

THE PEOPLE v KANGWA MWABA (1979) Z.R. 193 (H.C.)

HIGH
CULLINAN,
10TH MAY, 1979
HPR/174/1979

COURT
J.

Flynote
Criminal law and procedure - Juvenile offender - Order fining guardian for juvenile's offence-
Impropriety of.

Headnote
The juvenile offender was charged with and convicted of evading price control regulations. His guardian who was present was fined K50 or one month's simple imprisonment in default of payment.

Held:

- (i) An order cannot be made against a parent or guardian under s. 73 of the Juveniles Act unless the procedure set out in the case of *Mkandawire and Others v The People* is followed.
- (ii) There was no evidence indicating that the guardian had conducted to the commission of the offence by neglecting to exercise due care of the juvenile.

Case cited:

(1) *Mkandawire and Others v The People* (1978) Z.R. 46.

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Legislation referred to:

Juveniles Act, Cap. 217, ss. 73 and 74 (1).

Judgment

CULLINAN, J.: The juvenile offender was charged with evading price control regulations in that he sold cigarettes at 5n and 4n each.

The record does not indicate the age of the juvenile offender or indeed whether any inquiry as to his age was conducted in accordance with the provisions of s. 118 of the Juveniles Act, Cap. 217. As to the presence of either parent or guardian at the hearing, the record contains the endorsement "Mother present": the name or address of the juvenile offender's mother was not recorded. The juvenile offender pleaded guilty and agreed with a statement of facts whereupon the court recorded a finding of guilty. The public prosecutor indicated that the juvenile offender was a first offender: no attempt was made to obtain a statement of the juvenile offender's precedents, as required by the provisions of s. 64 (7) of the Juveniles Act. In mitigation the juvenile offender indicated no more than that he was "a school-boy in Mufulira". Thereafter the record reads:

"Guardian:

I am the one who is looking after the offender.

I ask the court to impose an order of corporal punishment.

Order: Guardian fined K50.00 or one month S.I. i/d I.R.A."

The name or address of the "guardian" is not recorded. It is not clear whether the "guardian" was in fact the "mother" of the juvenile offender or vice versa. The warrant of commitment on default of payment of a fine of K50 attached to the record is made out in respect of one Ndefefina Kenala, so I can only presume that the "guardian" was of that name.

An order cannot be made against a parent or guardian under s. 73 of the Juveniles Act however unless the procedure set out by Silungwe CJ, in the Supreme Court case of *Mkandawire and Others v The People* at p. 4 is followed. As it was not followed in this case I consider that the trial magistrate's order was a nullity. I had considered sending the record back to the court below so that the proper procedure in the matter could be followed. I observe however that there was not an iota of evidence before the court to satisfy the proviso to s. 74 (1) of the Juveniles Act, that is to indicate that the guardian had "conducted to the commission of the offence by neglecting to exercise due care of the juvenile".

For the avoidance of doubt, I order that the order of the fine of K50 or one month's simple imprisonment in default of payment thereof be set aside. Under all the circumstances I consider that it would be in the interests of justice to order that the juvenile offender be absolutely discharged and I so order.

Order set aside
