**MANGROSA v THE PEOPLE (1969) ZR 131 (HC)**

HIGH 40   COURT

WHELAN J

5th SEPTEMBER 1969

**Flynote and Headnote**

[1]   **Road traffic and roads - Drunk in charge - Prosecution must prove vehicle was in a public place.** 45

**1969 ZR p132**

WHELAN J

   Where a person is charged with being in charge of a motor vehicle while under the influence of drink or drugs contrary to section 208 (1) of the Roads and Road Traffic Ordinance, the prosecution must prove that at the time in question the vehicle was on a road within 5 the meaning of section 2 of the Ordinance to which the public had unrestricted access.

Statute construed:

   (1)   Roads and Road Traffic Ordinance (1965, Cap.173), s.208 (1).

*Dumbutshena, Legal Aid Counsel*, for the appellant

*Chaila, State Advocate,* for the respondent 10

**Judgment**

**Whelan J:**[1] On the 30th June, 1969, in the Subordinate Court of the First Class for the Luanshya District the appellant was convicted of being in charge of a motor vehicle when under the influence of drink or drugs, contrary to section 208 (1 ) of the Roads and Road Traffic Ordinance. 15 He was fined K80 and he appeals to this court against his conviction and sentence.

The State do not support this conviction and in my opinion quite rightly, in view of the lack of evidence and the absence in the magistrate's judgment of any reference as to whether the appellant was in charge of a 20 motor vehicle on a road within the meaning attributed to that term by section 2 of the Roads and Road Traffic Ordinance. It was an essential part of the prosecution case that the appellant was in charge of this vehicle on a road. The allegation was that he was in a public place, namely Ralph's Pleasure Resort. There was no real evidence that where the vehicle was 25 was a public place to which the public had unrestricted access, and the magistrate had made no finding that the appellant was in such a place. In these circumstances I do not consider that this conviction can stand. The appeal is allowed, the conviction is quashed and the sentence is set aside. I understand the fine has been paid and it is to be refunded to the appellant. 30

*Appeal allowed*

**1969 ZR p132**