

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CONFIRMATION CASE NO. 742 OF 1997

THE REPUBLIC

VERSUS

OLIVA MWANYENGAMAPEZI

In the First Grade Magistrate Court sitting at Nsanje Criminal Case No. 64 of 1997

CORAM: MWAUNGULU, J.

Chimwaza, State Advocate, for the State

Defendant, present, unrepresented

Banda, the Official Court Interpreter

Marsen, the Recording Officer

Mwaungulu, J

JUDGMENT

The Honourable Mr. Justice Chimasula set down this case to consider the sentence that the court below passed in this matter in respect of the housebreaking count. In relation to thus count the court below sentenced the defendant to two years' imprisonments with hard labour. The defendant, Oliva Mwanyenganapezi, was convicted on three counts. The other two offences were simple theft and theft of a bicycle, an aggravated theft under our penal provisions. For these two, the court below sentenced the defendant to nine and twelve months imprisonment with hard labour respectively. The reviewing judge had no problems with these sentences. He had all to say about the sentence imposed for the housebreaking count. In this regard he was right. The State and I agree with the judge.

In the afternoon of 30th May, 1997 the complainant closed his house and went put. He came later

that afternoon to find his house broken into and property stolen. The defendant gained entry by pushing the door. The door was not locked. It was only closed. The defendant pleaded guilty. This was the defendant's first offence.

In relation to the offence of burglary, it is clear that the court below is oblivious to the trend that this court is setting for this crime. Offences of burglary and housebreaking deserve long and immediate imprisonment. The offences are punishable with death or life imprisonment. They therefore belong to a group of offences regarded very seriously under our criminal law. Besides, in spite their seriousness, they are very commonplace, if the records of the courts are anything to go by. The two offences with the related offence of theft result in many millions of kwacha of loss of property in the country each year. Households spend an equivalent amount for insurance and security. The offences are a desecration of the home. It is for these reasons and others that this court is now recommending long and immediate imprisonment for these offences.

In **Republic v Chizumila**, (1994) Conf. Cas. No 316, this court said that the starting point for burglary should be six years imprisonments with hard labour. The sentence should be scaled upwards or downwards to reflect mitigating and aggravating factors. Always this will involve a consideration of the extent and the circumstances in which the crime was committed, the personal circumstances of the defendant, the impact of the crime on the victim and the public interest in prevention of crime. For burglary the legislature directed its mind to trespass with intent to commit a crime. The extent of the trespass will have a bearing on the sentence actually passed. Where therefore there has been substantial damage to the premises or property in breaking and gaining entry, the sentence will be enhanced. Equally, where the victims were disturbed or injured, the court will regard that. Then there will be a host of other considerations that reflect a disposition beyond the ordinary mental requirement for commission of a crime, such as meticulous planning or that more than one person was involved in the execution of the criminal design. All these, and the list is not exhaustive, are the sort of things that the sentencer has to look at when dealing with an offender.

Here, on the burglary count, I and Madam Chimwaza agree with the criticism of the reviewing judge of the sentence of the court below. In favour of the defendant was his age, that he is a first offender and his plea of guilty. The trespass was not very extensive. The appropriate sentence in the matter is three years imprisonments with hard labour. I set aside the sentence of two years imprisonments with hard labour on the burglary count. 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 28th Day of October.

D.F. Mwaungulu.

JUDGE