

GEOFFREY MUYOKA v THE PEOPLE (1986) Z.R. 34 (S.C.)

SUPREME COURT
NGULUBE, D.C.L., GARDNER AND SAKALA, JJ.S.
11TH APRIL, 1986
(S.C.Z. JUDGMENT NO. 9 OF 1986)

Flynote

Sentence - Corporal punishment - When appropriate -

Sentence - Mandatory minimum sentence - When should it be exceeded.

Headnote

The appellant in this case was convicted and sentenced for stock theft, in a Magistrate's Court. Since the statutory minimum sentence was outside the jurisdiction of the trial magistrate, the matter was referred to the High Court. In sentencing the appellant the judge sentenced him to twelve years imprisonment with hard labour plus ten strokes of the cane. The appellant appealed against both conviction and sentence.

Held:

- (i) When considering whether to sentence an accused person for more than a mandatory minimum sentence, courts should take note of the fact that the minimum sentence imposed by Parliament covers a very broad spectrum of the type of offence for which Parliament has declared that mandatory minimum.
- (ii) Corporal punishment should only be imposed in exceptional circumstances where the offence is so prevalent as to amount to a serious outbreak of crime and other forms of punishment have ceased to have a deterrent effect.

Cases cited:

(1) Emmanuel Phiri v The People (1978) Z.R. 79

(2) Nkoloma v The People (1978) Z.R. 278

(3) Berejena v The People (1984) Z.R. 19

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(4) Alakazamu v The People (1973) Z.R. 31

For the Appellant: In person

For the Respondent: R. R. Balachandran, Senior State Advocate

Judgment

GARDNER, J.S.: delivered the judgment of the court.

The appellant was convicted of stock theft; the particulars of the offence were that on the 23rd

April, 1982 at Namwala he jointly and whilst acting together with another stole five heads of cattle valued at K2,000, the property of Muwezwa Shimbizhi.

The prosecution's evidence was to the effect that the complainant found that five head of his cattle were missing. Two prosecution witnesses said that they had received cattle from the appellant which were identified by brand marks as being the cattle stolen from the complainant.

The appellant has put forward a number of grounds of appeal in none of which there is any merit whatsoever. However, there is one matter which we must consider. The two purchasers of the oxen from the appellant must be regarded as witnesses with a possible interest of their own to serve. The magistrate recognised this and looked for corroboration or something more to support the evidence of those two witnesses. He found that corroboration or something more in the fact that the appellant signed sales books in respect of both purchases and he found that this was too much of a coincidence that the sales books were kept by the two persons, pw.3 and pw.4 who purchased the oxen, as books that they used in their normal course of business and the entries in the books show that they were used in the normal course of business and were not in any way falsified.

We agree with the magistrate that there was something more in the terms of the case of *Emmanuel Phiri v The People* (1) to support the conviction of the appellant. The appeal against conviction is dismissed.

The appellant was sentenced to twelve years imprisonment with hard labour and ten strokes of the cane. He was sentenced by a High Court judge because this is a second offence of stock theft, and the mandatory sentence of seven years imprisonment with hard labour was beyond the powers of the magistrate. As we have said in the case of *Nkoloma v The People* (2) when considering whether to sentence an accused person for more than a mandatory minimum sentence, courts should take note of the fact that the mandatory minimum sentence imposed by Parliament covers a very broad spectrum of the type of offence for which Parliament has declared that mandatory minimum. It is therefore necessary for courts to consider very carefully before they impose any sentence above that imposed by Parliament.

It is our view that the sentence of twelve years imprisonment with hard labour was so severe that it comes to us with a sense of shock. However we do take note of the fact that the appellant made a profit

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out of his own criminal activity and this is one of those cases where the mandatory minimum sentence should be exceeded. We note moreover that the appellant was sentenced to corporal punishment of ten strokes of the cane. As the learned Chief Justice said in the case of *Berejena v The People* (3), corporal punishment should only be imposed in exceptional circumstances. As this court said in *Alakazamu v The People* (4), corporal punishment should only be imposed where the offence is so prevalent as to amount to a serious outbreak of crime and other forms of punishment have ceased to have a sufficient deterrent effect on members of the community. The appeal against sentence is allowed. The sentence of ten strokes is set aside. The prison sentence is also set aside and in its place we substitute a sentence of eight years imprisonment with hard labour with effect

from the
4th

August,

1982.

Appeal Allowed in Part
