

THE PEOPLE (1982) Z.R. 29 (S.C.)

SUPREME COURT  
SILUNGWE, C.J., GARDNER, J AND BWEUPE, AG J.S.  
13TH JULY, 1982  
(S.C.Z. JUDGMENT NO. 22 OF 1982)  
APPEAL NO s.18 OF 1982 AND 45 OF 1981  
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**Flynote**

Criminal law and procedure - Appeal - Power of appellate court to impose sentence which is in excess of the powers of the trial court - Whether available.

Sentence - Appeal - Power of appellate court to impose sentence which is in excess of the power of the trial court - Whether possible.

**Headnote**

The appellants pleaded guilty to breaking into Mukobeko offices and stealing therefrom. They were sentenced to three year's imprisonment with hard labour by the trial court. On appeal the court increased the sentence to five years. They appealed further.

**Held:**

- (i) An appellate court cannot enhance the sentence imposed by the trial court, beyond the powers of the latter, it can only impose the sentence that the trial court could have imposed.

For the appellants: N. L. Patel Senior Legal Aid Counsel  
For the respondent: C. K. Chanda State Advocate,

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**Judgment**

**SILUNGWE, C.J.:** delivered the judgment of the court.

Both appellants pleaded guilty to breaking into Mukobeko offices and stealing therefrom, among other items, a revolver and six rounds of ammunition, on the 29th June, 1979. Both were first offenders and were each sentenced to the Subordinate Court of the second class to a term of imprisonment with hard labour for three years.

On appeal to the High Court against their respective sentences, these were increased to five years each. Evidently, the enhancement of these sentences was *ultra vires* the powers of the trial court which, under s. 7 (iv) of the Penal Code, could not have imposed a sentence in excess of three years. An appellate court can only impose a sentence that the trial court could have imposed. It has no power to impose any greater sentence. In the circumstances, the appellate court's sentence was invalid and, as such, it is set aside; in its place we reimpose the original sentence of three years imprisonment with hard labour. In the case of the first appellant, this sentence consecutive to any sentence he may now be serving, but the second appellant's takes effect from 23rd January, 1980.

Original sentence re-imposed

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VALSAMOS KOUFOU v