

IN THE SUPREME COURT OF ZAMBIA

SCZ APPEAL NOS. 23,24,25,26 OF 2004

HOLDEN AT KABWE

(CRIMINAL JURISDICTION)

ISAAC SIMUTOWE

1st APPELLANT

KAUNGA KATONTOLA

2nd APPELLANT

DAVIEW SAILONI

3rd APPELLANT

EUGINE M. TEMBO

4th APPELLANT

VS

THE PEOPLE

RESPONDENT

Coram: Sakala, CJ., Mambilima and Silomba JJS

6th April, 2004.

For the Appellants: Captain F.B. Nanguzyambo, Director of Legal Aid.

For the Respondent: Mr. L. E. EYAA, Principal State Advocate

J U D G M E N T

Sakala, CJ., delivered the Judgment of the Court.

Cases referred to:-

- 1. *Muka and Another Vs The People (1983) ZR 94***
- 2. *Lazarous Moonga Vs The People SCZ Appeal No. 11 of 1989***

The Appellants, who had originally been charged with aggravated robbery, pleaded guilty to three counts of burglary and theft contrary to sections 301 and 272 of the Penal Code, Cap 87 of the laws of Zambia.

: 2 :

The particulars of the offence alleged that the Appellants stole assorted household goods from three complainants. According to the facts, some of the stolen items were recovered from the Appellants' homes. The trial court sentenced each of the Appellant as follows:-

***6 years imprisonment with hard labour on count one,
4 years imprisonment with hard labour on count two, and
5 years imprisonment with hard labour on count three***

The trial court ordered the sentences to run consecutively making a total of 15 years imprisonment with hard labour to be served by each of the Appellants. They all appealed against the sentences.

On behalf of the Appellants, the Learned Director of Legal Aid filed one ground of appeal attacking the order of making the sentences to run consecutively. The contention by the learned Director was that the court below did not treat the Appellants' activities as a single course of conduct. He submitted that this was wrong in principle. He pointed out that the sentences were excessive and that the court should re-visit them.

In the case of ***Muka and Another Vs The People,(1)*** the facts were that a series of offences were committed in the course of the same conduct. We held in that case that where the facts of a case disclose a series of offences forming a course of conduct, the proper procedure is for the sentences imposed to run concurrently.

In a recent case of ***Lazarous Moonga Vs The People, Supreme Court Appeal No. 11 of 1989 (2)*** we said:-

: 3 :

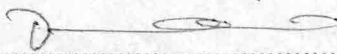
".....we confirm that the position where an accused person has been engaged in a course of conduct and in the process has committed many offences, the court should assess the proper sentence which is appropriate for the whole course of conduct....."

We re-confirm this principle. We, therefore, set aside the order making the sentences to run consecutively. In its place, we order that all the sentences run concurrently, making a total sentence to be served by each Appellant to be one of 6 years imprisonment with hard labour. To that extent the appeal succeeds.



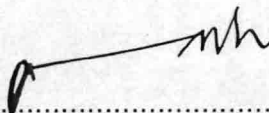
.....
E. L. Sakala

CHIEF JUSTICE



.....
I. C. Mambilima

SUPREME COURT JUDGE



.....
S. S. Silomba

SUPREME COURT JUDGE

/rmc