

**KACHINGWE v THE PEOPLE (1965) ZR 159 (HC)**

HIGH COURT

RAMSAY J

3rd December 1965

**Flynote and Headnote**

**[1] Courts - Juvenile court - jurisdiction - powers over juvenile after approved school order confirmed by High Court:**

The Juvenile court can make a temporary order committing a juvenile to a place of safety after the confirmation of an approved school order only if such temporary order is necessary for escorting the juvenile to the school or for some other similar temporary purpose.

**[2] Criminal law - Escape from lawful custody - detention pursuant to approved school order - not authority for detention other than in approved school:**

Detention pursuant to an approved school order is not authority to detain a person other than in an approved school; accordingly, when the accused escaped from Chilenje Remand Home, he had not escaped from lawful custody and hence was not in violation of Penal Code section 101.

Statutes construed:

- (1) Penal Code (1005, Cap. 6), s. 101.
- (2) Juveniles Ordinance (1956, Cap. 8), ss. 76, 77.

The appellant in person

*Shoniwa, State Advocate*, for the respondent

**Judgment**

**Ramsay J:** The appellant, Simon Paul Kachingwe, a juvenile aged 16 years was found guilty on his own plea of escape from lawful custody, contrary to section 101 of the Penal Code (Cap. 6). The particulars were that on or about the 6th of October, 1965, at Lusaka, being a person in lawful custody he did escape from such custody. It was ordered that he receive six strokes with a cane, and he is appealing against this order.

On perusing the record, I observe that in the outline of facts the Public Prosecutor stated that the appellant was locked in a secured room at Chilenje Remand Home and that he was in custody pending a vacancy at an approved school under a Court Order confirmed by the High Court. The appellant, in mitigation, said he had been at Chilenje for eight months and that the approved school order was made at Mazabuka the previous October, twelve months ago (though he was not sure of the month), and that he escaped because he wanted to attend school. This plea in mitigation was not contested by the Public Prosecutor. I have examined the original case record (HPR/37/1965), and I have ascertained that the approved school order was confirmed by the High Court on 25th January, 1965.

[1] Section 76 of the Juveniles Ordinance (Cap.8) provides that an approved school order shall be an authority for the detention of the person named therein in an approved school. The order is not an authority to detain him anywhere else. The appellant therefore was not in lawful custody by virtue of the approved school order. It was, however, possible that he was in lawful custody under some other warrant. I therefore adjourned the hearing so that the State Advocate could investigate the position. The State Advocate now informs me that he does not submit that the appellant was in lawful custody by virtue of the approved school order, and he says that the only practical thing that the welfare authorities could do was to keep the appellant in the remand home pending a vacancy.

In exercise of my powers of revision I therefore quash the finding of guilt, and I acquit the appellant. His appeal against the order of caning therefore falls away.

Section 77 of the Juveniles Ordinance reads as follows:

<sup>(1)</sup> No approved school order made by a juvenile court shall be carried into effect until the record of the case or a certified copy thereof has been transmitted to and the order confirmed by the High Court.

(2) Pending the confirmation of an approved school order by the High Court or pending arrangements for the admission of the juvenile to an approved school the court making the order may make a temporary order committing the juvenile to the care of a fit person to whose care he might be committed under this Ordinance, or to a place of safety, and, subject as hereinafter provided, such temporary order shall have effect until he is sent to an approved school in pursuance of the approved school order:

Provided that a temporary order as aforesaid shall not remain in force for more than twenty - eight days, but if all the expiration of that period the court considers it expedient so to do, it may make a further temporary order. Any temporary order may be made under this subsection in the absence of the juvenile.'

It is not clear from subsection (2) whether the juvenile court can make these temporary orders only up to the time the High Court has confirmed the approved school order or if it can continue to make the orders after the approved school order has been confirmed and pending the making of arrangements for the admission of the juvenile to the approved school.

It would be surprising if a lower court could nullify the High Court confirmation of the approved school order by making temporary orders that the juvenile should be detained elsewhere. Furthermore, section 74 of the Ordinance puts the duty on the lower court to select the school to which the juvenile is committed. An overriding factor in such selection must be that there are vacancies in the school and that arrangements have been made for the juvenile's admission. Before making the approved school order, the lower court must therefore satisfy itself that there are vacancies in the school and that the juvenile will be transferred there immediately the order is confirmed. A further factor for consideration is that section 62 (7) of the Ordinance implies that the juvenile court should deal with the case in the best interests of the juvenile. It is not in the best interests of any juvenile that he should be detained in custody for a period of months pending the occurrence of a vacancy in an approved school.

[2] I accordingly am of opinion that the juvenile court can only make a temporary order committing a juvenile to a place of safety after the approved school order has been confirmed if such order is necessary to enable arrangements to be made escorting the juvenile to the school or for some other similar temporary purpose.

So far as the appellant is concerned, the difficulty as to the best method of dealing with him in his interests has been resolved. I have earlier this morning, in respect of another offence, ordered that he should be detained in a reformatory and this order supersedes the approved school order made against him.

*Finding of guilt quashed.*