PETER MULOWA v THE PEOPLE (1979) Z.R. 152 (S.C.)

SUPREME COURT
GARDNER, AG. D.C.J., BRUCE-LYLE, J.S. AND CULLINAN, AG. J.S.
24TH APRIL AND 8TH MAY, 1979
S.C.Z. JUDGMENT NO. 12 OF 1979

Flynote
Criminal law and procedure - Plea - Pleading more than once to same charge - Whether amounts to prejudice.

Headnote
The appellant accused the complainant of having bewitched his dog; he rushed towards the complainant's house with a muzzle-loading gun and shot him wounding him severely. In court he appeared three times before different judges and on each appearance he was asked to plead to the charge of attempted murder, and he pleaded not guilty each time. The charge was later amended to wounding with intent to cause grievous harm and he pleaded guilty and was convicted and sentenced. On appeal against sentence counsel also contended that the appellant should not have been asked to plead more than once.

Held:
Although the taking of a plea to the same charge more than once is generally undesirable, it is not prejudicial unless the accused, having pleaded not guilty at firm, changes his plea to one of guilty to the same charge.

Case referred to:
(1) R. v Matyola (1958) R. & N. 154.

For the appellant: G. Chilupe, Legal Aid Counsel.
For the respondent: R. Balachandran, State Advocate.

Judgment
GARDNER, AG. D.C.J.: delivered the judgment of the court.

The appellant was convicted of wounding with intent to cause grievous harm and sentenced to four years' imprisonment with hard labour. His appeal was against sentence only but we allowed Mr Chilupe, Legal Aid Counsel for the appellant, to put forward one ground of appeal against conviction.

The appellant was first charged with attempted murder and he first appeared before Ryan Commissioner, on the 5th June 1978, when he pleaded not guilty and the case was adjourned to the 6th June 1978. On that day the appellant appeared again before Ryan Commissioner, when a plea was taken and the appellant pleaded not guilty. The case was then adjourned to the next sessions. On the 6th November 1978, the appellant

appeared before Moodley, J., when a plea was taken again. The appellant again pleaded not guilty and the case was adjourned for trial on the 7th November. On the 7th November no plea was taken but the case was adjourned to the next sessions on an application by the State Advocate. On the 10th January, 1979, the appellant appeared before Bweupe, J., and the State Advocate withdrew the charge of attempted murder and put in an amended charge of wounding with intent to cause grievous harm. To this charge the appellant pleaded guilty. Counsel for the appellant referred us to the case of *R. v Matyola* (1). This was a case heard in Nyasaland (now Malawi) whose Criminal Practice and Procedure was similar to that of this country. In his judgment at p. 155 Spencer - Wilkinson, C.J., said that, although he was not prepared to lay down a general rule that an accused person should never be asked to plead more than once, it was his opinion that if an accused has the charge put to him more than once he may ultimately admit simply because he thinks that this is what the court expects of him. In that case the accused, when first charged with the offence of burglary, said: "I do not deny entering the house. I did so because I had some drinks." And, as the learned Chief Justice said:

> "Upon this the learned magistrate, quite properly, entered a plea of not guilty."

At a later date the same charge was put to the accused again and he said: "I understand the charge. I admit the charge." Thereafter the prosecution gave the facts of the case in which there was nothing from which an intention to steal on the part of the accused could be inferred. Moreover, the accused was not asked at the conclusion of the statement of facts whether he agreed with those facts. The conviction was quashed in that case not only because of the criticism of the number of times that the accused had been called upon to plead, but because it was not proper for the trial court to accept a simple admission of the charge, further questions should have been put to the accused in order to find out the exact meaning of his plea, the statement of facts did not disclose an intention to steal, and the accused was not called upon to agree with the facts. That case is clearly distinguishable from the case at present before us. The appellant although charged three times with attempted murder maintained his plea of not guilty and there was therefore no possible prejudice by having been called upon to plead more than once. He did not plead guilty until the charge was amended to wounding with intent to cause grievous harm. While we respectfully agree with the comments of Spencer Wilkinson, C.J., in the *Matyola* case (1), we must point out that, although the taking of a plea to the same charge more than once is generally undesirable, there is no need to consider the possibility of prejudice unless, having pleaded not guilty at first, an accused changes his plea to one of guilty to the same charge on being called upon to plead again. As we have said earlier there was no prejudice to the appellant in this case and in any event he was represented by Legal Aid Counsel at all the hearings. There is no merit in this ground of appeal.

The appeal against sentence was dismissed.
Appeal dismissed