

IN THE SUPREME COURT OF ZAMBIA

Appeal No. 80/2005

HOLDEN AT KABWE

(Criminal Jurisdiction)

**BETWEEN:**

**MIKE MUNENGA**

**STANFORD TICHAONA NDAULA**

**V**

**THE PEOPLE**

**Coram:** Chirwa, Silomba and Mushabati, J.J.S.

on 8<sup>th</sup> and 10<sup>th</sup> April, 2008.

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

**For the State** : Mr. P. Mutale, Principal State Advocate

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**JUDGMENT**

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Silomba, JS delivered the judgement of the court.

This is an appeal against the judgment of the High Court dated the 14<sup>th</sup> September, 2005. In that judgment, the Appellants were charged with one count of the offence of **Aggravated Robbery** contrary to **Section 294(1) of the Penal Code, Chapter 87 of the Laws of Zambia**. The particulars of the offence alleged that **Mike Munenga** and **Stanford Tichaona Ndaula**, on the 2<sup>nd</sup> day of March, 2002 at Siavonga in the Southern Province of the Republic of Zambia jointly and whilst acting together with other persons unknown and whilst armed with offensive weapons, did steal an assortment of items from Willen Gerhardt Vander Gryp valued at K53,683,00.00 and that at or immediately after the time of such robbery or immediately before the robbery did use or threatened to use force to the said Willen Gerhardt Vander Gryp in order to obtain or overcome resistance to the said property being stolen.

The prosecution led evidence through six witnesses. Their evidence was that on the 1<sup>st</sup> March, 2003, around 22:00 hours, PW1 (Christina Vander Gryp) and her husband, Willen Gerhardt Vander Gryp, knocked off from their business and headed for their home at Farm No.9124, Chirundu. While at their home, they were visited by four bandits, who were wielding big knives. They demanded money and keys to the safe and PW1 gave them the money she had on her. When she could not give them keys to the safe, one of them hit her on her right eye and she bled profusely; the other bandit stabbed the husband of PW1 on the arm. Amid threats of violence, the bandits tied the couple and thereafter ransacked the house and stole various items (see information) which were later recovered in Lusaka.

The Appellants also testified in their defence and denied any involvement in the robbery. Upon the evidence adduced by both sides, the learned trial Judge convicted and sentenced each Appellant to twenty one years imprisonment with hard labour effective from the 21<sup>st</sup> March, 2003, the date of their arrest.

When the duo appeared before us on appeal, they advanced one ground of appeal, that is to say, that the trial court erred in principle when it sentenced both Appellants to 21 years imprisonment as first offenders. The only ground of appeal was supported by written heads of argument, which the Appellants relied on in their entirety. Consequently, Mr. Nkausu, the learned Director of Legal Aid, did not submit orally except in reply.

From the heads of argument, counsel submitted that the mandatory minimum sentence for aggravated robbery was 15 years. As for first offenders, Mr. Nkausu submitted that they were entitled to be given due allowance. As far as he was concerned, a term of twenty-one years on a first offender did not reflect lenience due to a first offender. He submitted that although violence

was used the fact that stolen property was recovered with the cooperation of the Appellants was a strong mitigation in their favour.

Besides, Mr. Nkausu submitted that a mandatory minimum sentence of fifteen years was sufficient to allow a first offender to repent unlike the sentence of 21 years, which was meant to keep the first offender longer in prison and expose him to dangers of developing into a hard core criminal. We were urged to set aside the 21 years imprisonment in favour of the mandatory minimum sentence of 15 years imprisonment with hard labour.

The response from Mr. Mutale, the learned Principal State Advocate and counsel for the Respondent, was that even though the two Appellants were first offenders there were aggravating circumstances to be considered, particularly that the appellants and other persons unknown used violence on an old defenceless couple, whereby one of them was stabbed. In this matter, the aggravating circumstance in the nature of violence justified the imposition of the sentence beyond the minimum sentence, Mr. Mutale submitted.

We have considered the submissions of counsel on an appeal against the sentence imposed by the learned trial Judge. We have also looked at the proceedings in the trial court as contained in the record of appeal. When considering the sentence to impose, this is what the learned trial Judge had to say: -

***"..... However, the offence of which they are convicted is not only serious one but one that is very prevalent. A majority of cases that come before the courts involve aggravated robbery and it is known that victims have lost plenty of their valuable property to the likes of the convicts. I also take serious view of the case because the accused and their accomplices attacked a defenceless old couple with knives and also stole large quantity of property."***

The observations made by the learned trial Judge accord well with the decisions of this court contained in the various pronouncements, in particular the case of **Solomon Chilimba Vs The People[1971] ZR 36**. In that case, we said: -

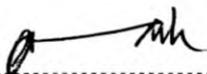
***“Unless the case has some extraordinary features which aggravate the seriousness of the offence, a first offender ought to receive the minimum sentence.”***

We are very much alive to the minimum sentence of 15 years imprisonment in cases of aggravated robbery. However, what makes this case a very serious one is the amount of violence that was exerted on a defenceless old couple who had struggled in their lives to acquire property only to lose it in a space of two hours.. We also know that the Appellants were first offenders and, therefore, entitled to leniency as a matter of law. Because of the violence used in the course of their mission to steal, the Appellants do not qualify for leniency. We abhor violence as an appellate court and this being the case the 21 years imprisonment imposed on the Appellants does not come to us with any sense of shock.

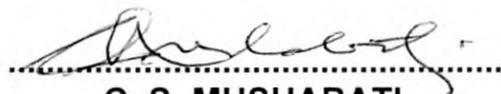
We uphold the sentences and dismiss the appeal against sentence only.



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**D. K. CHIRWA**  
**SUPREME COURT JUDGE**



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**S. S. SILOMBA**  
**SUPREME COURT JUDGE**



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**C. S. MUSHABATI**  
**SUPREME COURT JUDGE**