

## **KAMENE v THE PEOPLE (1966) ZR 33 (CA)**

COURT OF APPEAL

BLAGDEN CJ, DOYLE JA, McCALL J

15th MARCH 1966

### **Flynote and Headnote**

**[1] Criminal law - Abduction with intent to confine - Intention to confine secretly as essential element - Section 228 of Penal Code construed.**

In the offence of abduction with intent to confine secretly and wrongfully, the secrecy is an essential element.

Cases cited:

(1) *R v Siwakwi* (1939), 2 NRLR 73.

Statute construed:

Penal Code (1965, Cap. 6), ss. 225, 228.

### **Judgment**

**By the court:** [1] This case arose out of events on the 9th April, 1965, when four persons were constrained by the appellant, Simon James Kamene, and other accused, to go, under escort of some thirty - five other persons, from the United National Independence Party Headquarters in Sabina Village to Chitumbo Village. In regard to this expedition the learned trial magistrate found that these four men had been abducted, and that the appellant and his two co - accused were principal parties in that exercise. There was ample evidence to support that conclusion, and that this was an abduction within the meaning of s. 226 of the Penal Code, but the charge with which the appellant and his co - accused were faced was a charge of abducting with intent to confine a person under s. 228 of the Penal Code. That section reads:

' Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, is guilty of a felony, and is liable to imprisonment for seven years.'

To secure a conviction under that section it is necessary for the prosecution to prove, not only abduction, but also intent to cause confinement secretly and wrongfully. For the State, Mr Shoniwa has conceded that the evidence of secrecy here is slight in the extreme. Yet that is an essential element of the offence, as was pointed out in the very case which Mr Shoniwa brought to our attention - *R v Siwakwi* [1]. That essential element remaining unproved, the appellant's conviction here cannot be supported. We have naturally given consideration to the question of whether or not the facts would support a conviction for some other offence. It is indeed likely that they would; but they would not support a conviction for any offence for which the appellant could be convicted, on a charge of committing an offence under Penal Code s. 228.

The appeal is accordingly allowed and the appellant must be discharged from prison.

*Appeal allowed*