case no. 178 of 2013 (unreported 21 August 2013).

After a consideration of the aggravating and mitigating factors, in light of the maximum penalty and the suggested sentencing guideline starting point of 6 years imprisonment, as well as reflecting on the sentences that are actually imposed in cases of similar nature, such as the cases of *Republic v Maganizo Mapeni* HC/PR confirmation case no. 466 of 2010 (unreported 21 August 2013) and *Republic v Fatsani Sakhwinya* HC/PR confirmation case no. 359 of 2013 (unreported 24 July 2013) this court agrees with the reviewing judge that the punishment of 24 months' imprisonment that was imposed on the defendant for committing the offence of burglary was manifestly inadequate for the offender and the offence that he committed.

In accordance with sentencing principles the maximum penalty of five years imprisonment for committing the offence of theft is reserved for the worst instance of the crime: *Lawe v Republic* [1997] 2 MLR 25 (HC) at 28. The *Magistrates' Court Sentencing Guidelines* suggests the starting point for the punishment of theft as a six months' custodial sentence. The general principles and guidelines for sentencing in cases involving dishonesty are covered at length in the case of *Republic v Francis Kotamu* HC/PR Confirmation case no. 180 of 2012 (unreported 27 June 2013).

Having already noted that the sentences that were imposed on the defendant expired before this confirmation process, it is hereby ordered that the sentences of 24 months imprisonment for the offence of burglary and 12 months imprisonment for the offence of theft which were imposed on the defendant be and are hereby reluctantly confirmed since they have already been served.

Dated this 8th day of June 2018 at Chichiri, Blantyre.



Dorothy nyaKaunda Kamanga
JUDGE

<i>Case information</i>	:	
The State	:	Absent.
The Defendant	:	Absent /unrepresented.
Ms. Million	:	Court Clerk