

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CONFIRMATION CASE NO. 500 OF 1995**

**THE REPUBLIC**

**VERSUS**

**JOHN ADAM**

From the First Grade Magistrate's Court at Salima  
Criminal Case No. 220 of 1994

**CORAM : MWAUNGULU, J**

**Divala, State Advocate, for the State  
Accused, present and unrepresented  
Tsoka, Official Interpreter  
Mwenyeidi, Recording Officer**

**Mwaungulu, J**

**JUDGMENT**

The Judge who reviewed this matter thought that the sentence of two years imprisonment with hard labour which the First Grade Magistrate imposed on the defendant, John Adam, on the burglary charge was manifestly excessive. Mr. Divala, appearing for the State, is like-minded. I was at the time of hearing the matter not like-minded. I, therefore, reserved my ruling.

The defendant broke into the complainant's house on the 12th of December 1994. The complainant woke up on the night to find that the house had been broken and quite a bit of his property stolen. He reported to the police. The defendant was arrested several days later. At the police he

admitted the charges of burglary and theft. He pleaded guilty before the Court below. He was sentenced to two years and nine months for the burglary and theft respectively. The sentence on the theft charge does not concern us. It is confirmed. It is the sentence on the burglary charge that preoccupied the Reviewing Judge and concerns us here. In view of the opinion of the Reviewing Judge and counsel, it might be of some use to explain why of late the approach of this Court has been for longer and, as often happens, an immediate custodial sentence for this offence.

In relation to burglary an attempt was made in *Republic v Chizumila*(1994) C.C. No 316) to rationalise sentencing for burglary and the related offence of housebreaking. There most sentences passed by this Court were reviewed. The sentences showed a range of eighteen months to two years. These sentences, however, were gainsaid by the appalling observation that this was the single offence that Courts below and the High Court had to grapple with every week throughout the year, if the records of Courts below and this Court are what one has to go by.

In *Chizumila's* case it was observed that four repeat offenders this Court was prepared to impose between five to six years imprisonment with hard labour. For repeat offenders, previous convictions are not a reason for imposing a sentence heavier than one deserved. A previous conviction is a reason why the sentence deserving in the circumstances should be imposed because leniency is forfeited because of repeated crime. It was concluded from the sentences that the starting point for burglary is a term of five to six years imprisonments with hard labour. As a matter of practice Courts have scaled the sentence downwards to reflect mitigating circumstances such as a plea of guilty age, the fact that the defendant is committing an offence for the first time, the circumstances in which the offence was committed and the list is not exhaustive. From these factors Courts settled for a period of eighteen months to two years for burglary and housebreaking.

These sentences, as I said and observed in *Chizumula's* case, seem not to result in any shift in the crime. Whether imprisonment succeeds in deterring crime is not a question for the Court: that is for penologists. Clearly, however, where certain levels of sentences are incapable of affecting crime, it is in the public interest that Courts should shift their sentencing policy so that it reflects the public interest in curbing crime. When that point is reached, individual personal circumstances have to be weighed against public interest. The way forward, a way justified by public policy, is to attach a premium on conventional sentences to reflect the need to deter crime by enhancing sentences. On this basis sentences of up to two years for burglary or housebreaking have had to be revised upwards. This has been reflected in many decisions after the *Chizumila* Case. I think it is an anticipated response to some curious observations made there.

As it has been said several times, burglary is an invasion of privacy. The crime leaves the victims helpless and insecure. With the related crime of theft, the offence leaves residents in dire loss. Others are put to considerable expense as they aim to beet up their security. Burglary is in the top bracket of offences considered heinous under our Criminal law. For all these considerations this Court, and most jurisdictions do, has espoused longer and immediate imprisonment for those guilty of burglary or housebreaking.

The sentencing Court referred to all these matters in the reasons for the sentence. I agree with his observations. I do not think that the sentence is manifestly excessive. It is in fact inadequately so. I enhance the sentence for the burglary to three years imprisonment with hard labour. The sentences will run concurrently as the First Grade Magistrate ordered.

Made in open Court this 30th day of January 1996 at Blantyre.

**D.F. Mwaungulu**  
**JUDGE**