

THE PEOPLE v EPHRAIM BASHILYO KAYUNGA (1979) Z.R. 124 (H.C.)

HIGH  
MOODLEY,  
20TH FEBRUARY 1979  
HNR279

COURT

J.

Flynote

Criminal law and procedure - Magistrate Class II - Jurisdiction to sentence limited to three years imprisonment - Concurrent or consecutive sentence - When appropriate.

Sentence - Magistrate Class II - Whether empowered to impose sentence totalling aggregate of 27 years.

Headnote

The accused was convicted in a subordinate court of the first class by a Class II Magistrate of three counts of forgery, three counts of uttering, and three counts of obtaining money by false pretences, each of which carry a maximum sentence of three years imprisonment. He was committed to the High Court for sentencing.

**Held:**

- (i) A subordinate court presided over by a magistrate of the second class may impose any sentence of imprisonment which does not exceed a term of three years.
- (ii) It is within such a court's Jurisdiction to impose the aggregate of consecutive sentences even if the total aggregate exceeds three years' imprisonment; provided the case is sent to the High Court for confirmation of any part of the sentence exceeding one year.
- (iii) The subordinate court may only commit to the High Court for sentencing if it feels that greater punishment should be indicted for the offence than it has the power to indict.

**Legislation referred to:**

Criminal Procedure Code, Cap. 160, ss. 7 (iv), 9 (3), 217 (1), (2).

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Judgment

**MOODLEY, J.:**

This case has been forwarded by a magistrate of the second class at Chililabombwe who had committed the accused to the High Court for sentencing in terms of s. 217 (1) of the Criminal Procedure Code, Cap. 160. The accused had been convicted of three counts of forgery, three counts of uttering and three counts of obtaining money by false pretences. The learned magistrate when committing the accused for sentence stated, "I have noticed that the maximum sentence on all these counts is 27 years. Even bearing in mind that some of them would run concurrently, my maximum jurisdiction of 3 years will not adequately mete out any punishment without reflecting a mockery of justice. The accused will be committed to the High Court for sentence."

The learned Magistrate had erred in law when he stated that the maximum sentence for all the counts is twenty-seven years. The maximum sentence in respect of each of the offences with which

the accused was charged is three years' imprisonment with hard labour. Thus if one  
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takes into account the total of the maximum sentences permissible in respect of each of the nine counts they will amount to twenty-seven years' imprisonment.

The new to consider is the jurisdiction of a Magistrate Class II with regard to sentencing. Section 7 (iv) of the CPC, Cap. 160, provides that a subordinate court, other than a court presided over by a senior resident magistrate, a resident magistrate or a magistrate of the Fast Class, shall not impose any sentence of imprisonment exceeding a terms of three years. Thus the jurisdiction of a Magistrate Class II is limited to one of imposing a sentence of three years' imprisonment in respect of a particular count. The offences of forgery, uttering and obtaining money by false pretences carry a maximum of three years' imprisonment with hard labour. It was within the learned magistrate's jurisdiction if he saw it fit to impose the maximum sentence of imprisonment, namely, one of three years' imprisonment with hard labour on each count. This would be within his jurisdiction. However, in terms of s. 9 (3) of the CPC "No sentence imposed by a Subordinate Court of the Second Class exceeding one year's imprisonment with or without hard labour, shall be carried into effect in respect of the excess, until the record of the case or a certified copy thereof has been transmitted to and the sentence has been confirmed by the High Court." Thus no confirmation of sentence is required for up to twelve months' imprisonment on a count but confirmation of sentence is only required where the sentence is in excess of one year's imprisonment on a count.

The learned magistrate was labouring under the mistaken impression that since his jurisdiction to impose a sentence was limited to only a maximum of three years' imprisonment he therefore had no jurisdiction to impose concurrent or consecutive sentences in respect of the crime counts where the total sentences of imprisonment exceeded three years with or without hard labour.

Section 217 (2) of the CPC reads as follows:

"For the purposes of this section, the aggregate of consecutive sentences which might be Posed by the Subordinate Court upon any person in respect of convictions for other offences joined in the charge of the offence referred to in sub-section (1) shall be deemed to be the sentence which could be imposed for such last mentioned offence."

Thus a subordinate court presided over by a magistrate of the second class may impose any sentence of imprisonment which does not exceed a term of three years in respect of each of the nine counts and it is within the court's jurisdiction to impose the aggregate of consecutive sentences which in this case totals twenty-seven years for all nine counts. It is only where the subordinate court in terms of s. 217 (1) of the CPC is of the opinion that greater punishment should be inflicted the offence than the court had power to inflict, the court may, for reasons to be recorded in writing on the record of the case, instead of dealing with an accused person in any other manner commit him in custody to the High Court for

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sentence. Since it was within the jurisdiction of the learned magistrate to impose the maximum sentence of three years' imprisonment in respect of each of the nine counts charged, there was nothing to prevent him from imposing concurrent or consecutive sentences in excess of three years. All that was required was that the magistrate should send the case to the High Court for confirmation of that part of the sentence of imprisonment in excess of one year.

It is quite clear that the learned magistrate had not directed his mind to the provisions of s. 217 (2) of the CPC. In this case the learned 10 magistrate had ample jurisdiction to impose the sentences as required by the law. For the guidance of the learned magistrate the offences of forgery, uttering and obtaining by false pretences are correlated and could be dealt with by imposing concurrent sentences and the three sets of concurrent sentences could then be made consecutive, if necessary.

I rule that the High Court has no jurisdiction to deal with this case. Accordingly, I direct that the prisoner be sent back to the subordinate court at Chililabombwe to appear before the learned magistrate of the second class who is required to impose sentences in respect of each of the nine offences in conformity with the law.

Order directing subordinate court to pass sentence

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