

MALICHI v THE PEOPLE (1967) ZR 137 (HC)

HIGH COURT

EVANS J

24th AUGUST 1967

Flynote and Headnote

[1] **Criminal procedure - Sentencing - Family of accused not reason for mitigation of sentence.**

The plight of the accused's family while he is incarcerated is not a reason for reducing the severity of the sentence.

Appellant in person.

Reilly, Senior State Advocate, for the respondent

Judgment

Evans J: The twenty-seven-year-old appellant was convicted on his own confession of a charge, under sections 271 (1) and 243 of the Penal Code, of burglary and theft. He and a co - accused broke into the house of a Mr Mulenga in Kitwe in the night of the 23rd/24th June this year, and there stole the property specified in the particulars of offence and valued at £79 10s. 6d. On the 15th July the appellant was sentenced to two years' imprisonment with hard labour with effect from the 24th June, 1967, subject to confirmation by the High Court. He now appeals against sentence, maintaining that it is too severe and that the lower court declined to show leniency because of his criminal record, and referring to the fact that he has a big family to support and asking that the sentences would date with effect from the date of his arrest.

The appellant was indeed disentitled to leniency by his bad criminal record of eleven previous convictions since July, 1960, including eight convictions for offences involving "breakings" and thefts. The magistrate did in fact back - date the sentence to the 24th of June. [1] As for the plight of the appellant's family, this is a matter which he should have borne in mind before committing this offence. It is inevitable that the families of criminals suffer whilst they are in prison.

In all the circumstances of the offence and of the appellant, I consider that the sentence was too lenient. This offence is punishable with a maximum of ten years' imprisonment with hard labour and, as I know from the course of my judicial duties, it is a very prevalent type of offence on the Copperbelt. I bear in mind that the appellant pleaded guilty and that he admitted the offence to the police and co - operated with them concerning the recovery of much of the stolen property, but it is clear that the public need to be protected against his criminal activities for a substantial period. This appeal is dismissed and the sentence is increased to three years' imprisonment with hard labour with effect from the 24th June, 1967.

I observe that the appellant's co - accused, Joseph Kandulo, was also sentenced by the lower court to two years' imprisonment with hard labour with effect from the 24th June, 1967, and this sentence comes before this court for confirmation. I confirm it and do not increase it because Joseph Kandulo was not so greatly disentitled to leniency, as was the appellant, because Joseph had only five previous convictions as compared with the appellant's eleven.

Appeal dismissed.