

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

Appeal No.24/2008

IN THE MATTER BETWEEN:

PATRICK CHAKA LUNGU

APPELLANT

AND

THE PEOPLE

RESPONDENT

Coram: Chirwa, Ag/DCJ, Chibesakunda and Silomba JJS
 12th February, 2007 and 4th March, 2008

For the Appellant: Mr Mukanta from Messrs Mukanta and Associates.

For the Respondent: Mr C S M Muchenga, Director of Public Prosecutions.

JUDGEMENT

Chibesakunda JS, Delivered the Judgement of Court

The Appellant was charged and convicted on one count of abduction of children contrary to Section 136 of the Penal Code Cap 87 of the laws of Zambia. The particulars were that, the Appellant on the 5th day of January, 2006 at Isoka in the Isoka District of the Northern Province of the Republic of Zambia, did unlawfully take a child namely Tuweni Nanyangwe out of the custody or protection of her father and mother (and in lawful care) and against the will of the said father and mother.

The facts on which the Appellant was convicted on were that on the 5th January, 2006 whilst PW2 the mother of

PW3 was at home, going about her daily chores, and PW3 the victim was out, a friend of PW3 came looking for her to go out with her to some place. PW2 chased this girl, a friend to PW3. This same girl came back at lunch time looking for PW3, Tuweni Nanyangwe, again PW2 chased her away and told her that Tuweni Nanyangwe was not in. This same girl came for the third time looking for Tuweni Nanyangwe. This time Tuweni Nanyangwe agreed to go with her to an unknown place. This was against PW1, her father's and PW2, her mother's wishes. Tuweni Nanyangwe never came back to her home that day. PW3 (Tuweni Nanyangwe) and this girl linked up with the Appellant. According to PW3 the Appellant took her and this girl to his room at Luangwa Guest House in Isoka. The Appellant then locked them up in a room against their wishes. The Appellant took them out for some refreshments and then brought back PW3 alone to Luangwa Guest House to his room. He spent the night with her against her will. He did not have any sexual relationship with her.

The following days again, against her will, he drove with her to Lusaka and took her to Chilanga to a family couple. They stayed there for almost a week. During that period he never had any sexual intercourse with her. In the meantime, both PW1, and PW2, (her father and mother) started searching for her. They made inquiries at their relatives' homes and discovered that the Appellant and their

daughter (PW3) had driven to Lusaka. PW1, her father and PW5 the Police Officer stationed at Isoka, then travelled to Lusaka where they traced PW3 at Chilanga. They found PW3 in the absence of the Appellant. They interviewed her. The appellant was subsequently arrested for the subject offence. In Court after he was found with a case to answer, he testified more or less confirming the story of PW3. He confirmed that he spent a night in Isoka with PW3. He confirmed that the following day, he drove with PW3 to Lusaka without the consent of PW3's parents. According to him, she wanted a lift from him because she wanted to visit her brother in Lusaka. The Appellant was convicted and sent to High Court for sentencing. The High Court sentenced him to 15 years with hard labour. Hence this appeal against sentence only.

We have listened to the argument for and against the appeal on sentence only. This Court has however noticed with great concern that these days the offences against morality are sadly on the increase even though day in and day out, courts are meting out long sentences against offenders thus sending messages to perpetrators and would be offenders about the outrage of members of the public and courts in particular. This trend is still on the increase. However, in this case before us legislatures has set out a minimum sentence of 7 years and 10 years as a maximum sentence. Therefore, we shall be lenient taking that into

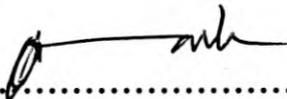
account and also the fact that the Appellant was decent in that he did not exploit the young girl because he did not have sex with her. We will disturb the sentence. We sentence you to 7 years with hard labour.



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D. K. Chirwa
SUPREME COURT JUDGE



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L. P. Chibesakunda
SUPREME COURT JUDGE



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S. S. Silomba
SUPREME COURT JUDGE