

HOLDEN AT NDOLA

(Criminal Jurisdiction)

HAPPY KENIE SIWALE

Appellant

THE PEOPLE

Respondent

CORAM: Ngulube, D.C.J., Gardner, J.S. and Bweupe AJ.S.

6th December, 1988

Mrs I. Kunda, Legal Aid Counsel, for the appellant

Mr. J. Mwanachongo, Senior State Advocate, for the respondent

J U D G M E N T

Ngulube, D.C.J. delivered the judgment of the court

The appellant was tried and convicted on a charge of aggravated robbery for which he received the mandatory minimum sentence. The particulars were that on 12th October, 1983, at Ndola, jointly and whilst acting together with another person, he robbed the complainant of his K150 cash and at or immediately before or immediately after such said robbery did use actual violence to the said complainant in order to obtain or to retain the cash. The evidence in the case showed that, the day before the robbery alleged in this case, the complainant was at a garage in town in Ndola looking for spare parts when he came across the appellant. When the appellant discovered that the complainant had a vehicle, the appellant requested that the complainant allow him to hire the vehicle, to transport some goods. This was agreed and the appellant was given the residential address of the complainant and asked to call there the next day. On the following day the appellant and another arrived at the complainant's house. They had a discussion first with the complainant's son who then referred them to the complainant who readily agreed to go and collect and transport the property. The appellant and his confederate were said to have used a ploy by firstly suggesting that the complainant should not take his son along because there was a lot

of property to be carried and there would not be room if an additional person came along. When the vehicle had gone past Lubuto compound, the complainant was asked to stop, which he did. There was evidence that the vehicle had problems in starting and on the pretext of assisting the complainant to repair the vehicle the appellant asked the complainant to open the bonnet. As the complainant was in the process of doing so, the appellant's confederate suddenly and very firmly grabbed the complainant and pinioned his arms so that he could not move. The appellant then took the cash from the complainant's pockets and the two then ran away.

On his behalf the appellant had filed some grounds of appeal in which, among other things, he alleged that he was the victim of mistaken identity. The offence occurred in broad daylight and both the complainant and his son had more than ample opportunity to make a reliable observation. We therefore have no hesitation in rejecting such a ground of appeal. He also raised a ground which was also taken up by Mrs Kunda on his behalf. It was submitted that the learned trial judge misdirected himself when he held that there was violence used which induced fear in the mind of the complainant when in actual fact the holding of arms could not amount to violence. It is Mrs Kunda's argument that, since the complainant did not mention that he was afraid, the mere fact that one of the robbers firmly held and pinioned his hands to the sides is not the type of violence referred to in the section. She pointed out that the complainant was not even beaten. We have addressed our minds to the submission and we do note also that the learned trial judge dealt with the matter in some detail. After setting out the terms of section 294(1) of the Penal Code which creates the offence, the learned trial judge then considered whether the pinioning of the arms was sufficient violence. The learned trial judge was not wrong when he found that the actions of the appellant and his confederate in this case, namely, the pinioning of the complainant's arms to prevent him from resisting the theft, was a sufficient display of violence to sustain the charge. We confirm also that under the terms of the section, it is not always necessary that

the complainant should be beaten. Mere threats would be sufficient. As we say, the pinioning of the complainant's arms so that his money could be taken without his permission was an act of violence against his person. The argument so valiantly put forward by Mrs Kunda cannot succeed. There are no other grounds of appeal. The appeal against conviction is dismissed.

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M. S. Ngulube
DEPUTY CHIEF JUSTICE

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B. T. Gardner
SUPREME COURT JUDGE

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B. K. Bweupe
ACTING SUPREME COURT JUDGE

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The appellant was tried and convicted on a charge of aggravated robbery. He received the statutory minimum sentence. The conviction was set aside on appeal in 1962, at Ndola, jointly and severally with the respondent.

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The appellant was charged with the said complainant in Ndola. The evidence in the case against the appellant related to the robbery alleged in this case, the appellant was in town in Ndola looking for spare parts for a motor vehicle. The appellant suspected that the complainant was in town to hire the vehicle, to transport some goods. The appellant was given the residential address of the complainant and asked to call there the next day. At the address mentioned another arrived at the complainant's residence. The appellant first with the complainant's son who was a member of the complainant who readily agreed to go and hire the motor vehicle. The appellant and his son used a ploy by firstly suggesting that they would hire the vehicle because there was a lot