

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA

HPC/33/2014

(Criminal Jurisdiction)



Between:

THE PEOPLE

Versus

NORMAN MACHAYI

Before the Honourable Mr. Justice C.F.R Mchenga SC

ORDER ON CONFIRMATION

Case referred to:

1. Tembo v The People [1974] ZR 286

Legislation referred to:

1. The Juveniles Act, Chapter 59 of The Laws of Zambia
2. The Narcotic Drugs and Psychotropic Substances Act, Chapter 96 of The Laws of Zambia.
3. The Criminal Procedure Code, Chapter 88 of The Laws of Zambia

This matter was pursuant to the provisions of **Section 94(1)** of **The Juvenile Act**, committed to the High Court for confirmation of the Reformation Order issued by the learned trial magistrate on 12th June 2014.

The brief facts surrounding the matter can be summarised as follows; Norman Machayi, the juvenile offender, appeared before a Juvenile Court on 2nd May 2014, charged with one count of the offence of Possession of Psychotropic Substances contrary to **Section 8** of the **Narcotic Drugs and Psychotropic Substances Act**. The particulars of offence alleged that on 29th April 2014, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, he had in his possession psychotropic substances, namely 0.4 grams of marijuana and herbal product of cannabis sativa without lawful authority. The plea could not be taken because both the juvenile offender's guardian and the Social Welfare Officer were not in attendance.

The matter was adjourned to 8th May 2014. On that day, the Social Welfare Officer attended but neither did his guardian or parent attend. The juvenile offender took plea and admitted the charge. On 12th June 2014, he admitted the facts when they were read out in the presence of a Social Welfare Officer; there was still no attendance by

either his guardian or parent. Following the juvenile offender's admission of the charge and the facts, the learned trial magistrate, made a finding of guilty. She also ordered that he be sent to a reformatory after considering the Social Welfare Officer's recommendation.

Section 127 of the Juveniles Act requires that a parent or guardian of a juvenile should be present during his trial and it provides as follows:

(1) Where a juvenile is charged with any offence, or is for any other reason brought before a court, his parent or guardian may in any case, and shall if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all the stages of the proceedings, unless the court is satisfied that it would be unreasonable to require his attendance.

(2) Where a juvenile is arrested or taken to a place of safety, the police officer by whom he is arrested or in charge of the police station to which he is brought, or the person by whom he is taken to the place of safety, as the case may be, shall cause the parent or guardian of the juvenile, if he can be found, to be warned to attend at the court before which the juvenile will appear.

(3) If any parent or guardian who has been required to attend as aforesaid, having received reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the court, he shall be liable to a fine not exceeding three hundred penalty units.

(4) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the juvenile:

Provided that if that person is not the father, the attendance of the father may also be required.

(5) The attendance of the parent of a juvenile shall not be required under this section in any case where the juvenile was, before the institution of the proceedings, removed from the custody or charge of his parent by order of a court.

In the case of *Tembo v The People (1)*, it was held, *inter alia*, that:

"Section 127 of the Juveniles Act, Cap. 217, stresses the importance which the Legislature attaches to the attendance wherever possible, during all stages of the proceedings, of the parent or guardian of a juvenile, and sets out in detail the procedure to be adopted and the circumstances in which such attendance may be dispensed with. In all cases the record should disclose that these provisions have in fact been complied with and, where the parent or guardian is not required to be present, the reasons why his attendance has been dispensed with should be stated"

The record of proceedings in the lower court does not indicate that the learned trial magistrate addressed her mind to the provisions of **Section 217 of the Juveniles Act** before proceeding to take plea in the absence of the Juvenile offender's parent or guardian. There is no indication that she inquired into whether they could be found or lived within reasonable distance and decided to proceed either because they could not be found or because they did not live within a reasonable distance and requiring them to attend would be unreasonable.

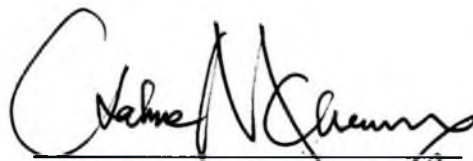
Since the presence of a guardian or parent is mandatory at such a hearing and their attendance was not dispensed with as is provided for by **Section 217 of the Juveniles Act**, proceeding with the matter in their absence is an irregularity which rendered the trial a nullity. I have decided to invoke the powers invested in me by **Section 338 of the Criminal Procedure Code** and I will review the findings of the learned trial magistrate. The finding of guilt is set aside and so is the reformatory order issued there under.

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I note that prior to these proceedings, the juvenile offender was found guilty of committing the same offence. He needs help. Consequently, I order a retrial. He should be taken back to the same court and should it not be practical to secure the attendance of his parents or guardians yet again, the learned trial magistrate should ensure that she records such finding before proceeding with the trial in their absence.

Order for retrial.

Delivered in Chambers at Lusaka this 6th day of August, 2014


C.F.R. Mchenga, SC
JUDGE