

**IN THE HIGH COURT OF ZAMBIA - Appeal No.10 of 2004**

**HOLDEN AT LUSAKA/NDOLA**

**BETWEEN:**

**JOHN MWAPE KAPYA - APPELLANT**

**VS**

**THE PEOPLE - RESPONDENT**

**Coram:** Lewanika, DCJ, Mambilima and Silomba, JJS on the 2<sup>nd</sup> Day of March, 2004.

For the Appellants - Mr. D. Mupeta;  
Senior Legal Aid Counsel.

For the Respondent - Mrs. J. C. Kaumba;  
Deputy Chief State Advocate.

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**JUDGMENT**

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**Mambilima, JS, delivered the Judgment of the Court.**

The Appellant was convicted on one count of espionage, contrary to Section 3 (D) of the State Security Act Cap 111 of the Laws of Zambia, and sentenced to a term of 22 years imprisonment with hard labour. The particulars of the offence alleged that the Appellant, on the 13<sup>th</sup> day of September 2002 at Kitwe, in the Kitwe District of the Republic of Zambia,

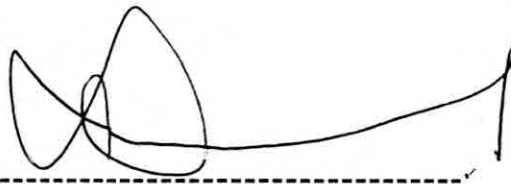
jointly and whilst acting together with others unknown, did cut and steal 140 litres of transformer oil valued at K982,704.80, from a Zambia Electricity Supply Corporation transformer, an act which was likely to interfere with the operations of the Zambia Electricity Supply Corporation, which is a necessary service, which act was prejudicial to the safety of the Republic of Zambia.

Mr. Mupeta has submitted before us that after careful perusal of the Judgment of the Court below, he was unable to argue the appeal and that he had informed the Appellant accordingly.

The Appellant has informed us that he was only appealing against sentence. He asked the Court for forgiveness and submitted that the sentence of 22 years was too long.

We have considered the submissions by Counsel and the Appellant. The minimum sentence for the offence on which

the Appellant was convicted is 20 years imprisonment with hard labour. The record shows that the Appellant is a first offender and a family man. As such, he is entitled to leniency. We allow his appeal against sentence. We quash the sentence of 22 years imprisonment with hard labour and substitute it with a minimum sentence of 20 years imprisonment with hard labour.



**D. M. Lewanika**  
**DEPUTY CHIEF JUSTICE**



**I. C. Mambilima**  
**JUDGE SUPREME COURT**



**S. S. Silomba**  
**JUDGE SUPREME COURT**