

KAPAPULA MAKESA v THE PEOPLE (1982) Z.R. 48 (S.C.)

SUPREME COURT
NGULUBE, AG.C.J., MUWO, AG .D.C.J. AND BWEUPE, AD.J.S.
8TH JUNE, 1982
(S.C.Z. JUDGMENT NO. 17 OF 1982)
APPEAL NO. 83 OF 1982

Flynote

Criminal law and procedure - Charge - Drafting of - need to use proper wording in charge - s. 319 of the Penal Code construed.

Headnote

The appellant was convicted in the Subordinate Court of the Third class at Mansa of being in possession of property reasonably suspected to

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have been stolen. The conviction was based on his failure to give a reasonable account as to how he came to be in possession of the said suspected stolen property. He was sentenced to eighteen months imprisonment and appealed against both conviction and sentence.

Held:

- (i) A charge must be properly framed in accordance with the format in the first schedule of the Criminal Procedure Code so that the accused person may know in advance what the prosecution has set out to prove against him.

For the appellant: L. P. Mwanawasa, Mwanawasa.

For the respondent: F. Mwisya, Senior State Advocate.

Judgment

MUWO, AG. D.C.J.: delivered the judgment of the court.

After dealing with matters not relevant to this case the learned trial judge continued.

In the course of Mr Mwiinga's submission this court has drawn it attention to the format contained in the first schedule to the Criminal Procedure Code where precise and comprehensive words are used guiding prosecutors as to how the charge should be properly framed. This is in fact our view also that if these words were adopted in future by prosecutors an accused person would know in advance what the prosecution has set out to prove against him. For ease of reference the wording for a charge under s. 319 of the Penal Code should be as set out in the first schedule of the Criminal Procedure Code, Cap. 160. The wording is:

"Failing to account for possession of property suspected to have been stolen or unlawfully obtained."

If these words were employed the necessity for an accused to claim he did not understand the charge properly would be avoided.

Appeal dismissed
