

KAFIRSAM v THE PEOPLE (1968) ZR 147 (HC)

HIGH COURT

WHELAN J

1st NOVEMBER 1968

Flynote and Headnote

[1] Criminal procedure - Local Courts-General approach of appellate court on review.

An appellate court will consider proceedings in a local court without undue regard to technicalities, and an appeal will not be allowed unless a procedural irregularity resulted in a miscarriage of justice.

[2] Criminal procedure - Local courts - Trial justices' failure to consider the evidence of the accused.

Local court justices must at some stage, no matter how briefly, consider the evidence adduced by the accused.

Gani, Legal Aid Counsel, for the appellant:

Chaila, State Advocate, for the respondent:

Judgment

Whelan J: In the Chifubu Local Court "A" Division, Ndola District, on the 15th July, 1968, the appellant was convicted of the theft of two motor car wheels, the property of Duly's, Ndola, and on the 25th July, 1968, he was sentenced to six months' imprisonment with hard labour. He appealed to the subordinate court of the first class against his conviction and sentence, and his appeal was dismissed on the 26th August, 1968. He has appealed to this court against his conviction and sentence. He now says that he does not wish to proceed with his appeal against sentence.

In the course of his trial the appellants made a statement upon which he was cross-examined. Whether or not he was sworn before he made the statement, he was cross-examined on it. In their judgment the local court justices considered the whole of the prosecution evidence, saying: "Considering the whole prosecution of the case, court has found accused person guilty as charged though he denies." They then commented on certain aspects of the prosecution case. At no time do they direct their minds to the appellants' denial as made during his trial.

[1] I fully appreciate that when one considers the proceedings in a local court one does so without undue regard to technicalities, and I also fully appreciate that an appeal should not be allowed because of an irregularity in a trial unless it has resulted in a miscarriage of justice, [2] but in this case I consider that the failure of the trial justices to consider in any way the evidence of the appellant is sufficient to vitiate this conviction because, when considering the prosecution case, they made a finding that the appellant had threatened a certain person with a knife when, in fact, there was no evidence to support such a finding at all. Whether a case is being conducted in accordance with African customary law or not, I consider it essential that the trial justices should at some stage, no matter how briefly, consider the evidence or statement made in the course of the trial of an accused person. For this reason, I set aside this conviction and quash the sentence of six months' imprisonment with hard labour.

Appeal allowed.