

**ALFRED PETROL MWANZA v THE PEOPLE (1970) ZR 62 (CA)**

COURT OF APPEAL

PICKETT AGCJ, MAGNUS AGJA AND HUGHES J

18 OCTOBER 1970 <sup>5</sup>

(Appeal No. 69 of 1970)

**Flynote**

**Criminal law and procedure - Consolidation of charges - Accused to be informed of offences and right of appeal against conviction.**

**Headnote**

Facts as in the judgment.

*Held:* <sup>10</sup>

- (i) Consolidation of charges should be specifically mentioned by the trial magistrate if that has taken place.
- (ii) A trial magistrate must fully explain the offences charged to the accused.
- (iii) An accused convicted of an offence must be informed of his right <sup>15</sup> to appeal against conviction.

Legislation referred to:

Criminal Procedure Code, 1965 (Cap. 7), s. 197A (3).

**Judgment**

**Pickett AgCJ:** delivered the judgment of the court.

Although this is said to be an appeal against sentence only it would <sup>20</sup> appear that the appellant is also appealing against conviction.

This trial in the magistrate's court appears to have been conducted in a very careless and slipshod manner. A plea of not guilty was recorded in the first charge sheet and then the record states the accused wished to change his plea to guilty and a plea of guilty was recorded. The appellant <sup>25</sup> was at that time represented by Mr Banda. The case was then adjourned to 25th June, 1970, for record and facts.

On the 25th June, 1970, the facts were agreed, and the record contains a statement "TICs (meaning 'offences taken into account') not yet fully explained", and the case was adjourned to 29th June, 1970. No <sup>30</sup> conviction was ever recorded against the appellant in respect of these two counts.

The second indictment contains five counts. A plea of guilty was recorded on the first, second, fourth and fifth counts and not guilty on count 3, which was withdrawn. Then, according to the record, the appellant <sup>35</sup> was "convicted on own confession". As there was no consolidation of these four counts with the first charge sheet containing two counts, this conviction can only apply to the four counts on the second charge sheet, since on p. 7 of the record the magistrate specifically refers to this withdrawal of the third charge which I have mentioned above.

Consolidation <sup>40</sup> should have been specifically mentioned if that had taken place.

There is no further reference on the record that the offences "TIC" were ever fully explained to the appellant and the indication from the record is that this in fact was never done by the magistrate and the

1970 ZR p63

PICKETT Ag CJ

appellant was committed to the High Court without this being done. It is clear, however, that the court did take cognizance of these other offences, because on the entry of the statutory judgment on p. 8 they are specifically mentioned.

Finally the appellant was never informed of his right to appeal against <sup>5</sup> conviction. This is mandatory under s. 197A (3) of the Criminal Procedure Code.

In our view these mistakes render it unsafe to allow these convictions and sentences to stand. Accordingly, we quash these convictions and sentences and order a new trial before a subordinate court of competent <sup>10</sup> jurisdiction.

*Re - trial ordered*