

THE PEOPLE v EMMANUEL LONGWE MUTAMBO (1981) Z.R. 314 (H.C.)

HIGH
MOODLEY,
15TH OCTOBER, 1981
(HNR/491/81)

COURT

J.

Flynote

Criminal law and procedure - Control of goods- Offering for sale goods in excess of maximum controlled price and failure to display prices on controlled goods - Sentence to be imposed.

Sentence - Control of goods- Offering for sale goods in excess of maximum controlled price and failure to display prices on controlled goods - Appropriate sentence.

Sentence - Fine - Imposition of fine instead of custodial sentence - Amount.

Headnote

The accused appeared before a magistrate of the third class at Ndola. He pleaded guilty to one count of offering for sale controlled goods in excess of the maximum controlled price and a second count of failing to display prices on controlled goods. He was duly convicted on his own admission and fined K2,000 or in default six months imprisonment in respect of each of the two counts and in addition it was ordered that the sentence was to be endorsed on his Trading Licence. The case was called for by the High Court to review the sentence imposed upon the accused by the magistrate.

Held:

(i) The maximum fine, that is provided for by reg. 17 (1) of the Control of Goods Regulations under the Control of Goods Act, 40 Cap. 690 is K2,000 or to imprisonment for a period not exceeding six months or to both such fine and imprisonment for first offence.

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(ii) In determining what the appropriate fine should be in a particular case, the courts should ensure that as far as possible an accused person should not be sent to prison. Courts should not impose a fine which is beyond the reach of an accused person where the end result is that the accused person is required to serve a term of imprisonment in default of payment of a fine, especially if there were no aggravating circumstances present.

Case referred to:

(1) Longwe v The People, S.C.Z. No. 30 of 1976 (unreported).

Legislation referred to:

Control of Goods Regulations, Cap. 690, reg. 17 (1).

Judgment

MOODLEY, J.:

This case was called for by the High Court for purpose of reviewing the sentence imposed upon the

accused by a Magistrate of the Third Class at the Subordinate Court, Ndola. On the 28th September, 1981, the accused appeared before the learned magistrate and pleaded guilty to one count of offering for sale controlled goods in excess of the maximum controlled price and a second count for failing to display prices on controlled goods. The learned magistrate duly convicted the accused on his own admission. The accused had no previous convictions for similar offences.

The learned magistrate having considered the mitigating factors in favour of the accused stated that the offences were serious and prevalent and in those circumstances the accused deserved a deterrent sentence. Accordingly, he fined the accused K2,000 or in default six months imprisonment in respect of each of the two counts. The fines were to be non-cumulative; that is K2,000 or in default six months simple imprisonment. It was further ordered that the sentence was to be endorsed on the accused's trading licence.

The maximum fine that is provided for by reg. 17 (1) of the Control of Goods Regulations under the Control of Goods Act, Cap. 690 is K2,000 or to imprisonment for a period not exceeding six months or to both such fine and imprisonment for a first offence.

In my view the imposition of the maximum fine of K2,000 for price control offence in the circumstances of this case is harsh and come with a sense of shock. While it is accepted that price control offences are prevalent and that it is the duty of the courts to stamp out profiteering by imposing deterrent sentences, I would hold that in view of the fact that the accused had pleaded guilty to the two counts and was first offender, he deserved sentence less than the maximum as laid down by the regulations. In any event the High Court and the Supreme Court have on many occasions indicated that in determining what the appropriate fine should be in particular case, the courts should ensure that as far as possible an accused person should not be sent to prison. In other words, should not impose a fine which is beyond the reach of an accused person where the end-result is that the accused person is

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required to serve a term of imprisonment in default of payment of fine, especially if there were no aggravating circumstances present-see *Longwe v The People* S.C.Z. (1) No. 30 of 1976. In view of the amount involved here, it would have been advisable for the Court to have asked the accused whether he had the means to pay the fine immediately and, if not whether he wanted to apply for time to pay the fine. No such opportunity was afforded to the accused in this case.

For the foregoing reasons it would be unsafe for the sentence to stand. Thus, in the exercise of my powers of review under section 338 of the Criminal Procedure Code, Cap. 160 and after taking into consideration that the accused had already spent about eighteen days in custody, I would quash the sentence imposed by the learned magistrate on both counts and substitute therefore the following sentence:

Count 1: Accused is fined K300, in default, three months simple imprisonment:

Count 2: Accused is fined K200, in default, three months simple imprisonment.

The fines are to be non-cumulative and in default the accused will serve 3 months simple imprisonment. I further order that the accused 20 be released from custody forthwith and it is directed that the fine be paid before the 31st October, 1981.

Sentence substituted
