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IN THE SUPREME COURT OF ZAMBIA

SCZ Appeal No. 10/2005

HOLDEN AT KABWE

(Criminal Jurisdiction)

BETWEEN:

ELIAS DAKA

V

THE PEOPLE

Coram: Sakala, CJ, Chibesakunda, JS and Kabalata, AJS.

on 8th and 10th April, 2008.

For the Appellants: Mr. A. C. Nkausu, Director of Legal Aid

For the State : Mrs. R.N. Kuzhwayo, Deputy State Advocate

JUDGMENT

Kabalata, AJS, delivered the judgement of the court.

This is an appeal against sentence only.

The Appellant, **Elias Daka**, was convicted by the High Court at Lusaka of **Aggravated Robbery** contrary to **Section 294(1) of the Penal Code, Cap 87** and sentenced to 20 years imprisonment with hard labour.

The particulars of offence alleged that Elias Daka, on the 13th day of September, 2002 at Lusaka, jointly and whilst acting with other persons unknown and whilst being armed, did steal from Justin Kazumba a motor vehicle, namely, a Toyota Corona Registration No. ACB 9050 valued at K8,000,000.00, the property of Moses Kashinga and that at or immediately before or immediately after the time of such stealing did use or threatened to use actual violence to the said Justin Kazumba in order to obtain the said property or to prevent or overcome resistance to its being stolen.

On behalf of the Appellant, Mr. Nkausu, the learned Director of Legal Aid, submits that a sentence of 20 years imprisonment with hard labour for a first offender is rather excessive because a first offender is always entitled to leniency. Furthermore, Mr. Nkausu says that in this case, there were no aggravating circumstances and therefore the minimum sentence of 15 years imprisonment with hard labour is sufficient to deter further commission of the crime and those, who would want to commit similar offences. According to him, a sentence of 20 years imprisonment with hard labour only serves to keep the prisoner in prison longer and thereby hardens the criminal.

Mr. Nkausu contends that a sentence which is going to reform a criminal is good and appropriate. He submits that the sentence of 20 years imprisonment with hard labour imposed in this case is rather on the excessive side.

On behalf of the State Mrs Kuzhwayo, the learned Deputy Chief State Advocate, merely said that she left it to the court to decide.

We have heard and considered the submissions of counsel in this appeal.

We entirely agree with the learned Director of Legal Aid that as a first offender the Appellant is quite entitled to leniency and the learned trial Judge was alive to this principle of sentencing.

However, the learned trial Judge observed that the offence with which the Appellant was convicted of was not only serious but equally prevalent. He also observed that of late, there has been an increase in cases whereby customers hire taxis who at the end prove to be robbers and rob taxi drivers of taxis. He went on to say that such a situation cannot be condoned and calls for deterrent sentences.

We entirely agree with the sentiments expressed by the learned trial Judge in this case.

It cannot be denied that taxi drivers in this country offer essential services to members of the public, throughout the day and night. In that regard, taxi drivers are quite entitled to be protected from people like the Appellant by the courts passing sentences which will invariably post a message on the wall that those convicted of this type of offence, whether they be first offenders cannot expect the leniency normally afforded to first offenders.

Therefore, the sentence of 20 years imprisonment imposed on the Appellant in this case does not come to us with a sense of shock. It is very appropriate in the circumstances of this case.

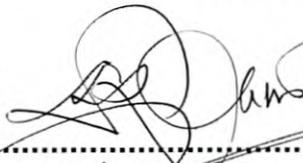
We find no merit in this appeal and it is, therefore, dismissed.



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E. L. SAKALA
CHIEF JUSTICE



.....
L. P. CHIBESAKUNDA
SUPREME COURT JUDGE



.....
T. A. KABALATA
AG/SUPREME COURT JUDGE