

**IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT KABWE**

APPEAL NO 36 OF 2007

(CRIMINAL JURISDICTION)

FREDRICK KANGWA

Appellant

V

THE PEOPLE

Respondent

Coram: Chirwa, Silomba JJS and Kabalata Ag. JS on 10th April and 8th August 2007.

**For the Appellant: Mr E M Sikazwe, acting Director of Legal Aid and
Mr Mwelwa, Legal Aid Counsel**

For the People: Mr P Mutale, Principal State Advocate

JUDGMENT

Chirwa JS delivered the judgment of the Court:-

Cases referred to:

- 1. Moses Mwiba v The People (1971) Z.R 131**
- 2. Phiri v The People (1970)**

The appellant, **FREDRICK KANGWA**, was convicted on his own plea of guilty and acceptance of facts on one count of Defilement Contrary to Section 138 (1) as read with Act No. 15 of 2006. The particulars of the Charge were that the appellant on 11th day of May 2006 at Mpika in the Mpika District of the Northern Province of the Republic of Zambia, did have unlawful carnal knowledge of **DOROTHY NAYULA**, a girl below the age of 16 years.

From the facts, the appellant admitted that he had invited the girl to his house and asked her to undress but she refused. He forced himself on her and had carnal knowledge. He knew that the girl was below the age of 16 years. Medical examination proved that there had been a sexual act. Upon his acceptance of the facts and conviction,

the appellant was committed to the High Court for sentence under the provisions of Section 217 of the Criminal Procedure Code, Cap 88. The learned Judge in the High Court on sentencing the appellant said:-

“The offence you have committed is not only serious but prevalent in the province. The situation is getting out of hand. It is the duty of the Courts to reduce such occurrences of such offences by giving deterrent sentences”.

The appellant was then sentenced to 25 years imprisonment with hard labour with effect from 26th May 2006.

In his appeal to this Court, he indicated that he was appealing against both conviction and sentence but when called upon, Mr Sikazwe, learned Acting Director of Legal Aid representing the appellant, told the Court that they were abandoning the appeal against conviction but only appealing against sentence.

In arguing the appeal sentence, the learned Acting Director submitted that the appellant was a first offender who pleaded guilty and showed contrition and did not waste the Court's time and as such he deserved some leniency even if the offence was prevalent. To buttress his submissions, the learned Acting Director referred us to the principles we have pounded on sentencing a first offender in the Cases of **MOSES MWIBA V THE PEOPLE (1) AND PHIRI V THE PEOPLE (2)**.

In **MOSES MWIBA** case we said:

“While sentencing due allowance should be given to accused person who pleads guilty and shows contrition”.

In the **PHIRI** case we stated that:-

“A first offender should not be denied leniency although circumstances may make the application of that leniency minimal . The reason for dealing a first

offender leniently is in the hope that severe sentence is not necessary and that a lenient sentence will be sufficient to teach a previously honest man a lesson”.

In sentencing the appellant, the learned Judge of the High Court did mention about the prevalence of the offence in the Province and also its seriousness. It would appear that he did not take into account that the appellant pleaded guilty and did not waste the Court's time. The record also shows that on pleading guilty, the appellant pleaded for leniency and promised not to repeat the offence. All these factors should have been taken into account. In dealing with a first offender leniently it is hoped that he will learn from the mistake. In the present, we bear in mind that the Legislature deemed the offence of defilement as very serious and imposed a minimum sentence of 15 years imprisonment with hard labour. Taking into account the prevalence and seriousness of the offence, although the appellant is a first offender, leniency would be very minimal. We note from the medical report that there was no infection of any sexually transmitted disease and the complaint was not seriously hurt but she will be traumatized for a long time. Leniency would be minimal indeed.

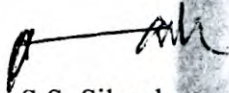
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We allow the appeal against sentence. The sentence of 25 years is set aside and in its place we impose a sentence of 17 years imprisonment with hard labour with effect from 26th May 2006.



D K Chirwa

JUDGE OF THE SUPREME COURT



S S Silomba

JUDGE OF THE SUPREME COURT



T A Kabalata

A/ JUDGE OF THE SUPREME COURT