

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

HPA/12/2018

BETWEEN:

PAUL SOLO MUSAU

VS

THE PEOPLE



Before Hon. Mr. Justice M. Chitabo, SC at Lusaka, the 26th day of April, 2018

For the State: Ms. R. Malibata - State Advocate

For the Accused: Mrs. S. C. Lukwesa - Legal Aid Counsel

JUDGMENT ON APPEAL

Cases Referred to:

- 1. Alfred Mulenga v The People (1977) ZR106*
- 2. Chomba v The People (1975) Z.R. 245 (S.C.)*
- 3. Jose Antonio Golliadi v The People*

Legislation Referred to:

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

The Appellant was convicted on his own plea for one count of Theft by Agent contrary to section 280 of the Penal Code Chapter 87 of the Laws of Zambia.

The Appellant was sentenced to 36 months imprisonment with hard labour with effect from the date of conviction and the said sentence was to run

consecutively with other sentences being served by the Appellant. The Appellant appealed against sentence raising the following ground of appeal:

1. That the trial Court erred in law and in fact when it sentenced the Appellant to 36 months imprisonment with hard labour which sentence was to run consecutively with the other sentence of 36 months already being served by the Appellant.

Counsel argued on behalf of the Appellant that the Appellant was convicted and sentenced to 36 months imprisonment to run consecutively with a sentence meted before another court for two counts of a similar offence. The said offences were all committed in 2015 but simply separated and handled by different Magistrates.

Counsel argued that the effect of the current sentence was that the Appellant would have served a total of 72 months. She argued that the previous record was produced into Court and marked P2 having cause No. 2SPF/199/2015. She submitted that the offences are similar and related to the other matter where the Appellant obtained money from different persons for whom motor vehicles were to be purchased by the appellant.

In response the State Advocate argued that the Court below sentenced the appellant in accordance with the principles of sentencing. She stated that if the offence is from the same facts, the sentences will run concurrently. However, if the offences are committed separately then it will be a consecutive sentence. She argued that in the present case there was no evidence to show that the offences in question were from the same act.

It was submitted that this offence was committed separately and was before another Court with jurisdiction to sentence in accordance with the law as this was a different complaint brought before a different Court. She cited the case of **Jose Antonio Golliadi v The People**³ where the Supreme Court affirmed the principle that where the facts of a case disclose a series of offences forming a course of conduct then the Court should sentence as one transaction. She

stated that this was different from the case at hand because in the present case, a complaint was filed after the appellant was convicted and sentenced by a different Court.

She argued that in the present case the Court that dealt with this matter only had one count and therefore it could not run concurrently with the other sentence by a different Court. She cited the case of **Alfred Mulenga v The People**¹ where it was held that:

“The fact that the appellant committed the present offences when he knew that he was already being tried for the first three counts took the case outside the category of a systematic course of conduct for the purpose of sentence.

When dealing with offences which form part of a systematic course of conduct the better course is to impose concurrent sentences in respect of all the charges, the length of each sentence being that which the court considers appropriate for the total course of conduct.”

It was argued that in the present case the offence that the Appellant stood charged with could not be treated as arising from a series of offences.

I have considered the evidence on record and the arguments from both parties. The law as has already been submitted by both parties is well established regarding a series of offences forming one form of conduct. The case of **Chomba v The People**² referred to by Counsel for the Appellant is instructive where the Court held that:

“when dealing with a series of offences comprising a course of conduct, and we have pointed out that although there are anomalies inherent in each of the two possible methods the better course is to impose concurrent sentences in respect of all the charges, the length of each sentence being that which the court considers appropriate for the total course of conduct.”

In that case the Court acknowledged that these were series of offences committed over a short period of time. It must also be noted that all the offences took place within a period from the 26th December, 1974, to the 7th January, 1975. The issue for this Court to determine is what the 'short period of time' entails. The Appellant's offences are said to have been committed between November 2015 and January 2015 according to the charge sheet. It is important to distinguish between a series of offences comprising one course of conduct and just a habitual crime.

Having said this, the case before me varies in the sense that the initial sentence was given before a different Court from the matter before the Court whose sentence is being appealed against. The Appellant has argued that the record from the previous Court was exhibited and as such the two matter should be deemed to be a series of offences forming one conduct.

Procedurally I find great difficulty in the Magistrate referring to the previous sentence before another Court to run consecutively with the present case. Similarly, the argument by the Appellant that the sentence that was imposed in the matter appealed against should run concurrently is procedurally incorrect. The Magistrate should therefore not have considered the sentence in another Court's for purposes of running consecutively or concurrent, except for considering the Appellant's mitigation.

In view of this the Appeal fails with respect to the Appellant seeking the sentences before two different Courts to run concurrently. I further Order that the Appellant's sentence will not run consecutively with the sentence before another Court but Order that it will run with effect from the date of arrest.

Delivered under my hand and seal this 26th day of April, 2018



**Mwila Chitabo, SC
JUDGE**