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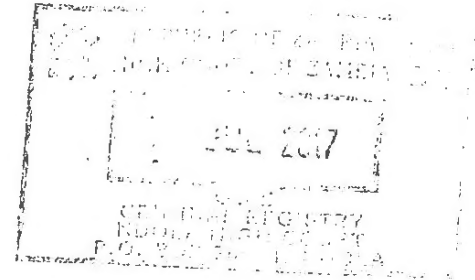
**IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT NDOLA
(Criminal Jurisdiction)**

HNA/08/2017

JOHN MWAPE SULAKO

V

THE PEOPLE



Before the Hon. Mr. Justice Davies C. Mumba in Open Court this 19th day of July, 2017.

For the Appellant: Ms. K. Chitupila, Senior Legal Aid Counsel

**For the Respondent: Mr. M. Lupiya, State Advocate
Mr. S. Zulu, State Advocate
Mrs. V. Sangwa, State Advocate**

JUDGMENT ON APPEAL

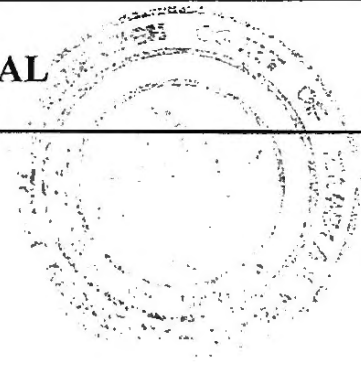
Case referred to:

1. Alubisho v The People (1978) Z.R. 11

Legislation referred to:

1. The Penal Code, Cap. 87- s.301

On his own plea of guilty, the appellant was found guilty and convicted of the offence of house breaking with intent to commit a felony, contrary to Section 301(a) of the Penal Code, Cap. 87; and he was sentenced to four years imprisonment with hard labour with effect from 28th December, 2016 by the Mufulira Subordinate Court of the first class. He has appealed against that sentence.



On 30th January, 2017 the appellant was granted bail pending the hearing and determination of the appeal. The said bail was revoked by me on 14th July, 2017.

The only ground on which the appellant appeals is that the sentence of four years imposed on him is harsh considering that he is a first offender who readily admitted the charge without wasting the Court's time. He has submitted that he regrets his mischievous behaviour and promises to refrain from all forms of criminal vices. He is remorseful and will endeavour to be a good person in society.

I have carefully perused the record of proceedings and take notice that the plea of guilty was unequivocal.

The undisputed facts of the case disclosed that the appellant removed a board on top of the door to the complainant's house and gained access into the house. When the complainant returned from church he heard some noise in his house after noticing that there was a gap on top of the door to his house. Later, the appellant emerged from the house and the complainant gave a chase. He managed to apprehend him and with the help of neighbours they took the appellant to Mufulira Central Police where he was subsequently arrested and formally charged with the subject offence. Under warn and caution in Bemba language, the appellant freely and voluntarily admitted the charge.

I have duly considered the circumstances under which the offence was committed, and the fact that nothing was stolen from the complainant's house. Although the appellant has contended that he readily admitted the charge, my view is that it is because he was caught red-handed. However, I have taken into account the fact that he is the first offender who deserves the leniency of the Court.

In the case of **Alubisho v The People**¹, it was held, *inter alia* that:

“In dealing with an appeal against sentence, the appellate Court should ask itself three questions:

- (1) Is the sentence wrong in principle?**
- (2) Is it manifestly excessive or so totally inadequate that it induces a sense of shock?**
- (3) Are there any exceptional circumstances which would render it an injustice if the sentence were not reduced?”**

The offence for which the appellant was convicted and sentenced to four years imprisonment with hard labour is provided for under section 301(a) and (b) of the Penal Code which enacts as follows:

“301. Any person who-

(a) breaks and enters any dwelling house with intent to commit a felony therein; or

(b) having entered any dwelling house with intent to commit a felony therein, or having committed a felony in any such dwelling house, breaks out thereof;

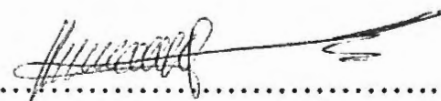
is guilty of the felony termed “house breaking”, and is liable to imprisonment for seven years.”

I find that the sentence that was imposed by the trial magistrate was within the prescribed punishment for the offence, and that within his class, the magistrate had the jurisdiction to impose that sentence. Therefore, the sentence was not wrong in principle.

I have considered the sentence of four years imprisonment with hard labour to be excessive in the circumstances of this case. The convict did not steal anything from the house and there are no aggravating circumstances surrounding the commission of the offence. This case is not the worst of its kind.

Accordingly, I accept the appellant's contention that his sentence is harsh. It has come to me with a sense of shock. The sentence if allowed to stand would be unfair and unjust to the appellant who is the first offender. In view of what I have said, I hereby allow the appeal against the sentence. The sentence is set aside and in its place, I substitute a sentence of two years' imprisonment with hard labour with effect from 14th July, 2017 when his bail pending appeal was revoked.

Delivered in Open Court at Ndola this day of 2017.



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DAVIES C. MUMBA
HIGH COURT JUDGE

