

**IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT NDOLA
(Criminal Jurisdiction)**

HNC/14/2017

THE PEOPLE

V

**NSHIMBI MULENGA
ALEX KAMBOYI**

Before The Honourable Mr. Justice Davies C. Mumba in Chambers on the 24th day of July, 2017

FOR THE STATE: N/A

FOR THE JUVENILE OFFENDERS: N/A

**CONFIRMATION OF A REFORMATORY ORDER AND AN APPROVED
SCHOOL ORDER**

Legislation referred to:

1. *The Penal Code, Cap. 87 – ss. 272 and 301*
2. *The Juvenile Act, Cap. 53 – ss. 73(1)(c) and (d), 78, 79(1), 86, 93, 94 (1), 101 and 103.*

The Juvenile Offenders, NSHIMBI MULENGA and ALEX KAMBOYI, aged 15 and 13 respectively were jointly charged with three counts of House Breaking and Theft contrary to sections 301 and 272 of the Penal Code, Chapter 87 of the Laws of Zambia. They readily pleaded guilty to all the charges in the three counts, before the Luanshya Subordinate Court of the first class.

After being satisfied that the charges were proved and on the recommendation by the Probation Officer in her Social Welfare reports dated 27th April, 2017, the learned

trial Magistrate made a reformatory order in respect of the first juvenile offender pursuant to section 73(1)(d) of the Juveniles Act; and an approved school order in respect the second juvenile offender pursuant to section 73(1)(c) of the Juveniles Act Chapter 53 of the Laws of Zambia. Both orders are subject to the confirmation by the High Court as provided for by sections 94(1) and 79(1) of the Juveniles Act, Cap. 53, respectively. The record of the case has been transmitted accordingly to this Court for confirmation.

I have perused the record of proceedings and I am satisfied that the pleas of the charges admitted were unequivocal. I have also considered the Social Welfare reports in respect of the two juvenile offenders.

It is settled law that juvenile cases should be disposed of by the Juvenile Courts. However, where the Juvenile Court has made either a reformatory order or an approved school order, the Juvenile Court does not have the mandate to specify the period of detention of a juvenile in a reformatory school or in an approved school, as in this case. It is, therefore, a misdirection on the part of the trial magistrate to have directed that the first juvenile offender's reformatory school order be for 36 months; and the second juvenile approved school order be for 24 months.

In the case of a reformatory order, the period of detention in a reformatory is the maximum period of four years as provided under section 93 of the Juveniles Act; and as may be determined by the Chief Inspector of Reformatories or the Minister in conformity with the provisions of section 103 of the Juveniles Act. The said section 103 of the Juveniles Act provides as follows:

“103. A person committed to a reformatory shall be detained in a reformatory for such period, not exceeding four years, as the Chief

Inspector of Reformatories may determine, and shall then be released:

Provided that-

- (i) The Chief Inspector of Reformatories shall not release any such person from a reformatory before the expiration of nine months from the date of the reformatory order;**
- (ii) The Minister may at any time order that any person detained in a reformatory be discharged or may continue the reformatory order under the provisions of section *one hundred and one.*"**

The effect of the above statutory provisions is that no Juvenile Offender can be detained for more than a period of four years in a reformatory but the Chief Inspector of Reformatories may exercise his discretion to shorten the period of detention but such discretion cannot be exercised before the expiry of nine months from the date of the reformatory order. In addition, the Minister may at any time discharge such a juvenile from a reformatory. The minister may also exercise the powers bestowed on him under the provisions of section 101 of the Juvenile's Act (see section 101). The release or continued detention of a juvenile within the prescribed period of four years will mainly be dependent on the progress the lad would have made in complying with the reformation or training programme set for him. This means that a trial magistrate has no power to fix any period of detention of a juvenile in a reformatory.

With regard to an approved school order, the Juveniles Act has itself provided guidance with respect to the period of stay of any person in an approved school under the Court's approved school order. Section 78 of the Juveniles Act enacts as follows:

"78. An approved school order shall be an authority for the detention of the person named therein in an approved school-

- (a) if at the date of the order he has not attained the age of fourteen years, until the expiration of a period of three years or the**

- expiration of four months after he attains the age of fifteen years, whichever is the later;
- (b) if at the date of the order he has attained the age of fourteen years but has not attained the age of sixteen years, until the expiration of a period of three years from the date of the order; and
- (c) if at the date of the order he has attained the age of sixteen years, until he attains the age of nineteen years.”

In view of the above provision, any Juveniles court has no power to fix the period of detention of a juvenile in an approved school. A manager of an approved school has to comply with the provisions of the law save where an extension of the period of detention may be necessary in compliance with section 86 of the Juveniles Act which reads as follows:

“86. If the managers of an approved school within Zambia are satisfied that a juvenile whose period of detention therein is, under the provisions of this Act, about to expire needs further care or training, they may, with the consent of the Minister, detain such person for a further period not exceeding six months.

Provided that a person shall not be detained beyond the date on which he will attain the age of nineteen years.”

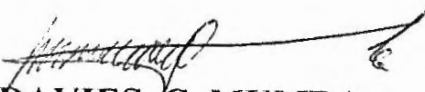
The above are the guiding principles in detaining any person in an approved school and therefore, no trial Magistrate can impose any fixed period of detention on a juvenile in an approved school. It is important that Magistrates adhere to the provisions of the law.

I have carefully considered the Social Welfare reports and the recommendations contained therein. I find that the learned trial magistrate properly directed himself in making the reformatory order in respect of the first juvenile offender; and an approved school order in respect of the second juvenile offender considering the

circumstances under which the offences were committed and the persistence in committing the same offences. Further, I find that both orders are expedient for the reformation/training of the juvenile offenders and the prevention of crime. I am quite satisfied that it is desirable and in the best interest of the two children that they be placed in the two separate institutions to undergo a period of reformation and training. I am of the view that the two juvenile offenders will acquire some survival skills and receive appropriate counseling on the bad effects of committing crimes and the necessity of being good citizens.

In view of what I have said above, I hereby quash the periods of 36 months for the reformatory order; and 24 months for the approved school order imposed on the juvenile offenders, respectively; and uphold the trial Magistrate's orders for reformatory order and approved school order without any fixed periods attached to them. In short, I confirm the reformatory order in respect of the first juvenile offender; and the approved school order in respect of the second juvenile offender as they are in the best interest of the said juvenile offenders.

CONFIRMED AT NDOLA THIS 24TH DAY OF JULY, 2017.


DAVIES .C. MUMBA
HIGH COURT JUDGE