

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

HP/10/2018

THE PEOPLE

VERSUS

RICHARD NJOBVU
RICHARD SIMUKONDA
JACKSON MULENGA
MATHEWS CHALI
EMMANUEL CHEWE
ERNEST MUSUKWA



BEFORE HONORABLE MR. JUSTICE MWILA CHITABO, SC

For the People: Mrs. R. Chisala – Legal Aid Counsel
For the Accused: Mrs. K. Chisala – Legal Aid Counsel

J U D G M E N T

Legislation Referred

1. *Penal Code Chapter 87 of the Laws of Zambia*

By an amended information **Richard Njobvu, Richard Simukonda, Jackson Mulenga, Mathews Chali, Emmanuel Chewe** stood charged of the offence of **AGGRAVATED ROBBERY** contrary to **Section 294 (1) of the Penal Code.**¹

The particulars of the offence allege that on 29th June, 2017 the named accused persons at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together and whilst being armed with machetes and iron bars did steal one Philips 3 CD loader radio, 1 decoder,

one 55" Plasma TV set, 4 windows curtains, 1 gas cylinder, 1 microwave, 1 blanket, 1 internet router, 2 cell phones, 4 jackets, 1 pair of canvas, 6 skirts, 1 tracksuit bottom, 1 laptop, 1 LG washing machine and 1 pair of bed sheets all together valued at K40, 090.00, the properties of **Chilendo Moyo** and at or immediately before or immediately after the time of stealing did use or threatened to use actual violence to the said **Chilendo Moyo** in order to retain or obtain the said properties or prevent or overcome resistance from being stolen.

The 2nd, 4th and 5th Accused pleaded guilty to the charge.

The statement of facts allege that **Richard Simukonda, Mathews Chali, Emmanuel Chewe** the Accused persons herein stands charged and pleads guilty to one count of **Aggravated Robbery** *Contrary to Section 294 (1) of the Penal Code CAP 87 of the Laws of Zambia.*

On the 29th day of June, 2017 at or about midnight to 03:00 hours of the following day, at Makeni in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together and whilst being armed with machetes and iron bars did steal one Philips 3 CD loader radio, 1 decoder, one 55" Plasma TV set, 4 windows curtains, 1 gas cylinder, 1 microwave, 1 blanket, 1 internet router, 2 cell phones, 4 jackets, 1 pair of canvas, 6 skirts, 1 tracksuit bottom, 1 laptop, 1 LG washing machine and 1 pair of bed sheets all together valued at K40, 090.00, the properties of **Chilendo Moyo** and at or immediately before or immediately after the time of stealing did use or threatened to use actual violence to the said **Chilendo Moyo** in order to retain or obtain the said properties or prevent or overcome resistance from being stolen.

On 30th June, 2017, the matter was reported to Sangalala Police Post. Investigations were carried out which led to the apprehension of the Accused persons.

On 17th day of July, 2017, the Accused persons were interviewed individually by W/Sgt Mwale who later arrested and formally charged them with the offence of **Aggravated Robbery** *Contrary to Section 294 (1) of the Penal Code CAP 87 of the Laws of Zambia* to which the Accused persons have readily pleaded guilty.

The Accused persons had no lawful justification in stealing the said property whilst stealing threatening to use violence.

On Accused's A2 and A5 own admission of the facts I found them guilty and convicted them of the offence of **AGGRAVATED ROBBERY** as charged.

The State indicated that the 2 Accused were first offenders.

In mitigation the gravamen of Defence Counsel's submissions were that Accused **A2** and **A4** were young people and the Court should give them an opportunity to live and lead a better life since they are young and can positively contribute to the development of our nation.

It was common ground that all the 3 Accused were 1st offenders and deserving of leniency. It was further submitted that having pleaded guilty they were deserving of utmost leniency.

In respect of A4 it was pointed out that he is a pupil at a named school and wished to continue with his education.

In respect of A2 it was submitted that he was married with 2 children and he is a sole bread winner of the family.

It was canvassed that all 3 accused have so far spent almost a year in incarceration since they were apprehended. They are remorseful and prayed for maximum leniency.

I have taken into account the powerful mitigations by the Learned Defence Counsel. I agree that a first offender who pleads guilty is entitled to utmost

leniency unless there are aggravating factors to deny such accused with the favorable treatment of Accused in such class.

There are no aggravating circumstances in this matter. As regards youthfulness, it is trite law that youthfulness or indeed old age is not a mitigating factor.

Equally, responsibility to the family of Accused and welfare of the family is not a mitigating factor as the convicts ought to have considered the plight or welfare of the family before embarking on a dangerous errand of committing aggravated robbery.

Having pleaded guilty to the charge, I am satisfied that the convicts are remorseful.

The law provides for a minimum mandatory sentence of 15 years imprisonment with hard labor. I have to obey the law. I accordingly sentence the convicts as follows:-

A2 – 15 years imprisonment with hard labour;

A4 – 15 years imprisonment with hard labour, and

A5 – 15 years imprisonment with hard labour with effect from the date of arrest.

No appeal lies against a minimum mandatory sentence.

As regards A6, he stands charged with the offence of **Receiving Stolen Property contrary to section 318 (1) of the Penal Code** in the 2nd count. The particulars of the offence allege that A6 on 29th June, 2017 at Lusaka did receive 1 microwave; 1 Huawei MK 7 phone and 1 Philips 3CD loader knowing or having reason to believe the same to be feloniously stolen.

The accused pleaded guilty to the charge. The statement of facts allege that **Enerst Musukwa**, the Accused person herein stands charged and pleads guilty to one count of **Receiving Stolen Property contrary to section 318 (1) of the Penal Code of the Laws of Zambia**.

On 30th day of June, 2017 at or about 05:00 hours, at a hidden place in John Laing in the Lusaka District of the Lusaka Province of the Republic of Zambia, did receive from **Richard Njobvu, Richard Simukonda, Jackson Mulenga, Mathews Chali, Emmanuel Chew** 1 microwave, 1 Huawei Mec 7 phone and 1 Philips 3 CD loader knowing or having reason to believe the same to have been feloniously stolen.

On 30th June, 2017 the matter was reported to Sangalala Police Post. Investigations were carried out which led to the apprehension of the Accused person.

On 17th day of July, 2017 the Accused was interviewed by W/Sgt Mwale who later arrested and formally charged him with the offence of Aggravated Robbery contrary to Section 294 (1) of the Penal Code Chapter 87 of the Laws of Zambia which offence in respect of the Accused person now stands reduced to that of **Receiving Stolen Property contrary to section 318 (1) of the Penal Code of the Laws of Zambia** to which the Accused has readily pleaded guilty.

The Accused had no lawful justification in receiving stolen property knowing that it was stolen. On his own admission and on admission of the facts of the case as narrated by the People of Zambia, I find the Accused 5 guilty as charged and I **convict him** of the offence.

As alluded to in one of the preceding paragraphs, a first offender who pleads guilty to the charge is deserving of utmost leniency. I find no aggravating circumstances to disentitle the convict from the favorable treatment enjoyed by convicts in his class.

The law provides for up to 7 years imprisonment with hard labour for this offence. I have already observed that the very fact that a convict pleads guilty in my view is evidence of contrition and remorse.

I will sentence the convict A6 to a term of **5 years imprisonment with hard labour** with effect from the date of apprehension or arrest. This will send a strong signal to the members in the community that those people who receive stolen contraband will not seek and find refuge in the Court. Providing a market for ill gotten goods encourages criminals to steal so that they can make their profits.

No appeal lies against a conviction following admission and plea of guilty. I however grant leave to appeal to the Superior Court of Appeal during the allowable statutory period.

Delivered under my hand and seal this 7th day of March, 2018



**Mwila Chitabo, SC
Judge**