

N'GAMBI v THE PEOPLE (1968) ZR 82 (HC)

HIGH COURT

WHELAN J

29th JULY 1968

Flynote and Headnote

[1] Criminal procedure - Questioning of the accused - At trial - By the court.

It is not proper for an accused person to be questioned in any way during the course of his trial.

Gani, Legal Aid Counsel, for the appellant

State Advocate, for the respondent

Judgment

Whelan J: At the end of March, 1968, the appellant appeared before the local court, Ndola, charged with the theft of K5.50, the property of Swaki Bweupe. He pleaded not guilty and after trial was convicted on 20th April, 1968. He appealed to the magistrate of the second class for the Ndola District against his conviction, and on the 29th May, his appeal was dismissed.

He now appeals to this court against his conviction, and counsel on his behalf has drawn my attention to a defect in the procedure adopted by the local court on the trial of the appellant which it is submitted is fatal to the conviction, with which submission counsel on behalf of the people agrees.

At the close of the evidence of the complainant the court asked the appellant whether the complainant had told the court the truth. The appellant said that he had, and in its judgment the local court relied on that answer to the question in order to make certain findings of fact. [1] It is not proper for an accused person to be questioned in any way during the course of his trial, and it is for the trial court to come to the conclusion of fact on the evidence before it and not by way of admissions improperly obtained from an accused. In these circumstances this appeal is allowed, the conviction is quashed, and the sentence of twelve months' imprisonment imposed in respect of it is set aside.

Appeal allowed.