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IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(Criminal Jurisdiction)

Appeal No. 35/2006

BOLDWIN CHITUZI TAXSON SIMWAWA

APPELLANT

Vs.

THE PEOPLE

RESPONDENT

Coram: LEWANIKA DCJ, MUMBA, MUSHABATI, JJS
ON 5TH SEPTEMBER, 2006 AND 6TH FEBRUARY, 2007

For The Appellant:

Capt F. Nanguzyambo (Rtd) Director for Legal Aid

For The People:

Mrs J.C. Kaumba, Deputy Chief State Advocate

JUDGMENT

Mumba JS, delivered the Judgment of the Court.

This is an appeal against sentence only.

The appellant was convicted of burglary and theft contrary to Section 301 (a) and Section 272 of the Penal Code, Chapter 87 of the Laws of Zambia. He was sentenced to nine years imprisonment with hard labour. The sentence was ordered to run consecutive to any sentence the appellant was serving at the material time.

Briefly, the facts are that on 2nd September, 2004 the complainant, Sub-Inspector **Cornwell Siachinzongo** and

family retired to bed around 21:00 hours. All doors were properly secured. At midnight complainant's wife awoke him, upon being alerted, he heard an unusual noise from the kitchen, he woke up, went to the sitting room. His wife told him that she had been a person carrying their deck and TV set. Complainant noticed that the TV set and deck were missing, the door was ajar, he followed the man who had the TV set but the man disappeared in the darkness. Another man challenged complainant who decided to follow the second man who by then had the deck in one arm and an iron bar in the other. Complainant confronted the man, the man put down what he was carrying and used the iron bar to strike complainant on the back and then hit complainant with a fist on the mouth. Complainant and his wife managed to disarm the man after a struggle and whilst shouting for help. Some people came to their rescue and the man was tied down. The man told complainant that he had come from Tanzania with a friend **Adama Sikanyika**. The man said that it was his friend, **Sikanyika** who had told him that he had seen a house with a TV set which they could steal. The complainant identified appellant as the assailant whom he had apprehended. He also identified the deck and the iron bar. After the evidence of the complainant, the appellant changed his plea to one of guilty claiming that he had pleaded not guilty in order to buy time. The guilty plea was accepted. The appellant was convicted. Because of his previous

conviction, he was sent to the High Court for sentence. The High Court ordered a nine year sentence to run consecutive to any sentence the appellant was then serving.

At the hearing of this appeal, the learned Director of Legal Aid, Capt. F. Nanguzyambo, (rtd), submitted that the appeal was against sentence only. That the previous conviction of the appellant for which he was serving a sentence of three years, was such that the court should exercise leniency and re-examine the consecutive order on sentence.

Mrs. Kaumba, Deputy Chief State Advocate on behalf of the State, supports the sentence. The learned Deputy Chief State Advocate submitted that the learned trial Judge properly directed himself when he ordered that the sentence should run consecutive to any sentence appellant was serving. That the previous convictions could not be regarded with the current offence as forming a course of conduct. She submitted further that the appellant committed the offence when he already knew that he had been convicted for other offences. Besides, this offence carries a maximum of ten years. And, finally, that the current sentence could not come to the court with a sense of shock.

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We have examined the record, we find that there was nothing to mitigate the sentence as appellant was a known convict. We find no merit in the appeal and it is hereby dismissed. The sentence as ordered is confirmed.



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D.M. Lewanika
DEPUTY CHIEF JUSTICE



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F.N.M. Mumba
SUPREME COURT JUDGE



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C.S. Mushabati
SUPREME COURT JUDGE