

**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**CONFIRMATION CASE NO. 821 of 1996**

**THE REPUBLIC**

**VERSUS**

**SMIZES MTUWANA**

From the Second Grade Magistrate's Court at Limbe  
Criminal Case No. 576 of 1996

**CORAM: MWAUNGULU, J**

Manyungwa, State Advocate, for the State

Accused, present and unrepresented

Mangisoni, Official Interpreter

Chilunga, Recording Officer

**Mwaungulu, J**

**JUDGMENT**

This case was set down by the Honourable Mr. Justice Tembo to consider the severity of the sentence. The First Grade Magistrate at Limbe convicted the defendant, Smizes Mtuwana, of the offences of burglary and theft contrary to sections 309 and 278 respectively of the Penal Code. The Court below sentenced the defendant to six months imprisonment with hard labour on each count. The Reviewing Judge thought that the sentence of six months imprisonment with hard labour on the burglary count was manifestly inadequate. I agree.

This was a mill- of- the road type of burglary, of course. The complainant, related to the defendant, came back on the night of 16th March 1996 to find that his house had been broken into and various items of property stolen. The intruder had broken the lock on the door to enter the dwelling house. When arrested by the police the defendant admitted the charge. He also pleaded guilty when he appeared in the Court below. This was, therefore, an ordinary case of burglary.

Since **Chizumila's Case**, (1994) CC. 316), we have said that the starting point for burglary should be six years imprisonment with hard labour. This sentence should be downgrade or upgrade to reflect mitigation and aggravation. We have also said that three years imprisonment with hard labour is the sort of sentence to impose for the ordinary type of burglary like the one in the present case.

It has been suggested in this Court as it was in the Court below that the defendant is a very young person. The argument just gives me another opportunity to repeat what we have noted in this Court recently. Frequent has been the forlorn cry that the particular offender is young. Much to our surprise, however, has been to notice that atrociously and dastard things are now committed by those of the age of the defendant's lot. We have been firm, therefore, in our resolve for serious crimes like the one under consideration that immediate and longer imprisonment should be imposed. While we will listen to the plea it will be in the firm understanding that we owe it to the public, to prevent crime and that this can only be achieved by passing meaningful sentences.

I agree with the Reviewing Judge that six months imprisonment with hard labour for burglary is manifestly inadequate. I set aside the sentence. The defendant will serve a sentence of three years imprisonment with hard labour. The sentences will run concurrently as was ordered by the Court below.

Made in open Court this 24th day of April 1997 at Blantyre.

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