

STEVEN NYONI v THE PEOPLE (1987) Z.R. 99 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., GARDNER AND SAKALA, J.J.S.
14TH JULY, 1987
(S.C.Z. JUDGMENT NO. 15 OF 1987)

Flynote

Criminal Law and Procedure - Juvenile - Trial - Accused no longer a juvenile.
Sentence - Juvenile - Accused juvenile at time of offence - Trial and sentence of.

Headnote

The appellant was convicted by the High Court for the offence of aggravated robbery and sentenced to fifteen years imprisonment with hard labour. The offence was committed when he was a juvenile. At the commencement of the hearing before the High Court He appellant was no longer a juvenile. The appellant appeared against the conviction and sentence for not having been treated as a juvenile for the purpose of trial in a juvenile's court and his not having been sentenced accordingly.

Held:

A person who is no longer a juvenile who had committed an offence when he was a juvenile should be tried as an adult in the appropriate court; but for the purpose of sentencing he should be treated as a juvenile.

Case cited:

(1) Musonda and Anor v The People (1976) Z.R. 218

For the appellant: C.P.Sakala, Acting Director of Legal Aid,
For the respondent: K.G.Chanda, Senior State Advocate

Judgment

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

This is an appeal against the conviction and sentence of the appellant for the offence of aggravated robbery for which he was sentenced to fifteen years imprisonment with hard labour. The particulars of the offence were that he, together with another, on the 11th of April, 1984, at Lusaka, jointly whilst acting together, did steal various items of clothing and personal property valued at K39 1.70, the property of Francis Kumwenda, and at the time of such stealing did use actual violence to the owner.

At the commencement of the hearing before the High Court Counsel on behalf of the appellant and his Accused informed the learned judge that the offenders were aged seventeen and sixteen years respectively. The learned trial judge ordered that both the accused persons be medically examined for the purpose of ascertaining their age. Accordingly they were examined and medical reports were submitted to the court that, in accordance with the bone formation of both of the accused, they were

aged more than eighteen years. Medical certificates were on forms indicating that they were regularly used by medical officers for this purpose and the doctor who examined the men must have been familiar with the definition of a juvenile. The learned trial judge on receipt of the medical report said that he would accept the evidence contained therein and would treat each accused as being eighteen years of age. He then proceeded to try the case, as a result of which the co-accused was acquitted but the appellant was convicted as recited.

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Mr Sakala, the learned acting Director of Legal Aid on behalf of the appellant at first appealed against the appellant not having been treated as a juvenile for the purpose of trial in a juvenile's court and his not having been sentenced accordingly. However, after arguments from both Mr Sakala on behalf of the appellant and Mr Chanda on behalf of the State, which were of great assistance to us, it was accepted by both counsel that, at the trial, the learned trial judge had misstated the age of the appellant according to the medical report. He should not have stated for the record that the appellant was eighteen years of age.

In this particular case we agree with both counsel that the medical report by stating that the appellant was more than eighteen years of age was intended to indicate that the appellant had attained the age of nineteen years, and he was therefore properly before the High Court for trial. As the learned trial judge proceeded to try the appellant, he must have accepted that he was no longer a juvenile in that he had attained the age of nineteen years, in accordance with the definition of a juvenile in the Juvenile Act Cap. 217. As a result Mr Sakala withdrew his appeal as to the jurisdiction of the High Court but maintained his ground of appeal that the appellant should have been treated as a juvenile for the purpose of sentence.

Mr Chanda conceded that the appellant was a juvenile at the time of the commission of the offence and that he should have been treated as such for the purpose of sentence.

There was one point which arose during the course of the argument put forward by counsel, and that was in relation to orders which have previously been made by this court for retrial when it has been found that a juvenile has been improperly tried by the High Court instead of by a juvenile court. Particularly, in the case of *Musonda and A nor v The People* (1), where the High Court had tried juveniles who should have been tried before a juvenile Court, we ordered a retrial but did not specify whether such retrial should be before a juvenile court or the High Court. At the time when we made our order the appellants in that case were no longer juveniles, and apparently some doubt has arisen as to which courts have jurisdiction. In order to make the situation perfectly clear we will say now that a person who is no longer a juvenile who has committed an offence when he was a juvenile should be tried as an adult in the appropriate court; but for the purpose of sentencing he should be treated as a juvenile. Therefore, when this court orders a retrial of a person who is no longer a juvenile, the retrial should be before a court having jurisdiction over adults. We emphasise however, that the age of the offender at the time of the commission of the offence should be the age to be taken into account for the purpose of sentencing.

The appeal against sentence will be allowed for the reasons we have given. The conviction will stand and the sentence will be set aside. For sentencing purposes the appellant will be treated as a

juvenile, and, to that end, we order that he be the subject of a welfare report to be submitted to this court. The appellant will be remanded custody until such time as the welfare report is available.

Appeal allowed in part
