**STAAS v THE PEOPLE (1969) ZR 147 (HC)**

HIGH  15 COURT

WHELAN J

19th SEPTEMBER 1969

**Flynote and Headnote**

[1]   **Criminal procedure - Sentencing - Fines, amount of - Necessity to determine financial means of accused.** 20

   In determining the amount of a fine to assess against the accused, the magistrate must make an inquiry into the accused's financial means.

*Porte,* for the appellant.

*Kawambwa, State Advocate*, for the People. 25

**Judgment**

**Whelan J:** On the 18th July, 1969, in the Subordinate Court of the First Class for the Kitwe District the appellant, a twenty - year - old clerk, was convicted of dangerous driving contrary to section 207 (1) of the Roads and Road Traffic Ordinance. He was fined K400, and it was ordered that his licence be indorsed. He appeals to this court against his 30 sentence, and briefly the submission as made by his counsel is that the facts of the case as read out by the prosecutor were somewhat exaggerated and as a result the magistrate was given a distorted picture of the appellant's actual driving at the time.

There is no doubt that, even on the best construction, the facts as 35 alleged by the prosecutor show that the appellant during the course of the early afternoon of the 15th July drove around Kitwe in what the magistrate described as an irresponsible and dangerous way. [1] But there is a certain aspect relating to sentence which counsel has drawn to my attention which the magistrate did not have the advantage of hearing, and that 40 is when one considers the salary earned by the appellant. The maximum

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fine which the magistrate could have imposed was K1,000. Of course the maximum fine is for an offence of the maximum gravity, and as to the seriousness of this offence I quite agree that it could have been very much worse, but the appellant I am informed earns K200 per month 5 gross. He therefore has been fined two months gross pay, and I am of the view that the magistrate should have inquired into the appellant's means in order that he could have assessed properly the extent of fine. On this ground alone I allow this appeal. The sentence is set aside, and in substitution therefor I order that the appellant do pay a fine of K150 which 10 is to be paid to the Clerk of the Court, Kitwe, on or before the 7th October, 1969.

*Appeal allowed*