

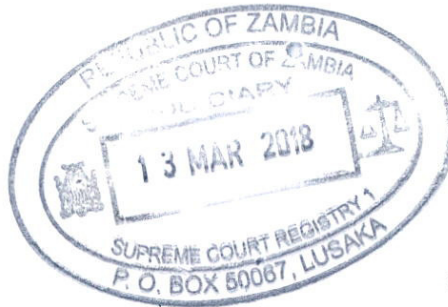
**IN THE SUPREME COURT OF ZAMBIA**

**HOLDEN AT LUSAKA**

(Criminal Jurisdiction)

**BETWEEN:**

**COBERTY KOMO**



**APPELLANT**

**AND**

**THE PEOPLE**

**RESPONDENT**

Coram: Phiri, Muyovwe and Malila, JJJS  
On the 6<sup>th</sup> March, 2018 and 13/3/18.....

**For the Appellants: Mr. V. Kabonga of Messrs George Kunda & Co.**

**For the Respondent: Mr. M. Lupiya  
State Advocate, National Prosecutions Authority**

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**JUDGMENT**

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**Phiri, JS, delivered the Judgment of the Court**

The appellant was tried and convicted by the Subordinate Court at Lusaka, of the offence of defilement contrary to **Section 138(1) of the Penal Code, Chapter 87 of the Laws of Zambia**, as read with the **Penal Code (Amendment) Act No. 15 of 2005**. The particulars of the offence were that the appellant, between 1<sup>st</sup>

November, 2011 and 29<sup>th</sup> November, 2011 at Lusaka, had unlawful carnal knowledge of a named girl under the age of 16 years.

Undisputed evidence before the trial Court established that the victim then aged 11 years, came over to the appellant's house to help taking care of his 3 year old child. The appellant was married to the victim's aunt. According to the victim who testified on oath after a successful *voire dire*, at the material time during the night she retired to her bed after locking her bedroom door and removing the key from the keyhole. The victim shared the bedroom with the appellant's baby while two other occupants of the house were away on night duties.

Whilst sleeping, the appellant accessed her bedroom using his spare key and ordered her to remain quiet. The appellant was half dressed in a pair of whitish/grey pair of shorts. He reached her bed and undressed; and he also undressed the victim and forced himself on her body carnally. She suffered severe pain and serious injuries to her private parts. The severe injuries were confirmed by the Government medical doctor who later examined her and issued a medical report. The doctor testified as PW5. The injuries were so severe that the victim immediately fell ill and was hardly able to

walk. In the meantime, the appellant and his wife left the home for Mkushi on a business trip. The victim's poor condition was observed by a neighbor who reported to her mother (PW3) who came over and took her to the University Teaching Hospital where she was examined and treated by PW5. When she was interviewed by her mother (PW3) and the police officer who investigated the case (PW4), she implicated the appellant.

When he was put on his defence, he conceded that the victim was defiled but explained that she could have been defiled by somebody else because she used to misbehave and came home late. The learned trial Magistrate analyzed the totality of the evidence received and found the appellant guilty and convicted him as charged. The High Court confirmed the conviction and sentenced him to 30 years imprisonment with hard labour.

In his appeal before us, Mr. Kabonga, on his behalf, filed three grounds of the appeal and simultaneously filed his heads of argument in support thereof. The three grounds of the appeal were as follows:

1. That the learned trial Magistrate misdirected herself by accepting without question the evidence of identification

by PW1 and failed to consider the possibility of an honest mistake.

2. That the evidence stated as corroborative was not conclusive and could therefore, not be corroboration.
3. That the learned trial Magistrate seriously erred both in law and in fact when she relied on the evidence of PW2, PW3 and PW4 which mostly was hearsay evidence which is normally inadmissible.

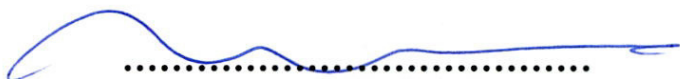
At the hearing of the appeal, Mr. Kabonga the learned Counsel for the appellant indicated to us that he had abandoned all the three grounds of appeal; and, by implication, he also vacated his written heads of argument filed in support of the three grounds of the appeal. To the learned Counsel, this in no way indicated that the appeal was abandoned. Thus, he proceeded to argue against the sentence of 30 years imprisonment with hard labour awarded to his client. His bone of contention was that the sentence was excessive and does not hold the principle that justice should be administered with mercy. He urged us to reduce the sentence.

It is apparent from the stance taken by the learned Counsel that he became oblivious to the rules of this Court concerning appeals; which rules enable us to exercise our jurisdiction on matters brought before us. Key among the rules is the requirement of an appeal to be validly filed in Court, with the notice of intention

to appeal, the grounds of appeal and the heads of argument. We do not see any need for us to recast the rules of Court because we are satisfied that the learned Counsel was very aware and conversant with the procedure to follow when seeking our jurisdiction. He had very ably followed and complied with these rules until after he abandoned the grounds of appeal. The short of it is that, with all the three grounds of appeal withdrawn, there is no valid ground of appeal for our determination in this matter. Mr. Kabonga's contention regarding the sentence is nothing but a lamentation that does not trigger our jurisdiction. The fate of this appeal was decided when all the grounds of the appeal were abandoned. This appeal must therefore fail and we dismiss it.



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**G.S. PHIRI**  
**SUPREME COURT JUDGE**



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**E.N.C. MUYOVWE**  
**SUPREME COURT JUDGE**



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**Dr. M. Malila, SC.**  
**SUPREME COURT JUDGE**