

GEDION MUSONDA AND CHISHA CHIMIMBA v THE PEOPLE (1979) Z.R. 53 (S.C.)

SUPREME COURT  
GARDNER, BRUCE-LYLE, JJ.S. AND CULLINAN, COURT  
20TH FEBRUARY, 1979 A.J.S.  
S.C.Z. JUDGMENT NO. 9 OF 1979.

Flynote

Sentence - Juvenile offenders - Reformatory order - When appropriate.

Headnote

Three juvenile offenders aged 16, 15 and 13 were found guilty of burglary and theft. The trial magistrate on the recommendation of a probation officer ordered that they be sent to a reformatory. They were first offenders, had pleaded guilty and the value of K97.40 involved was recovered.

**Held:**

A reformatory order is a very severe punishment and should only be made when other methods of reformation are in the circumstances entirely inappropriate or have proved to be in vain in the past.

**Legislation** referred to:  
Juveniles Act, Cap. 217, s. 72 (3).

For the appellants: In person.  
For the respondent: R. Balachandran, State Advocate.

---

Judgment

**CULLINAN, A.J.S.:** delivered the judgment of the court.

The juvenile appellants aged 16 and 15 years respectively; were found guilty with another juvenile offender aged 13 years of burglary and theft.

The learned trial magistrate ordered that the juvenile appellants be sent to a reformatory. He did so, on the recommendation of a probation officer, because, as he observed, they lacked parental care. We do not consider that that is a proper basis for making a reformatory order. A reformatory order is a very severe punishment, warranting as it does four years' detention, and should only be made when other methods of reformation are in the circumstances entirely inappropriate or have proved

p54

to be in vain in the past. Indeed, in the case of the second juvenile appellant, the learned trial magistrate does not seem to have considered the provisions of s. 72 (3) of the Juveniles Act which reads as follows:

"A court shall not order a child to be sent to a reformatory unless the court is satisfied that having regard to his character and previous conduct and the circumstances of the offence, it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a reformatory."

In the present case the juvenile offenders were first offenders. They pleaded guilty. The stolen property valued at K97.40 was recovered. We do not appreciate why in the circumstances the learned trial magistrate did not, as in the case of the other juvenile offender, make a probation order. In all the circumstances, the reformatory order is set aside and we order that the juvenile appellants be required for the period of one 15 year from the date of this order, to be under the supervision of a probation officer and that during that period they be required to reside at the Insakwe Probation Hostel at Ndola.

Order set aside. Probation order substituted

---