

**IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA.**

SCZ APPEAL NO.69/08

(Criminal Jurisdiction)

BETWEEN:

AVON SENGA

APPELLANT

AND

THE PEOPLE

RESPONDENT

Coram: *Mambilima, DCJ, Chitengi, JS and Mushabati, AJS
On 7th October, 2008 and 5th November, 2009.*

For the Appellant : *Mr. A. C. Nkausu, Director, Legal Aid Board.*

For the Respondent : *Mrs. R. N. Kuzwayo, Deputy Chief State Advocate.*

J U D G M E N T

Chitengi, JS, delivered the Judgment of the Court.

When we heard this appeal Mr. Justice Mushabati was a member of the panel but retired before this judgment was ready. This Judgment is, therefore, the Judgment of the majority who heard the appeal.

When we heard this appeal which was basically against sentence we allowed it and indicated that we shall give our reasons later. We now give the reasons.

The facts of this case are that the Appellant who was arrested on 6th January 2006 was tried for aggravated robbery. After the close of the prosecution case, the learned trial Judge found that no case had been made out against the Appellant on the charge of aggravated robbery but found that the Appellant had a case to answer on the lesser charge of receiving stolen property and thereupon put the Appellant on his defence on the lesser charge. The Appellant pleaded guilty to the lesser charge of receiving stolen property and after the facts were read, and which facts the Appellant agreed with, the learned trial Judge convicted the Appellant and sentenced him to 6 years imprisonment with hard labour effective from the 16th January, 2008, the date on which he was convicted.

Although there is no obligation on the trial Judge or Magistrate, the practice in Zambia is that the trial Judge or Magistrate has the dispensation to backdate the sentence, thereby taking into

account the time the accused has been in custody awaiting trial. In this case, the learned trial Judge did not backdate the Appellant's sentence to the date he was taken into custody. On the facts of this case, we do not see any factors militating against the backdating of the Appellant's sentence.

We accordingly allow the appeal and backdate the Appellant's sentence to 6th January, 2006 the date he was arrested.



I.C. MAMBILIMA
DEPUTY CHIEF JUSTICE



PETER CHITENGI
SUPREME COURT JUDGE

C. S. MUSHABATI (Retired)
SUPREME COURT JUDGE