

LUMSDEN v THE PEOPLE (1967) ZR 142 (HC)

HIGH COURT

RAMSAY J

20th OCTOBER 1967

Flynote and Headnote

[1] Criminal procedure - Juvenile offenders - Duty of court to call the guardian to attend - Section 125 (1) of Juvenile Ordinance.

When a juvenile is charged with an offence, it is the duty of the court to make the guardian attend the proceedings or to make an order that under the circumstances it would be unreasonable to demand his presence.

Statute construed:

(1) Juvenile Ordinance (1956, Cap. 8), s. 125 (1).

Hadden, for the appellant

Chuula, Director of Public Prosecutions, for the respondent

Judgment

Ramsay J: The appellant, Anthony Lumsden, appeared before the subordinate court of the first class for the Livingstone District, sitting as a juvenile court. He was charged with driving whilst under the influence of drink or drugs contrary to section 209 (1) of the Roads and Road Traffic Ordinance. He pleaded guilty and the learned magistrate ordered that he pay a fine of £70 in default seventy days' simple imprisonment. He also suspended the accused's driving licence for a period of twelve months and ordered that it be endorsed. He is appealing against the finding of guilt and the orders.

Section 125 (1) of the Juveniles Ordinance is in the following terms:

"Where a juvenile is charged with any offence, or is for any other reason brought before the Court, his parent or guardian may in any case, and shall if he can be found and resides within a reasonable distance, be required to attend at the Court before which the case is heard or determined during all the stages of the proceedings unless the Court is satisfied that it would be unreasonable to require his attendance."

It appears from the record that the accused was a young person aged eighteen years; that he was arrested on 9th August at about 8.30 p.m., that he was kept in custody and that he appeared before the court on 10th August at 10 a.m. He then pleaded guilty to the charge. A probation officer was present. [1] There is nothing in the record to show that the requirements of section 125 of the Juveniles Ordinance were complied with. In my judgment, this section is mandatory in its terms and a juvenile court must either ensure that a juvenile's parent or guardian attend or make an order that, in the circumstances, it is unreasonable to require the attendance. This was not done in the instant case.

I accordingly quash the finding of guilt and the orders of payment of the fine, of the suspension of the licence and of the endorsement on the licence.

The Clerk of the Court at Livingstone is to refund the fine to the appellant and to notify the Road Traffic Commissioner of the cancellation of the orders affecting the licence.

My reversal of the finding of guilt and the orders means that the accused is discharged. I order him to be retried by a subordinate court of competent jurisdiction.

Accused discharged and a retrial ordered.