

THE PEOPLE v DAUTI TIYESANJE PHIRI (1985) Z.R. 201 (H.C.)

HIGH

(BWEUPE,

30TH

(CASE NO. HPR/372/ 1985)

J.

AUGUST

COURT

1985

Flynote

Criminal Law and Procedure - Acquittal - Whether court can acquit where it has no jurisdiction to try a case.

Criminal Law and Procedure - Acquittal - Circumstances where court may acquit.

Criminal Law and Procedure - Subordinate court - Procedure - Alternatives in dealing with cases triable by the High Court.

Headnote

The accused was charged before a Subordinate Court with aggravated robbery, an offence triable by the High Court.

On twenty-four separate occasions stretching over a period of one year the accused appeared before a subordinate court and on each occasion an adjournment was made at the instance of the prosecution because the Director of Public Prosecutions had not issued certificate to enable the court to commit the accused to the High Court for summary trial.

On the twenty-fifth occasion the court refused to grant the prosecution any further adjournment and acquitted the accused for want of prosecution. The prosecution applied to the High Court for review of the order of acquittal.

**Held:**

- (i) A court cannot acquit or convict in a case which it has no jurisdiction to try.
- (ii) An acquittal can only be entered where evidence has been led or if not led where the prosecution has offered no evidence.
- (iii) In dealing with cases triable by the High Court, if it thinks that waiting for a certificate of committal for summary trial would occasion injustice to an accused person, a subordinate court may either order the immediate holding of a preliminary inquiry or order the summary discharge of the accused person for want of prosecution.

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**Legislation referred to:**

Criminal Procedure Code, Cap.160, ss.224, 230.

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Judgment

**BWEUPE, J.:** This case has been sent to the High Court for review.

The accused was charged with aggravated robbery contrary to section 294 of the Penal Code. On

10th October, 1984, he appeared before the subordinate court of the first class for the Lusaka District for committal to the High Court for summary trial. He was not so committed because the Director of Public Prosecutions has not issued a certificate committing the accused to the High Court for summary trial as is required by the Provisions of the Criminal Procedure Code.

On twenty-four different dates the learned Senior Resident Magistrate graciously granted an application by the Public Prosecutor for an adjournment on similar grounds namely that the Director of Public Prosecutions had not given instructions to have the accused committed to the High Court. When the 25th application was made on similar ground the Senior Resident Magistrate's, patience ran out and summed up the case in these words-

"The Director of Public Prosecutions does not seem to make up his mind, I could make up their mind. The accused had been brought to court for nearly a year awaiting instructions. What is being there is perpetration of injustice through indecision. I acquit accused for want of prosecution."

I totally endorse the first part of the learned Magistrate's sentiments and concern that the learned Director of Public Prosecutions suffered from unwarranted indecision resulting in justice being denied to the accused.

However, the learned Magistrate seriously misdirected himself when he said "I acquit accused for want of prosecution" for two reasons:

Firstly, the Magistrate had no jurisdiction to try aggravated robbery. He cannot, therefore "acquit" (or convict) where he has no powers to do so.

Secondly, "acquittal" can only be entered where evidence has been laid or if not laid where the prosecution has offered no evidence. In this case the prosecution could not lay or offer no evidence because this case was not within the jurisdiction of the learned Magistrate.

In the circumstances of this case the Magistrate had one of the two alternatives open to him. These are:

Firstly, the learned Senior Resident Magistrate should have ordered a Preliminary Inquiry to be conducted under section 224 of the Criminal Procedure Code. And if at the end of the day the court considers that the evidence against the accused not

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sufficient to put him on his trial the court shall forthwith "Discharge" the accused: Section 230 of the Criminal Procedure Code refers.

It can clearly be seen that even where evidence has been adduced the Magistrate has no power to "acquit" for the simple reason that one can only "acquit" where one has jurisdiction to "convict" and mete out punishment.

Second, if the learned Senior Resident Magistrate satisfied himself that injustice was being deliberately perpetrated he should have simply made the observations as he rightly did and then "DISCHARGE" the accused.

For reasons aforegoing I hold that the learned Magistrate fell in a serious error. Under the revisionary powers conferred upon me under section 338 (1) (a) (i) of the Criminal Procedure Code I set aside the order of the Magistrate and direct that any of the procedures laid down in section 222 or 245 of the Criminal Procedure Code should be complied with.

Order set aside on review

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