

**THE PEOPLE v KAUMANN (1968) ZR 8 (HC)**

HIGH COURT

WHELAN J

29th FEBRUARY 1968

**Flynote and Headnote**

- [1] **Criminal procedure - Sentencing - Plea of guilty as compared to admission of guilt pursuant to section 199A of Criminal Procedure Code, comparative sentences for.**

In the absence of extenuating circumstances, an accused who pleads guilty should not receive a greater sentence than one who admits guilt pursuant to section 199A of the Criminal Procedure Code.

- [2] **Criminal procedure - Appeal against sentence - After plea of guilty.**

An accused who pleads guilty to an offence cannot thereby be made to waive his right to appeal from the decision of the trial court.

Case cited:

- (1) *The People v Richmond Smith*, unreported.

**Judgment**

**Whelan J:** On the 23rd February, 1968, in the subordinate court of the second class for the Ndola District, the accused was convicted of speeding contrary to section 203 (3) of the Roads and Road Traffic Ordinance and was sentenced to pay a fine of K20.

The accused had driven a Peugeot motor vehicle on Nkana Road, Ndola, at forty miles an hour when the speed limit for the vehicle in question was thirty miles an hour. The accused is a first offender, and the maximum penalty which could have been imposed upon him was a fine of K50.

[1] I am informed that the fine payable under the provisions of section 199A of the Criminal Procedure Code for this offence would have been K4. There were no aggravating circumstances in this case which would call for an exemplary sentence and, as I implied in a recent judgment in the case of *The People v Richmond Smith* [1] I do not appreciate why, in the absence of special circumstances, a person who does not take advantage of the provisions of section 199A of the Criminal Procedure Code, but nevertheless pleads guilty to an offence, should be called upon to pay a fine in excess of that prescribed by the magistrate under section 199A. If the magistrates consider that a fine of K4 for exceeding the speed limit by ten miles an hour is inadequate, then they can increase the deposit acceptable under section 199A. I set aside the sentence imposed by the magistrate in this case and substitute therefor a sentence that the accused do pay a fine of K4.

[2] There is one further matter. The accused pleaded guilty by letter by completing a form apparently drafted by the police, and it would seem that it was originally drafted in Lusaka. The letter contains the following sentence: "I wish to plead guilty to the offence and agree to abide by the decision of the Court." An accused person receiving such a form for completion might consider that sentence to mean that if he wishes to plead guilty by letter he must at the same time waive his right of appeal from any decision made by the court. I consider that the sentence in question is objectionable and should be omitted.

*Order accordingly.*