

**IN THE SUPREME COURT FOR ZAMBIA  
HOLDEN AT NDOLA AND KABWE  
(CIVIL JURISDICTION)**

**APPEAL NO.48/2000**

**BETWEEN:**

**DOMINIC BANDA**

**APPELLANT**

**AND**

**THE PEOPLE**

**RESPONDENT**

**Coram:** Sakala, Ag.DCJ, Chirwa, Lewanika JJS.  
On 5<sup>th</sup> September, 2000 and  
On 7<sup>th</sup> November, 2000.

**For the Appellants:** Mrs. J. Kaumba,  
Assistant Principal State Advocate

**For the Respondent:** R.O. Okafor,  
Principal State Advocate

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**JUDGMENT**

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**Lewanika, JS. delivered Judgment of the court.**

The appellant who had been originally charged with the offence of aggravated robbery contrary to Section 294(1) of the Penal Code was convicted of the offence of theft from the person contrary to Section 276(a) of the Penal Code, the particulars of the offence being that the appellant and another on the 7<sup>th</sup> April, 1999 at Ndola in the Ndola district of the Copperbelt Province of the Republic of Zambia jointly and whilst acting together did steal from the person of Howard Lungu one bicycle and K90,000.00 cash altogether valued at K640,000.00. The appellant was sentenced to six years imprisonment with hard labour and he appeals against conviction only.

The evidence on record is that on the evening of 7<sup>th</sup> April, 1999 P.W.1 and P.W.2 were returning from a funeral in Chipulukusu Township and on their way home they

were confronted by a group of three men who were armed with pangas. This group attacked them and got away with their bicycles. P.W.1 had sustained some injuries and reported the incident to the Police. On 4<sup>th</sup> June, 1999 P.W.1 saw P.W.3 riding a bicycle which he identified as the one that had been stolen from him. P.W.1 apprehended P.W.3 and took him to the Police and it transpired that P.W.3 had bought the bicycle from the appellant and his co-accused on 10<sup>th</sup> April, 1999. The appellant admits having sold the bicycle to P.W.3 through his co-accused who was a friend of P.W.3 but claims to have bought the bicycle at Masala Market in April, 1999 but that he decided to sell the bicycle as it was giving him problems and he also needed to raise money to go and see his ailing father in Chipata. The appellant claims to have been given K40,000.00 by his sister to augment his K30,000.00 as the price of the bicycle was K70,000.00

The learned trial Judge did not accept the appellant's explanation and convicted him of theft from the person, hence this appeal.

Mrs. Kaumba who appears for the appellant has filed only one ground of appeal namely:

1. That the learned trial Judge erred in law and on the facts when he convicted the appellant of the offence of theft from the person in the light of the appellant's explanation as to how he came into possession of the bicycle which was the subject matter of the offence, which explanation might reasonably have been true.

In arguing this ground Counsel for the appellant submitted that the only evidence connecting the appellant to the alleged offence was that the appellant shortly after its commission was found in possession of the complainant's bicycle which he later sold to P.W.3. She said that the appellant gave an explanation to the effect that he had bought the bicycle from Masala Market with the help of his sister at K70,000.00. That he later sold it because it gave him problems and he wanted to raise transport money to go and see his ailing father in Chipata. She submitted

that the explanation given by the appellant might reasonably be true because a bicycle is an item that could change hands easily. She said that the alleged theft took place on 7<sup>th</sup> April, 1999 and the appellant had deposed that he had bought the bicycle on 10<sup>th</sup> April, 1999 at Masala Market. She said that it was common knowledge that stolen bicycles are sold almost every day from our markets without the seller proving ownership of the same. She said that it was also common knowledge that such items are sold and bought at very minimal prices without raising suspicion on the part of the buyers as evidenced by the testimony of P.W.3 who bought the same bicycle from the appellant at K40,000.00.

She submitted that a finding of guilt by inference was not the only inference that the learned trial Judge ought to have drawn from the appellant's possession of the bicycle and she urged us to quash the conviction and acquit the appellant.

In reply Mr. Okafor who appeared for the respondent submitted that the appellant in his evidence had given his sister's name as Justina Phiri, whereas the witness whom he called gave her name as Christina Sakala. She also did not know her mother's name or the residential address where the mother stayed. He submitted that the learned trial Judge had made a finding that he did not believe the story of the appellant and his witness and he was entitled to find on the evidence adduced before him. He urged us to dismiss the appeal as lacking in merit.

We have considered the submissions made by Counsel for the appellant and for the respondent. The evidence on record is that the bicycle was stolen from the complainant on 7<sup>th</sup> April, 1999 and on 10<sup>th</sup> April, 1999 the same bicycle was sold to P.W.3. The appellant claims to have bought the bicycle on the same day from some unknown person at Masala Market with help from his sister. The appellant's explanation as to how he came to be in possession of the bicycle was considered by the learned trial Judge and rejected by him. This was a finding of fact made by the learned trial Judge who had the advantage of hearing and observing the demeanor of the witnesses who

testified before him. As we pointed out in the case of A.G. vs. ACHIUME, 1983, Z.R. 1-

"Before this court can reverse findings of fact made by a trial Judge, we would have to be satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which on a proper view of the evidence, no trial court acting correctly could reasonably make."

On the evidence before him, we are satisfied that the learned trial Judge was perfectly entitled to come to the conclusion that he did. We find no merit in the appeal against conviction which we dismiss.

E.L. SAKALA  
AG. DEPUTY CHIEF JUSTICE

D.K. CHIRWA  
SUPREME COURT JUDGE

D.M. LEWANIKA  
SUPREME COURT JUDGE