

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

HPJA/06/2018

BETWEEN:

CHRISTOPHER MABVUTO SAKALA



APPELLANT

AND

THE PEOPLE

RESPONDENT

**BEFORE THE HONOURABLE LADY JUSTICE M.CHANDA THIS 26TH DAY OF
APRIL, 2018**

APPEARANCES

FOR THE APPELLANT : MR. J. PHIRI, SENIOR LEGAL AID COUNSEL OF
LEGAL AID BOARD

FOR THE RESPONDENT: MRS. A.N. SITALI, DEPUTY CHIEF STATE
ADVOCATE APPEARING WITH MR. M.
LIBAKENI ACTING SENIOR STATE ADVOCATE
OF NATIONAL PROSECUTIONS AUTHORITY.

J U D G M E N T

LEGISLATION REFERRED TO:

1. THE PENAL CODE CHAPTER 87 OF THE LAWS OF ZAMBIA
2. THE CRIMINAL PROCEDURE CODE CHAPTER 88 OF THE LAWS OF ZAMBIA

AUTHORITIES REFERRED TO:

1. ISAAC SIMUTOWE AND OTHERS V THE PEOPLE (2004) ZR 91
2. ALFRED MULENGA V THE PEOPLE (1977) ZR 106
3. ALUBISHO V THE PEOPLE (1976) ZR 11
4. CHOMBA V THE PEOPLE 1975 ZR 245

Christopher Mabvuto Sakala, the appellant herein was arraigned before the Subordinate Court of the second class in Petauke district on eleven counts of theft contrary to Section 272 of the Penal Code Chapter 87 of the Laws of Zambia as follows:

Count 1

The particulars of the offence were that on an unknown date between 1st November and 30th November, 2015 at Mayadi in the Petauke District of the Eastern Province of the Republic of Zambia jointly and whilst acting together with other persons unknown the appellant did steal one motor vehicle battery, one modulator, one flash, two cell phones altogether valued at K580=00 the property of **Changa Changa**.

Count 2

The particulars of the offence read that on 11th November, 2015 at showground in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together with other unknown the appellant did steal one inventor, one motor vehicle battery, one motor vehicle V-Glass all valued at K2,450=00 the property of **Constantine Phiri**.

Count 3

The particulars of the offence indicated that on 11th October, 2016 at New Houses Compound in the Petauke District of the Eastern Province of the Republic of Zambia, the appellant whilst jointly and acting together with others unknown did steal one motor vehicle battery valued at K790=00 the property of **Beauty Chishimba**.

Count 4

The particulars of the offence were that the appellant on 7th June, 2016 at New Houses Compound in the Petauke District of the Eastern Province of the Republic of Zambia jointly and whilst acting together with others unknown did steal one motor vehicle wheel and one motor vehicle battery altogether valued at K1500=00 the property of **Beauty Chishimba**.

Count 5

The particulars of the offence read that on unknown date between 1st January, 2016 and 31st March, 2016 at Mayadi in the Petauke District of the Eastern Province of the Republic of Zambia the appellant jointly and whilst acting with others unknown did steal three motor vehicle batteries altogether valued at K6350=00 the property of **Joseph Moosa**.

Count 6

The particulars of the offence stipulated that the appellant on unknown date between 31st March and 1st June, 2016 at Anusa in the Petauke District of the Eastern Province of the Republic of Zambia jointly and whilst acting with others unknown did steal motor vehicle battery and one cell phone valued at K1100=00 the property of **Ganizani Zulu**.

Count 7

The particulars of the offence were that the appellant on unknown date between 1st May, 2016 and 31st May, 2016 at Police Camp in the Petauke District of the Eastern Province of the Republic of

Zambia, jointly and whilst acting with others unknown did steal one motor vehicle wheel valued at K650=00 the property of **Rodgers Chifita**.

Count 8

The particulars of the offence read that on unknown date between 3rd August, 2016 and 1st September, 2016 in the Petauke District of the Eastern Province of the Republic of Zambia, the appellant whilst acting with others unknown did steal one motor vehicle speaker, one motor vehicle battery, one memory card, one motor vehicle jack, two wheel spanners and K2200=00 cash altogether valued at K4000=00 the property of **Isaac Tembo**

Count 9

The particulars of the offence stated that the appellant on 18th October, 2016 at Police Camp in the Petauke District of the Eastern Province of the Republic of Zambia jointly and whilst acting together with others unknown did steal one motor vehicle wheel, one power bank, one modulator, one motor vehicle jack, one cell phone, two USBs valued at K650=00 the property of **Samson Mambwe**

Count 10

The particulars of the offence were that the appellant on 21st November, 2016 at Main Location in the Petauke District of the Eastern Province of the Republic of Zambia jointly and whilst acting with others unknown did steal one digital camera, one motor vehicle Jack, one spanner, two motor vehicle triangles altogether valued at K2,120=00 the property of **Jonathan Maliye**

Count 11

The particulars of the offence were that the appellant on 8th December, 2016 at Showground Compound in the Petauke District of the Eastern Province of the Republic of Zambia jointly and whilst acting with others unknown did steal one Motor vehicle V-glass valued at K400=00 the property of **Hildah Musonda**.

The appellant pleaded guilty to counts 1, 3 and 7 and pleaded not guilty to the other nine counts. He was sentenced to three (3) years imprisonment with hard labour on each admitted count, the sentence to run consecutively with effect from 13th December, 2016. The appellant was ultimately found guilty on all the other nine counts and was convicted accordingly to three (3) years imprisonment with hard labour, the sentence to run concurrently with the sentence he was already serving.

He now appeals before this court against the total sentence of 6 years imprisonment with hard labour imposed in respect to the admitted counts. The gist of the appellant's appeal is that the magistrate erred in ordering the sentences to run consecutively. In support of his ground, the appellant cited the Supreme Court's decision in the case of **Isaac Simutowe and Others v The People**¹ wherein the court confirmed the principle that where an accused person has engaged in a course of conduct and in the process has committed many offences, the court should assess the proper sentence which is appropriate for the whole course of conduct.

In support of the grounds of appeal Counsel for the appellant submitted that it was a misdirection when the trial court ordered that the admitted counts will run consecutively. In support of his submission, counsel cited the case of **Alfred Mulenga v The People**² wherein it was stated that concurrent sentences were a better course when dealing with offences which form part of a systematic course of conduct. Counsel also submitted that a consecutive sentence was wrong in principle. He drew the court's attention to the case of **Alubisho v The People**³ in which it was held alia that:

In dealing with an appeal against sentence the appellate court should ask itself three questions:

Is the sentence wrong in principle?

Is it manifestly excessive or so totally inadequate that it induces a sense of shock?

Are there any exceptional circumstances which would render it an injustice if the sentence were not reduced?

Only if one or the other of these questions can be answered in the affirmative should the appellate court interfere.

I have considered the appeal and it is my opinion that when the magistrate referred to counts 1 and 2 being the admitted counts, he meant counts 1 and 3 as these were the admitted the counts on the record. I must affirm however, that there was a misdirection on the part of the trial court as it ought to have sentenced the appellant on count 7 as well.

It is worthy of mention that when a person is convicted at a trial of more than one crime he may be given consecutive sentences. Circumstances when such a sentence may be appropriate are: where a person is charged with several counts which do not form a single transaction or a systematic course of conduct; where one of the offences was committed while the offender was on bail for the other; use of violence to avoid apprehension for another offence; possession of a firearm at the time of committing an offence and breaches of conditions of probation, conditional discharge or suspended sentence.

However, sentences may be concurrent where offences arise out of the same transaction or incident (whether or not they arise out of precisely the same facts) and where a series of offences are committed against the same victim within a short period of time.

In **Chomba v The People**⁴, the court held, inter alia, that:

“When dealing with a series of offences comprising a course of conduct...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 the case before me, the appellant admitted committing the offence of theft in November, 2015 and October, 2016. It is my considered view that these offences formed a systematic course of conduct for the purpose of sentencing. A concurrent sentence

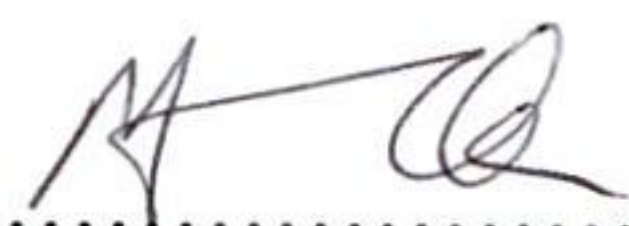
would therefore have been most appropriate in respect of both counts, the length to reflect the court's desire to punish the appellant for his total conduct.

It is worth noting that the cumulative sentence of six (6) years total imprisonment is further wrong in principle as it offends **Section 36** of the **Penal Code** which provides that if the terms of imprisonment ordered are consecutive, the total of the terms of imprisonment so ordered shall not exceed the maximum term allowed in respect of that conviction for which the law allows the longest term. The maximum penalty for theft which was the offence committed in both counts is 5 years. *In casu*, the total punishment ordered by the magistrate came to six (6) years imprisonment which is above the maximum penalty for theft.

In view of the foregoing, I confirm the three (3) years sentences on the 1st and 3rd count. On count 7, I hereby sentence the appellant to four (4) years imprisonment with hard labour, the sentences will run concurrently. The net effect is that the appellant shall serve a total of four (4) years imprisonment with hard labour.

Appeal allowed.

Delivered at Chipata in open court this 26th day of *April*, 2018.



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M.CHANDA
JUDGE