

BEATON SHOWA v THE PEOPLE (1981) Z.R. 285 (S.C.)

SUPREME COURT  
GARDNER, AG. C.J., BRUCE-LYLE, AG. D.C.J. AND MUWO, AG. J.S.  
7TH OCTOBER, 1980  
(S.C.Z. JUDGMENT NO. 22 OF 1980)

Flynote

Criminal law and procedure - Appeal - Absence of appellant at hearing of appeal - Procedure to be followed - Criminal Procedure Code, Cap.160, s. 325

Headnote

The appellant was absent at the time his appeal was ready to be heard. The learned Commissioner dismissed the appeal for want of prosecution.

**Held:**

- (i) Section 325 of the Criminal Procedure Code specifically provides that an appeal may be dealt with summarily in the absence of an appellant but there is no provision for appeals to the High Court to be dismissed for want of prosecution.
- (ii) There was no complete investigation made as to whether the appellant had been duly served with notice that his appeal was due to be heard.

**Legislation referred to:**

Criminal Procedure Code, Cap. 160, s. 325.

For the respondent: In person.

For the respondent: N. Sivakumaran, State Advocate

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Judgment

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

The applicant was convicted of theft by public servant, the particulars being that, whilst employed by the Ministry of Health, he stole drugs from a hospital. He appealed against his conviction and sentence to the High Court in Lusaka. By the time his appeal was ready to be heard he had already served his sentence, and he did not appear before the learned High Court Commissioner who was prepared to hear his appeal. For this reason the learned Commissioner dismissed the appeal for want of prosecution.

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Section 325 of the Criminal Procedure Code specifically provides that an appeal may be dealt with summarily in the absence of an appellant.

There are two criticisms which we would make of the procedure adopted in this case. The first is that no complete investigation was made as to whether the appellant had been duly served with notice that his appeal was due to be heard. Secondly, that there is no provision in our law for appeals to the High Court to be dismissed for want of prosecution, they must be dealt with in accordance with section 325 of the Criminal Procedure Code. That is to say, the appellate judge must examine the record and deliver a reasoned judgment on appeal. In view of these irregularities we allow the applicant's application for an extension of time in which to appeal to this court, and will treat it as the appeal.

The appeal is allowed, and the case will be sent back to the same or equivalent judge of the High Court for the hearing of this appeal in that court.

Appeal allowed

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