IN THE SUPREME COURT OF ZAMBIA SCZ JUDMENT NO. 13 OF 1998

HOLDEN AT NDOLA APPEAL NO. 164 OF 1997

(Criminal Jurisdiction)

B E T W E E N:

EMMAMUEL CHIFWEMBE APPELLANT

VS

THE PEOPLE RESPONDENT

CORAM: NGULUBE, CJ, SAKALA AND LEWANIKA, JJS

On 2nd June, 1998

For the appellant - Mrs. Judith Kaumba, Assistant Principal Legal Aid Counsel

For the respondent - Mr. R.O. Okafor, Principal State Advocate.

J U D G M E N T

Ngulube, CJ, delivered the judgment of the Court.

The appellant was tried and convicted on two counts of aggravated robbery. The first count alleged that on 16th October, 1995 at Ndola, while armed with an axe he robbed Elias Chama of his bicycle and at the time used or threatened to use violence. The second count was that on 28th October, 1995 at Ndola, and whilst armed with an axe he robbed Zindikila Manda of his bicycle and at the time used or threatened to use violence. The evidence established that the robberies were committed in broad day light. The complainant on the second count was PW1 while

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the complainant on the first count was PW2. The witnesses had more than ample opportunity to make a reliable observation.

The argument presented is that the Court below was in error not to have given credit to the appellant for the days already spent in custody prior to the date of judgment and sentence. We agree that while it is in the discretion of the trial Court, as to when the Court would like the sentence to take effect from, it is customary in the absence of any good reasons to the contrary to back-date sentences to the date when a person was first taken into custody. However, in this particular case, the learned trial Commissioner was wrong in two other respects none of which are in the appellant's favour. The first was that these were two robberies committed on two separate days. Quite clearly it is wrong in principle to fail to make a distinction between a robber that has committed one offence and a robber who has embarked on a series of robberies. Secondly, there was evidence from PW2 who was axed that he was severely injured. It is totally wrong in principle to inflict the minimum mandatory sentence in such a case.

The 15 years mandatory sentence for aggravated robbery we accept covers a wide spectrum of offences and a wide variety of situations. But to commit several offences and to axe complainants is aggravation which goes beyond the aggravation contemplated in the section. This must be reflected in the sentences the trial Courts impose. The result therefore is that we dismiss the appeal against sentence but will interfere with the sentence. We set aside the sentence of 15 years. In its place we

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impose a sentence of 18 years imprisonment with hard labour which will start on 20th October, 1995 the date the appellant was arrested.

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M.M.S.W. NGULUBE
CHIEF JUSTICE

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E.L. SAKALA
SUPREME COURT JUDGE

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D.M. LEWANIKA
SUPREME COURT JUDGE