

**DOUGLAS MPOFU AND WASHINGTON MAGURA v THE PEOPLE (1988) S.J.  
(S.C.)**

SUPREME COURT  
NGULUBE, D.C.J., GARDNER, J.S. AND CHAILA, AG.J.S.  
9TH FEBRUARY, 1988  
(S.C.Z. JUDGMENT NO. 5 OF 1988)

**Flynote**

Evidence - Aggravated robbery - "Leading" the police to scene of crime

**Headnote**

The appellants were charged with aggravated robbery. They were alleged to have stolen money from the Central Province Marketing Cooperative Limited. There was evidence that at the time of the robbery the accused fired gunshots wherein they were able to steal the money in question. There was evidence of bullet shells on the scene of the robbery.

**Held:**

- (i) The finding of live ammunition in the possession of one of the appellants does not necessarily lead to the inevitable conclusion that he must have taken part in the robberies

For the Appellants: H. Silweya : Messrs Silweya and Co.

For the Respondent: G. S Phiri: Senior State Advocate.

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**Judgment**

**GARDNER, J.S.:** delivered the Judgment of the Court.

The Appellants were convicted on two counts of aggravated robbery whilst armed with a gun. The particulars of the first charge were that on the 18th January, 1984, the Appellants jointly and whilst acting together, and whilst armed with a gun, did steal K9,002.58n cash, the property of Central Province Marketing Cooperative Limited of Kabwe, and at the time of such stealing did threaten to use violence. The particulars of the second charge were that the Appellants on the 14th December, 1983, at Lusaka, jointly and whilst acting together and whilst armed with a gun, did steal a cash box and K1,496.00, the property of Central Province Marketing Cooperative of Kabwe, and at the time of such stealing did threaten to use violence.

The evidence adduced by the prosecution in support of the charges was to the effect that the two robberies took place and were carried out by three men who had on both occasions fired shots as a result of which they were able to steal the sums of money which were referred to in the charges, and, also as a result of which empty ammunition shells found at the scenes of the two robberies. There was further evidence that the appellants were apprehended by the police as a result of their having been pointed out by one Agrippa Phiri was the first man to be apprehended by the police in connection with the robberies. There was evidence that the police were led to a place in the bush where a gun was found which was tested and shown to have been the gun used in the firing from which the empty rounds from the scenes were found. The cash box referred to in the second charge was also pointed out to the police. There was evidence that the house of the first appellant was searched a number of live rounds of emmunition was found and these live rounds were of the same calibre as that of the gun

which was properly found by the court to have been used in the robberies. Furthermore there was evidence that both the appellants had in their possession, when their house were searched, new clothing and other articles of personal property. It was on this evidence that the trial court found that, because the appellants knew where the gun and the cash box were to be found, and, because the first appellant had in his possession some rounds which fitted the gun used in the robberies, together with the fact that both appellants had recently purchased new clothing and other personal property, the only reasonable influence that a court could draw from these facts was that both appellants had taken part in the robberies.

Mr. Silweya instructed by Legal Aid on behalf of both appellants has argued that there was no evidence identifying the two appellants as having taken part in the robberies and that there was no conclusive evidence as to which of the three persons who were present when the gun and the cash box were found in fact led the police to the items and by so doing had guilty knowledge of where they could be found.

Mr. Phiri on behalf of the State conceded that, without evidence as to which one of three persons did the actual leading of the police to where the items were found the rest of the evidence was insufficient to support the conviction of the appellants.

We agree and we have commented on this state of affairs before, that where a number of accused persons are alleged to have led the police to where incriminating evidence is found it is essential for the trial court to ascertain what is exactly meant by "leading". In our view, except in the most exceptional cases only one person could do the actual leading, and evidence should be adduced to show which of a number of persons alleged to have done the leading did in fact have the guilty knowledge. In this case we agree with Mr. Silweya that there was no/such evidence and, in the result, because the learned trial judge relied on that evidence to support the convictions there was a misdirection. We can only uphold the convictions if we find that the remainder of the evidence was sufficient to support them. As it is, we do not consider that the finding of live ammunition the possession of one of the appellants necessarily leads to the inevitable conclusion that he must have taken part in robberies. There was no evidence that any of ammunition was anything but a common type of ammunition which might be found anywhere in this country. In the same way the finding of new clothes and personal property in the possession of the appellants does not in this case lead to an inevitable

The appeals are allowed, the convictions are quashed and the sentences are set aside.

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