

IN THE SUPREME COURT OF ZAMBIA    APPEAL NO. 29/2003  
HOLDEN AT NDOLA  
(CRIMINAL JURISDICTION)

EDDY BANDA  
VS  
THE PEOPLE

CORAM: CHIRWA, MAMBILIMA, SILOMBA JJS  
On 4<sup>th</sup> June, 2003.

For the Appellant:      Captain F.P. NANGUZYAMBO, Director of  
   Legal Aid  
For the Respondent:      Mr. C.F. MCHENGA, Chief State Advocate.

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JUDGMENT

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CHIRWA JS, delivered the judgment of the court.

The Appellant pleaded guilty to one count of defilement contrary to Section 138 of the Penal Code before the subordinate court of the First Class in Lusaka and upon his plea of guilty, he was sentenced to a term of five years imprisonment with hard labour with effect from 24<sup>th</sup> February, 2002 and the sentence was to be confirmed by the High Court. The High Court in exercise of its powers under Section 338 of the Criminal Procedure Code reviewed the sentence and in the absence of the Appellant, set aside the sentence of five years and instead imposed a sentence of twenty years imprisonment with hard labour with effect from the date of his arrest.

When the appeal was called up, the court made an observation that from the record, it appeared that the Appellant was not present when the learned trial Judge heard the proceedings on the confirmation and enhanced the sentence to twenty years. The Appellant has confirmed that he did not attend the High Court hearing and therefore was not given an opportunity to react on the possibility of the sentence being enhanced. Failure by the learned Judge of the High Court to give an opportunity to the Appellant to be heard in terms of Section 333(2) of the Criminal Procedure Code was a misdirection and hence the proceedings before him were a nullity. Mr. MCHENGA for the State concedes to this point and asked that this case be remitted back to the High Court for the proceedings to take place in the presence of the Appellant.

We agree that the action by the trial Judge to review and enhance the sentence in the absence of the Appellant was a misdirection and the proceedings were therefore a nullity. This is a proper case to be sent back to the High Court before another judge to consider the matter and pass an appropriate sentence in view of the gravity of the offence to which the Appellant pleaded guilty. This appeal is therefore allowed and sentence of 20 years imposed by the Judge in the High Court is set aside and the matter

is sent back to the High Court before another Judge to consider the appropriate sentence on the Appellant.

D.K. Chirwa  
SUPREME COURT JUDGE

I.M.C. Mambilima  
SUPREME COURT JUDGE

S.S. Silomba  
SUPREME COURT JUDGE