**ILUNGA v THE PEOPLE (1969) ZR 175 (HC)**

HIGH COURT

WHELAN J 40

19th DECEMBER 1969

**Flynote and Headnote**

[1]   **Criminal law - Burglary - Specification of intended felony in charge.**

   In a prosecution for burglary (breaking into a dwelling house at night with intent to commit a felony), the charge must specify the 45 felony intended.

**1969 ZR p176**

MAGNUS J

[2]   **Criminal procedure - Separate counts - Burglary - Doubt as to what felony intended***.*

   If, in a charge of burglary, doubt exists as to what felony the accused intended, the prosecution can overcome this difficulty by 5 laying separate counts.

[3]   **Criminal law - Burglary - Separate counts - Doubt as to what felony intended.**

   See [2] above.

**Appellant in person.**

*Heron, State Advocate,* for the People:  10

**Judgment**

**Whelan J:** The appellant was convicted in the Subordinate Court of the Third Class for the Kitwe District of burglary contrary to section 271 (1) of the Penal Code, and he was sentenced to fifteen months, imprisonment with hard labour. He appeals to this court against his 15 conviction and sentence.

There is no merit in any appeal against his conviction. He was caught red - handed coming out of a house in Kitwe. He has a bad record and the sentence of fifteen months if anything errs on the side of leniency. His appeal against conviction and sentence is dismissed, and the sentence 20 is confirmed.

[1] Before finally disposing of this case I would observe that the charge as originally laid was in a correct form in that it alleged that the appellant had broken into a dwelling house with intent to commit a felony and the felony was specified as being that of theft. For some reason the 25 prosecutor applied to amend the charge to delete the words "namely to steal," the reference to theft, and the magistrate acceded to this request. This was a mistake on the part of the prosecutor and on the part of the magistrate. Burglary is the breaking into of a dwelling house with intent to commit a felony and that felony must be specified in the charge. [2] [3] 30 If there is doubt as to what felony was intended by the housebreaker, that difficulty can be overcome by laying separate counts. In the circumstances of this case I do not consider that any miscarriage of justice has been occasioned and in view of this I have dismissed the appellant's appeal.

*Appeal dismissed*