

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

HPJA/02/2018

**BETWEEN:**

COLLINS BAKASA  
TEDIAS MUMBI  
FRED DAKA  
AND  
THE PEOPLE



1<sup>ST</sup> APPELLANT  
2<sup>ND</sup> APPELLANT  
3<sup>RD</sup> APPELLANT  
  
RESPONDENT

**BEFORE THE HONOURABLE LADY JUSTICE M.CHANDA THIS 26<sup>TH</sup> DAY OF  
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.

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**J U D G M E N T**

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**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. MUKE AND ANOTHER V THE PEOPLE (1983) ZR 94
3. ALFRED MULENGA V THE PEOPLE (1977) ZR 106
4. ALUBISHO V THE PEOPLE (1976) ZR 11
5. CHOMBA V THE PEOPLE 1975 ZR 245

**Collins Bakasa, Tedias Mumbi and Fred Daka** the appellants herein were charged before the Subordinate Court of the 3<sup>rd</sup> Class in Petauke district on nineteen (19) counts of housebreaking and theft and one (1) count of personation contrary to Section 272 of the Penal Code Chapter 87 of the Laws of Zambia as follows:

**Count 1**

The Particulars of offence were that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 15<sup>th</sup> May, jointly and whilst acting together did break and enter the dwelling house of Wilson Phiri with intent to steal and stole from therein, one home theatre, one inventor, one mattress, one travelling bag, one laptop bag, fourteen tablets of soap, one bucket of washing soap, one barbing machine, airtime and K200.00 cash altogether valued at K3,090.00 the property of Wilson Phiri.

**Count 2**

The particulars of offence were that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 17<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Chalwe Luchanga** with intent to steal and stole from therein, one duvet, one travelling bag, one DVD player, three cell phones and one plastic bucket altogether valued at K1,800.00 the property of **Chalwe Luchanga**.

**Count 3**

The particulars of offence stated that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 2<sup>nd</sup> June, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Masauso Ngo'mbe** with intent to steal and stole from therein, one fridge valued at K1,770.00 the property of **Masauso Ngo'mbe**.

**Count 4**

The particulars of offence stated that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 24<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Dickson Lungu** with intent to steal and stole from therein, one solar panel, one laptop bag, six phone batteries, one cell phone, one cash box and one pair of shoes altogether valued at K1,570.00 the property of **Dickson Lung**.

**Count 5**

The particulars of offence stipulated that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 26<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Samilani Muzichi Phiri** with intent to steal and stole from therein, one grinding machine, one radio, one barbing machine and

K100.00 cash altogether valued at K1,700.00 the property of **Samalani Muzichi Phiri**.

**Count 6**

The particulars of offence alleged that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 15<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Webster Simwaka** with intent to steal and stole from therein, one subwoofer and one cell phone altogether valued at K2,000.00 the property of **Webster Simwaka**.

**Count 7**

The particulars of offence were that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 16<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Christine Banda** with intent to steal and stole from therein, six puma blankets, two curtains, one home theatre, one chitenge material, three bed sheets, one pair of shoes, assorted clothes, one car radio altogether valued at K16,050.00 the property of **Christine Banda**.

**Count 8**

The particulars of offence stipulated that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 13<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia,

jointly and whilst acting together did break and enter the dwelling house of **Edson Miti** with intent to steal and stole from therein, one television valued at K3,500.00 the property of **Edson Miti**.

**Count 9**

The particulars of offence were that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 29<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Samson Banda** with intent to steal and stole from therein, one solar panel and flash disc valued at K700.00 the property of **Samson Banda**.

**Count 10**

The particulars of offence were that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 17<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Alick Mwanza** with intent to steal and stole from therein, one home theatre, one computer and one printer altogether valued at K9,690.00 the property of **Alick Mwanza**.

**Count 11**

The particulars of offence stated that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 15<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling

house of **Benedict Chipekwe** with intent to steal and stole from therein, one mattress, one home theatre, one laptop, one cell phone and K400.00 cash altogether valued at K6,400.00 the property of **Benedict Chipekwepe**.

### Count 12

The particulars of offence alleged that **Collins Bakasa, Tediias Mumbi** and **Fred Daka** on 15<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Esnart Ngulube** with intent to steal and stole from therein, one radio, one set of food warmers, one set of pots, one chitenge material, five cases of beer and three flash discs altogether valued at K4,980.00 the property of **Esnart Ngulube**.

### Count 13

The particulars of offence alleged that **Collins Bakasa, Tediias Mumbi** and **Fred Daka** on 10<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Tukiya Makanga** with intent to steal and stole from therein, one television set, one barbing machine, one toner and one external hard drive altogether valued at K3,420.00 the property of **Tukiya Makanga**.

### Count 14

The particulars of offence were that **Collins Bakasa, Tediias Mumbi** and **Fred Daka** on 7<sup>th</sup> May, 2017 at Petauke in the Petauke District

of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Mirriam Chalwe** with intent to steal and stole from therein, one mattress, one home theatre, one laptop bag, one duvet, one radio altogether valued at K1,130.00 the property of **Mirriam Chalwe**.

**Count 15**

The particulars of offence alleged that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 30<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Mary Banda** with intent to steal and stole from therein, one radio, one solar panel, two pairs of shoes, one bag of mealie meal, one cell phone, assorted plates and one container of cooking oil altogether valued at K1,367.00 the property of **Mary Banda**.

**Count 16**

The particulars of offence alleged that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 27<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Kelon Kamphango** with intent to steal and stole from therein, one mattress, one home theatre, two duvets, two travelling bags one laptop, two cell phones and assorted pots and plates altogether valued at K4,500.00 the property of **Kelon Kamphango**.

**Count 17**

The particulars of offence alleged that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 23<sup>rd</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Morris Mwandu** with intent to steal and stole from therein, one home theatre, one combat, one short button, one leather court, jersey and one boot altogether valued at K1,500.00 the property of **Morris Mwandu**.

**Count 18**

The particulars of offence stipulated that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 29<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Stella Daka** with intent to steal and stole from therein, one cooker, four curtains, one DVD player and one wall clock altogether valued at K750.00 the property of **Stella Daka**.

**Count 19**

The particulars of offence stipulated that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on 29<sup>th</sup> May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did break and enter the dwelling house of **Lemmy Banda** with intent to steal and stole from therein, one DVD player, one inventor, one food wormer, seven cups, one set of washing dishes, one bucket, one pressing iron, one set of pots,



two plates and one cell phone altogether valued at K3,090.00 the property of **Lemmy Banda**.

### **Count 20**

The particulars of offence alleged that **Collins Bakasa, Tedias Mumbi** and **Fred Daka** on unknown date but in the month of May, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia, jointly and whilst acting together did with intent to defraud, did falsely represent themselves as police officers when in fact they are not.

The appellants pleaded guilty to counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 16, 19 and 20 and pleaded not guilty to the other five counts. They were sentenced to one (1) year imprisonment on each admitted count, the sentence to run consecutively with effect from 3<sup>rd</sup> June, 2017. After the appellants were called upon to make their defence, the prosecution withdrew the other five counts pursuant to section 88(b) of the Criminal Procedure Code and the appellants were acquitted on them.

The appellants were dissatisfied and now appeal before this court against the sentence in respect to the admitted counts; a total sentence of fifteen (15) years imprisonment. The appellants' ground of appeal is that the magistrate erred in ordering the sentences to run consecutively. In support of this ground, the appellants cited the Supreme Court's decision in the case of **Isaac Simutowe and Others v The People**<sup>1</sup> 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. The appellants also cited an earlier case of **Muke and Another v The People**<sup>2</sup> in which the court held that where the facts of the case disclose a series of offences forming a course of conduct, the proper procedure is for the sentences to run concurrently.

Counsel for the appellants filed written heads of argument for which I am greatly indebted.

On behalf of the appellants, it was submitted that the trial court misdirected itself when it ordered the sentences to run consecutively. In support of his submission, counsel cited the case of **Alfred Mulenga v The People**<sup>3</sup> 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 referred the court to the case of **Alubisho v The People**<sup>4</sup> in which it was held alia that:

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

- (1) Is the sentence wrong in principle?**
- (2) Is it manifestly excessive or so totally inadequate that it induces a sense of shock?**
- (3) 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. I must mention that when a person is convicted at one trial of more than one crime he may be given consecutive sentences. Circumstances when such a sentence may be appropriate is 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.

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**<sup>5</sup> it was held, inter alia, that:

**“When dealing with a series of offences comprising a course of conduct, although there are anomalies inherent in both the "consecutive" and " concurrent" methods of sentencing the better course is to impose concurrent sentence in respect of all the charges the length of each sentence being that which the court considers appropriate for the total course of conduct.”**

Exceptional circumstances may still necessitate departure from the principle of giving concurrent sentences even when offences form part of one transaction.

In the case before me, the appellants broke into 19 different dwelling houses within one month. This in my considered view was over a short period of time and ought to have been treated as one course of conduct for the purpose of sentencing. A concurrent sentence would therefore, have been most appropriate in respect of all counts, the length to reflect the court's desire to punish the appellant for their total conduct.

Moreover, the cumulative sentence of fifteen years (15) total imprisonment is further wrong in principle as it offends section **36** of the **Penal Code** which provides that where if the terms of imprisonment ordered are consecutive, the total of the terms of imprisonment so ordered shall not exceed the maximum term allowed by law in respect of that conviction for which the law allows the longest term. The maximum penalty for breaking which was the offence committed in all the 19 counts is seven (7) years. In the current case the total punishment ordered by the magistrate came to fifteen years imprisonment which is above the maximum penalty for breaking.

It is further my considered view that the sentences of one year imposed by the trial magistrate in counts 7 and 11 were totally inadequate considering the intrinsic value of the stolen property.

In light of the foregoing I am therefore inclined to temper with the said sentences. The one year sentences passed in respect of counts 7 and 11 are set aside and substituted with six (6) years and four (4) years imprisonment with hard labour respectively. I also quash the order for the sentences to run consecutively and replace it with the order that the sentences shall run concurrently. Accordingly the appellants will have to serve a total of six (6) years imprisonment with hard labour.

Appeal allowed.

Delivered at Chipata in open court this 26<sup>th</sup> day of April, 2018.



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**M. CHANDA**  
**JUDGE**