

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(CRIMINAL JURISDICTION)

APPEAL NO. 14/2008

BETWEEN:

CHIPETA CHISANGA
PATRICK PHIRI SAM

APPELLANT
APPELLANT

VS

THE PEOPLE

RESPONDENT

CORAM: MAMBILIMA, DCJ, SILOMBA, MUSHABATI, JJS
On 9th and 11th September, 2008

For the Appellants: Mr. L.E. EYAA, Deputy Director of Legal Aid
For the Respondent: Mr. P. MUTALE, Principal State Advocate

JUDGMENT

SILOMBA, JS delivered the judgment of the Court.

The two Appellants are appealing against the judgment of the High Court delivered on the 8th day of April, 2005 in which they were convicted and sentenced to 25 years imprisonment each for the offence of espionage contrary to Section 3(d) of the State Security Act Chapter 111 of the Laws of Zambia. The particulars of the offence were that Chipeta CHISANGA and Patrick Phiri SAM, on

the 10th June 2002 at Lusaka in the Lusaka District of the Republic of Zambia jointly and whilst acting together without lawful excuse did damage or interfere with ZESCO cables thereby disrupting services.

When we heard the appeal, Counsel indicated to us that the two Appellants were appealing against sentence only. This being the case it is not necessary to state the facts of the case. Counsel filed the heads of argument on which he relied upon in their entirety.

In the heads of arguments, there is no specific ground of appeal but reading through, the Appellants are saying that the sentence of 25 years is excessive and should be reduced to 20 years. Counsel mitigated on behalf of the two Appellants in the heads of argument who have already served 7 years and has urged the Court to exercise maximum leniency. There was no submission from the Counsel representing the Respondent.

We have considered the submission and mitigation given by the Counsel for the Appellants. We have also looked at the observations of the learned trial Judge before sentencing the two Appellants. While the learned trial Judge appreciated the fact that the Appellants were first offenders, he was of the strong view that the offence they had committed was a very serious one as it had the potential to disrupt commerce and generally the development of the country. He

continued ***“the minimum sentence imposed by law for this type of offence is 20 years imprisonment and this Court cannot impose any sentence less than this.”***

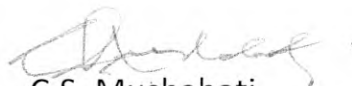
From the judgment of the learned trial Judge and his observations before passing the sentence, we have not come across any incident of an aggravating nature that could have compelled him to go above the minimum sentence of 20 years imprisonment. In the circumstances, we are left with no choice but to set aside the 25 years imprisonment imposed on each Appellant and substitute it with one of 20 years imprisonment with effect from 9th June 2002. In essence, it means that each Appellant will now serve 20 years and to that effect the Appellants' joint appeal is allowed.



I.C. Mambilima
DEPUTY CHIEF JUSTICE



S.S. Silomba
SUPREME COURT JUDGE



C.S. Mushabati
SUPREME COURT JUDGE

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(CRIMINAL JURISDICTION)

APPEAL NO. 101/2008

BETWEEN

NKONDE MUTALE

APPELLANT

VS

THE PEOPLE

RESPONDENT

CORAM: MAMBILIMA, DCJ, SILOMBA, MUSHABATI, JJS
On 9th and 11th September, 2009

For the Appellant: Mr. L.E. EYAA, Deputy Director of legal Aid
For the Respondent: Mrs. R.N. KHUZWAYO, Deputy Chief State Advocate

JUDGMENT

SILOMBA, JS delivered the judgment of the Court.

This is an appeal against the ruling of the High Court dated the 5th day of November, 2007. In that Ruling the Appellant was sentenced to 15 years imprisonment with hard labour for the offence of abduction of a child contrary to Section 136 of the Penal Code, Chapter 87 of the Laws, as amended by Act No. 15 of 2005. The particulars of the offence were that Nkonde MUTALE on the 1st day of March, 2007 at Kasama in the Kasama District of the Northern Province of the Republic of Zambia did unlawfully take Gladys KAMPAMBA, who was a child, out

of custody or protection of the father, mother or other person having lawful care or charge of her and against the will of such father, mother or other person.

The Appellant was tried in the Subordinate Court for the said offence holden at Kasama District of the Northern Province of the Republic of Zambia. After trial, the Appellant was convicted and sent to the High Court for sentence as shown above.

In this appeal it will not be necessary to go into the facts of the case. This is so because when we heard the appeal we were informed by Counsel representing the Appellant that the Appellant was appealing against sentence only.

From his oral submission and heads of argument, Counsel did not state the ground of appeal. He however stated in the heads of argument that the sentence of 15 years was extremely excessive, unlawful and beyond the maximum statutory sentence under Section 136 of the Penal Code, as amended. He urged us to impose the minimum statutory sentence of 7 years as prescribed by Section 136 of the Penal Code.

By way of mitigation, Counsel submitted in the heads of argument that the Appellant, aged 47years, was married with five children and was taking care of four orphans who were left behind by his elder brother. He submitted that the

Appellant was remorseful for committing the crime and had promised never to indulge himself in such criminal activities.

In response Counsel for the Respondent conceded that the sentence imposed by the lower Court did not accord with Section 136 of the Penal Code.

We have visited Section 136 of the Penal Code and in view of the submission by Counsel for the Appellant, we find that the sentence imposed by the learned trial Judge was excessive and had no statutory support under Section 136 of the Penal Code. The sentence under the said Section is a minimum of 7 years and not exceeding 10 years so that a sentence of 15 years was well above the maximum under the Section.

We cannot understand why the learned trial Judge imposed a sentence above the maximum when the law is very clear. In the view we take of the offence and considering the fact that the victim was only four years old, a sentence of eight years imprisonment with hard labour would suffice. That being the case, the appeal is allowed and the sentence of 15 years is set aside and substituted with a sentence of eight years with effect from 1st March, 2006.


I.C. Mambilima
DEPUTY CHIEF JUSTICE



S.S. Silomba
SUPREME COURT JUDGE



C.S. Mushabati
SUPREME COURT JUDGE