



A brief background of the instant case has it that, appellant was charged with 2 counts of offences.

Count 1 – Unlawful Entry Contrary to Section 152 of Act 29/60.

Count 2 – Causing Unlawful Damage Contrary to Section 172(a) of Act 29/60.

The brief facts are that accused on the 19/07/2021 unlawfully broke into the ceiling of complainant and hid there. He was however detected and brought down. It was alleged he had a knife but was not charged with it.

When put before court, appellant pleaded guilty to the two counts preferred against him. The trial Magistrate on the 22/07/2022 convicted appellant on his own plea of guilty on count 1 only and sentenced him to 5 years IHL.

The trial Court Magistrate took into consideration the fact that the offence of breaking into the homes of people has become rampant in the jurisdiction, therefore the sentence of 5 years IHL was to serve as a deterrent to others. It is against the above decision that the convict appeals to this court.

The appellant is not represented by a lawyer. Having studied the facts and the grounds of appeal this Court hold the view that the 5 years IHL sentence handed down by the court on the appellant is not only harsh but excessive.

My reasons are that;

- a) Appellant is a first time offender
- b) No harm was occasioned to the complainant.

Indeed, when a particular crime becomes elevated and affects the community the courts have duty to speak loud through its sentence to deter like minds; hence the decision of the trial court to punish the appellant in the manner it did.

However, the said sentence of five years IHL appears harsh and excessive based on the context of the crime.

Appellant has no previous criminal record of any nature. The alleged knife he is said to possess was brought to the police by the complainant several days after appellant was arrested. Perusing the record of appeal, it revealed that the court struck out count 2 of the offence charged. It gave no reasons.

The above factors should have been taken into consideration by the trial Magistrate but he did not. Our prisons are full with no help in sight. Our national purse is lean and would no serve the interest of the public to keep an able bodied young man of 36 years in prison and feed him with tax payers money for an offence that cause no injury to anyone. It is better he is left out to fend for himself.

After considering the case in totality, the law and sentencing guidelines on the offence of Unlawful Entry, I conclude that the 5 years' punishment is harsh and excessive. I thereby review the sentence of 5 years down to 15 months IHL.

I believe appellant must have learnt his lessons by now. The review takes effect from 22/07/2021

(SGD.)

CHARITY A. ASEM (MRS.)

(JUSTICE OF THE HIGH COURT)

**PARTIES:**

Appellant - Absent, in lawful custody not brought.

Respondent AG – Present.

Francis Asumeni for Prisons

**LEGAL REPRESENTATION**

Joseph Opusuma for the Republic (ASA) – Present for Freda Ameke

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