**KUMOYO v THE PEOPLE (1974) ZR 50 (HC)**

HIGH COURT

CULLINAN J

22nd MARCH 1974

(Criminal Appeal No. HL A66 of 1974)

**Flynote**

**Criminal**5**Procedure - Statutory judgment under s. 171 of Criminal Procedure Code - Whether powers of the court under ss. 308 and 311 of Criminal Procedure Code exercisable in respect of a statutory judgment.**

**Headnote**

The appellant was convicted of theft by public servant and sentenced 10 to fifteen months' imprisonment with hard labour. The trial magistrate also entered statutory judgment under s. 171 of the Criminal Procedure Code. The appellant appealed against this judgment.

*Held:*

   (i)   No appeal lies against a statutory judgment, *per se.*

   (ii)   The 15 trial magistrate had no power to exercise any power under ss. 308 and 311 of the Criminal Procedure Code in respect of a statutory judgment.

Legislation referred to:

Criminal Procedure Code, Cap. 160, ss. 171, 171 (1), 171 (2), 308 and 311.

Penal Code, Cap. 146, s. 28 *(c)* (ii). 20

Appellant in person.

*V K C  Kamalanathan, State Advocate*, for the respondent.

**Judgment**

**Cullinan J:** The appellant was convicted by the Subordinate Court of the Second Class for the Kalabo District of theft by public 25 servant of K106.10 cash and sentenced to fifteen months' imprisonment with hard labour. The appellant has appealed against sentence out of time; he has however filed notice of application for extension of time within which to appeal. I consider that the interest of justice will be served by granting such application and I so grant it.

The 30 appellant was convicted on his own plea of guilty. The trial magistrate took into account the fact that the accused was a first offender. He did not, however, take into account as he shou2ld have done the fact that the appellant pleaded guilty. Although the offence is a serious and prevalent one and the sentence does not come to me with any sense of 35 shock, there was an error of principle and I consider that the appellant is therefore entitled to a slight reduction in sentence. The sentence of the court below is quashed and a sentence of twelve months' imprisonment with hard labour is substituted therefor.

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The trial magistrate also entered statutory judgment under section 171 of the Criminal Procedure Code. The appellant has appealed against such judgment. Under subsection (2) of section 171 no appeal lies against a statutory judgment *per se.* In the exercise of my revisionary powers, however, I note that the trial magistrate's order reads as follows: 5

   "Statutory judgment is hereby granted to the Government of the Republic of Zambia to recover the sum of K106.10 from the accused person by seizure and sale of the accused's moveable and immoveable property under distress in default of distress 2 months' simple imprisonment until the sum of K106.10 shall 10 sooner be paid."

It seems to me that not alone did the trial magistrate exercise the additional jurisdiction contained in section 171 (1) but also the powers contained in sections 308 and 311 of the Criminal Procedure Code - those contained in section 28 *(c)* (ii) of the Penal Code are obviously not 15 applicable. Section 308, however, refers to a "fine, penalty, compensation, costs, expenses or otherwise" and clearly deals with sanctions imposed by a court in the exercise of its criminal jurisdiction under the Criminal Procedure Code. The judgment, however, entered by the court under section 171, is to all intents and purposes a civil judgement and under 20 subsection (1) thereof civil jurisdiction is specifically conferred upon the court for that purpose.

It seems to me therefore that the powers contained in sections 308 and 311 of the Criminal Procedure Code are not exercisable in respect of a statutory judgment entered under section 171. The court has merely 25 the power to enter such judgment in favour of the Attorney-General (not the Government), no more than that. Thereafter it is a matter for the Attorney-General as to how he will seek to execute such judgment, bearing in mind the provisions of the Subordinate Court Act and the High Court Act and the rules made thereunder, or indeed as to 30 whether or not he will choose to execute such judgment at all.

The order of the court below is therefore set aside and there is substituted therefor an order under the provisions of subsection (1) of section 171 of the Criminal Procedure Code that judgment be entered for the amount of  K106.10 in favour of the Attorney-General. 35

*Order accordingly*