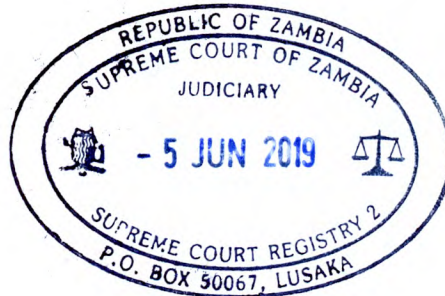


IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

APPEAL No. 172/2018

BETWEEN:

LIKE SILISHEBO



APPELLANT

AND

THE PEOPLE

RESPONDENT

Coram: Muyovwe, Malila and Chinyama, JJS.

On the 5th February, 2019 and on 5th June, 2019.

For the Appellant: Mrs L. T. Tindi, Legal Aid Counsel, Legal Aid Board.

For the Respondent: Mrs A. N. Sitali, Deputy Chief State Advocate, National Prosecutions Authority.

J U D G M E N T

Chinyama, JS, delivered the Judgment of the Court.

Cases referred to:

1. *Shampeta and Another v The People (1967) Z.R. 168 (H.C.)*

Statutes referred to:

1. *Penal Code, Chapter 87, Laws of Zambia, section 137 (1)*
2. *Criminal Procedure Code, Chapter 88, Laws of Zambia, Section 204*

Introduction

1. The appellant was convicted on his own plea of guilty to the charge of indecent assault on a female contrary to **section 137 (1)** of the **Penal Code** by the Subordinate Court at Kalabo and sentenced to 15 years imprisonment with hard labour by the High Court. At the hearing of the appeal before us on the 5th February, 2019 we took the view that the conviction was not supported by the facts disclosed in the case. Mrs Sitali, the learned Deputy Chief State Advocate graciously conceded that the State was not supporting the conviction as well. Mrs Tindi of the Legal Aid Board representing the appellant had nothing to say, and rightly so. We accordingly, acquitted the appellant and indicated that we shall give our reasons for so doing later which we now do in this short judgment.

Reasons for the decision

2. The appellant was found guilty on the basis of the following plea made by the appellant-

I understand the charge. I admit the charge. It is true I unlawfully and indecently assaulted the complainant in this matter at the time she was taking her son to school on the 28th January, 2013. The

complainant did not consent to any of my acts on the material day.
(Underlining supplied for emphasis)

3. The ensuing statement of facts upon which the appellant was convicted simply stated that on the material day, as the complainant was taking her son to school, the appellant attacked her and “**unlawfully and indecently assaulted**” her. The appellant confirmed that the “facts” read out were true and correct. The Court found the appellant guilty, convicted and committed him to the High Court for sentence which imposed the 15 years imprisonment with hard labour.

4. Section 204 of the **Criminal Procedure Code (CPC)** which deals with the taking of plea requires that an accused must either admit or deny the truth of the charge. This, in our view, relates to the need to reveal the facts that constitute the elements or ingredients of the charge. We agree with Ramsay J’s holding in the case of **Shampeta and Another v The People**¹ that-

For a plea of guilty to be effective, the accused must appreciate the nature of the charge, he must intend to plead guilty, and he must admit sufficient facts to enable him to be convicted of the offence charged.

5. It was, therefore, not enough for the appellant to plead that he **“unlawfully and indecently assaulted”** the Complainant without disclosing the facts that establish the unlawfulness or indecency of his action in support of the charge. In other words the appellant’s responses especially that he was not represented by a lawyer at the time, should have disclosed what it is that the accused did which amounted to committing the offence charged. The admission by the appellant that he **“unlawfully and indecently assaulted”** the Complainant is certainly not a fact which establishes what it is that the appellant did on the basis of which the offence charged can be said to be founded.

6. Based on the foregoing, we took the view that the plea upon which the appellant was found guilty and the statement of facts upon which he was convicted fell short of the standard. Accordingly, we found merit in the appeal. Bearing in mind that this is an old case instituted in 2013 and the appellant has all along been in custody in a remand facility, we feel that the best

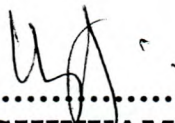
interests of justice will be better served by acquitting the appellant. We order accordingly.



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



.....
DR. M. MALILA, SC
SUPREME COURT JUDGE



.....
J. CHINYAMA
SUPREME COURT JUDGE