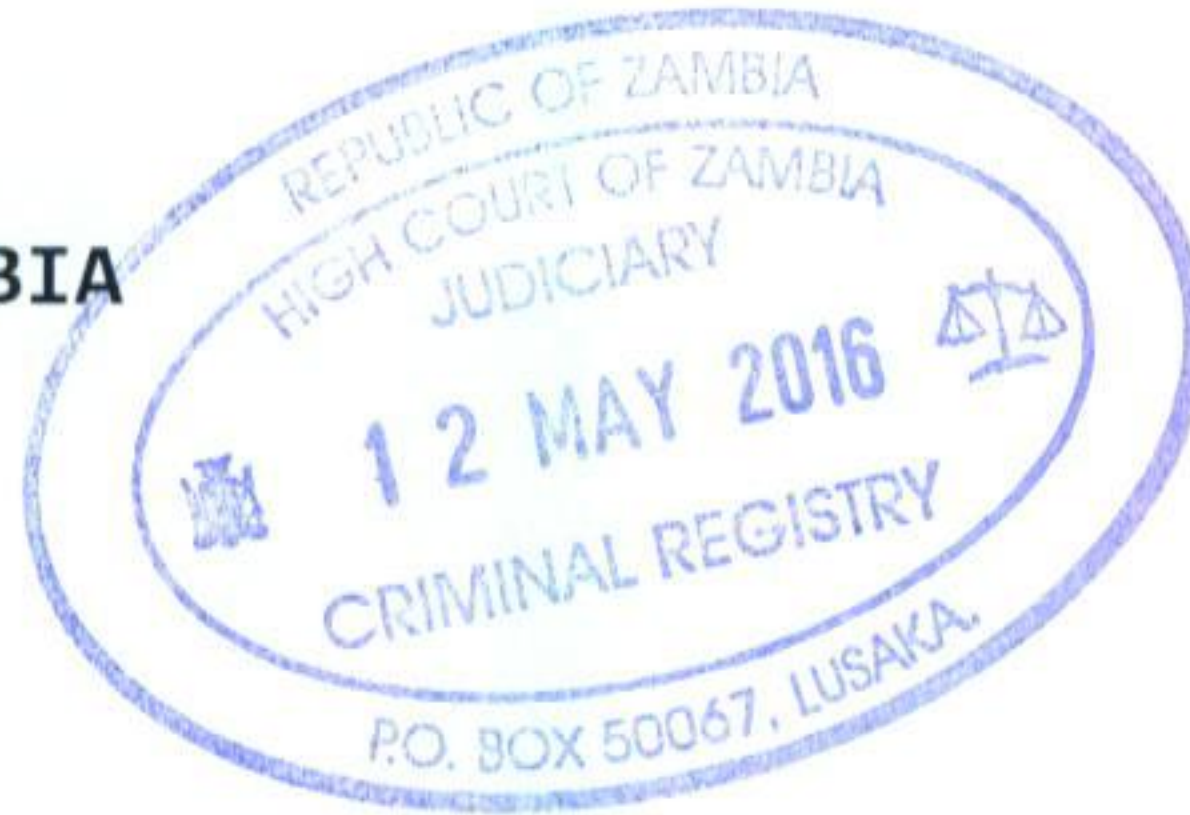


IN THE HIGH COURT FOR ZAMBIA
AT PRINCIPAL REGISTRY
LUSAKA
(Criminal Jurisdiction)



HPA/22/2006

THE PEOPLE

V

ROBBSON GUMBO

Before the Honorable Mr. Justice C.F.R. Mchenga SC

J U D G M E N T

Robbson Gumbo, the appellant, appeared before the Subordinate Court charged with the offence of Defilement contrary to **Section 138 of the Penal Code, Chapter 87 of the Laws of Zambia**. The particulars of offence alleged that between October 2003 and April 2004, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, he had unlawful carnal knowledge of Mary Ndumbakwenda, a girl under the age of sixteen (16). He denied the charge and the matter proceeded to trial.

The evidence of the prosecutrix, who was born on 14th January 1990, was that in October 2003 and December 2003, the appellant had canal knowledge of her. She subsequently became pregnant and delivered a child. The appellant did not dispute having canal knowledge of the

prosecutrix at the stated time but raised the defence that before he had carnal knowledge of her, the prosecutrix informed him that she was 16½ half years old.

After considering all the evidence, the trial magistrate found that the appellant had carnal knowledge of the prosecutrix at a time when she was below the age of 16 years. He also considered his defence that he believed that she was above the age of 16 years and found that no person would have reasonably believed that she was above that age. He dismissed the defence and convicted him.

The appellant has advanced two grounds of appeal and they are as follows:

1. *the conviction is against the weight of the evidence; and*
2. *the court below did not consider his explanation and defence that the prosecutrix told him that she was above the age of 16 years old.*

Though the appellant has not appeared in court on the many occasions on which this appeal has come and there is a bench warrant against him, I have decided to deal with the appeal summarily.

The two grounds of appeal are related and I will deal with them at the same time. In his defence, the appellant did not deny having carnal knowledge of the prosecutrix who was below the age of 16 years at the

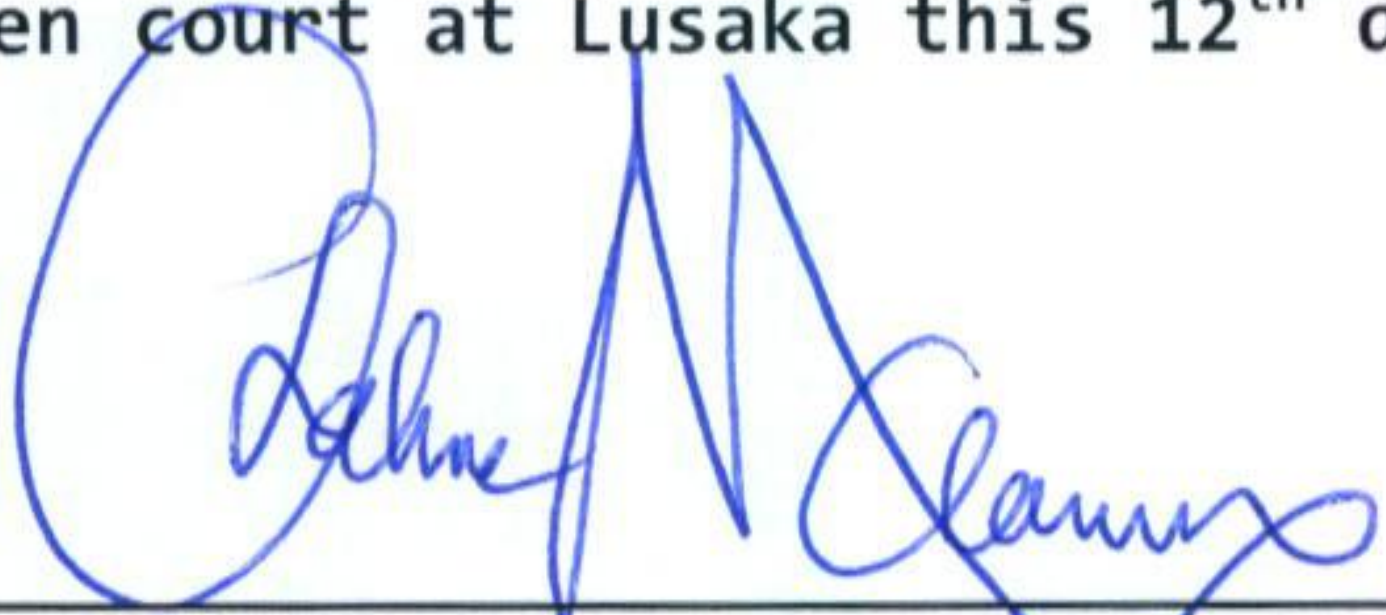
time the offence was committed. There was uncontroverted evidence that after their encounter, the prosecutrix became pregnant and gave birth to a child. It is therefore my finding that evidence that he had carnal knowledge of a child below the age of 16 years is overwhelming and it cannot be said that the conviction is against the weight of the evidence. The first ground of appeal therefore fails.

Coming to the second ground of appeal, the judgment of the court below shows that the trial magistrate considered his explanation and defence that the prosecutrix told him that she was above the age of 16 years old. He did not believe his claim that he believed that she was above the age of 16 years. The second ground of appeal also fails.

Both grounds of appeal having failed, the appeal is dismissed and the 5 years sentence is confirmed. The sentence shall run from the day when the appellant is apprehended.

He has the right of appeal against both the conviction and sentence.

Delivered in open court at Lusaka this 12th day of May, 2016



C. F. R. MCHENGA SC
JUDGE