

THE PEOPLE v NDEMA SIMOLU (1981) Z.R. 318 (H.C.)

HIGH COURT  
MOODLEY,  
22ND  
(HNR/332/81)

JULY,

1981

J.

**Flynote**

Sentence - Imposition of - Sentence to be proportionate to seriousness and gravity of offence.

**Headnote**

The case came up for confirmation of a sentence of 6 years imprisonment with hard labour imposed on the accused after he had been convicted of burglary and thereby the Acting Senior Resident Magistrate at Solwezi. The accused had no previous convictions for offences involving dishonesty.

The learned Acting Senior Resident Magistrate took a serious view of the accused's conduct. Further, the comments which he made when passing sentence would appear to suggest that the sentence of six years imprisonment with hard labour was being imposed upon the accused because he had been found guilty after a lengthy trial.

**Held:**

(i) While burglary and theft are serious offences and require a deterrent sentence, a court however is required to impose a

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- sentence which content with the granty or otherwise of the offence.
- (ii) Justice must not only be done but must be manifestly seen to be done.
- (iii) An accused person should not be allowed to leave court with a sense of grievance in that he was given a severe sentence not so much because of the seriousness of the offence, but because he had exercised his constitutional rights to undergo a trial after pleading not guilty to the charge.

**Legislation referred to:**

Criminal Procedure Code, Cap. 160, s. 338 (1) (a) (ii).

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**Judgment**

**MOODLEY, J.:** This case comes up for confirmation of a sentence of six years imprisonment with hard labour imposed on the accused after he had been convicted of burglary and theft by the Acting Senior Resident Magistrate at Solwezi. Upon perusal of the case record, the Court observed that the subject matter of the charge involved three blankets valued at K12.00. The accused had no previous convictions for offences involving dishonesty. The learned Acting Senior Resident Magistrate took a serious view of the accused's conduct as he was entitled to do. Further, the comments which he made when passing sentence would appear to suggest that the sentence of six years imprisonment with hard labour was being imposed upon the accused because he had been found guilty after a

lengthy trial. It was also said that in the course of the trial the accused decided to change his plea but when the charge was put to him again it would appear that his plea was equivocal and in those circumstances the trial continued.

While burglary and theft are serious offences and require deterrent sentences, a Court however, is required to impose a sentence which is consistent with the gravity or otherwise of the offence. In this case, the subject matter was valued at K12.00. From the learned Acting Senior Resident Magistrate's comments on record, it might appear that the accused was given this severe sentence because he had inconvenienced the Court since a lengthy trial was called for and further when the accused had changed his plea, it was found that his plea was equivocal. Justice must not only be seen but must be manifestly seen to be done. An accused person should not be allowed to leave Court with a sense of grievance in that he was given a severe sentence, not so much because of the seriousness of the offence, but because he had exercised his constitutional rights to undergo a trial after pleading not guilty to the charge.

I have some sympathy with the learned Acting Senior Resident Magistrate, because there is no doubt that there were prevarications on the part of the accused. Nevertheless, a sentence of six years imprisonment with hard labour, especially in the case of a first offender comes to me with a sense of shock. Accordingly, in the exercise of my powers of review in terms of section 338 (1) (a) (ii) of the Criminal Procedure Code, Cap. 160, I hereby quash the sentence of six years imprisonment with hard labour imposed by the Acting Senior Resident Magistrate and in

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substitution therefore I would impose a sentence of three years imprisonment with hard labour, twelve months of which will be suspended for three years on condition that the accused is not convicted of any offence involving dishonesty during the period of suspension. Accordingly, the accused will serve a sentence of two years imprisonment with hard labour with effect from 12th January, 1981.

Sentence substituted

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