
THE PEOPLE v MWAIBA KAKUYA
(1990 –1992) Z.R. 9 (H.C.)

HIGH COURT
C.S. MUSHABATI, J.
25TH JULY, 1990
(REVIEW CASE NO. HTR/36 OF 1990)

Flynote

Criminal law and procedure - Charge - Accused charged with more than one offence - Proper procedure thereof.

Headnote

The accused was convicted of selling prescribed trophies. The particulars of the offence disclosed that there were two kinds of trophies involved, namely a Zebra skin and two clawless Otter skins. This constituted two separate offences. The accused, however, was charged with the two offences in the same charge sheet as one count.

Held:

Where an accused person is charged with more than one offence it is permissible to charge such person on one charge sheet or information, provided such offences are set out in separate paragraphs as separate counts. *Mutoloki v The People* distinguished.

Case referred to:

(1) *Mutoloki v The People* (1972) Z.R. 283.

Legislation referred to:

1. Criminal Procedure Code, Cap.160, ss. 135, 337, 338.
2. National Parks and Wildlife Act, Cap. 316, ss. 111(1), 142(2).

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Judgment

C.S. MUSHABATI, J.:

The accused was convicted of selling prescribed trophies on his own plea of guilty.

He was fined a sum of K5 000 or 9 months' simple imprisonment in default of the fine. The case comes before me for confirmation of the sentence (fine). Looking at the particulars of offence I observe that there were two kinds of trophies involved. There was a Zebra skin and two clawless Otter skins. A Zebra and an Otter are different types of animals. The accused should have been charged with two counts of possession of prescribed trophies.

It is for this reason that I decided to revise the case in terms of ss. 337 and 338 of the Criminal Procedure Code.

The charge against the accused was bad for duplicity. He should have, however, been charged on one charge sheet with two offences of possession of prescribed trophies, as laid down in s. 135 of the Criminal Procedure Code.

The Sections reads:

- "1. Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the same facts or form, or are a part of, a series of offences of the same or similar character.
2. Where more than one offence is charged in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count.
3. Where, before trial, or at any stage of a trial, the Court is of opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge or information, or that for any other reason it is desirable to direct that any person should be tried separately for any one or more offences charged in a charge or information, the Court may order a separate trial of any count or counts of such charge or information."

It is clear from the above provisions of the law that though it is permissible to charge an accused with more than one offence, such offence should be set out in separate paragraphs. This means that each offence should be set out in separate counts. This is the exact position in the instant case before me. The charge was bad for duplicity.

The accused pleaded guilty to this offence and he paid the fine. The accused did not undergo a custodial sentence nor was he subjected to a long trial. I therefore feel he did not suffer any prejudice or embarrassment. A retrial and not an acquittal is appropriate in this case. The case of *Mutoloki v The People* [1] is distinguished.

The conviction and sentence are quashed. A retrial is ordered before another magistrate of competent jurisdiction. The fine shall be refunded to the accused.

Retrial ordered.