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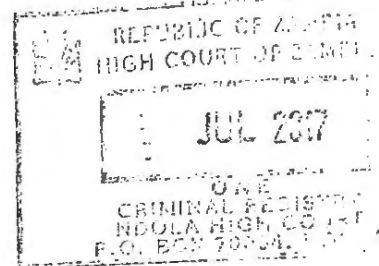
**IN THE HIGH COURT FOR ZAMBIA  
AT THE DISTRICT REGISTRY  
HOLDEN AT NDOLA**  
(Criminal Jurisdiction)

**HNS/38/2017**

**THE PEOPLE**

**V**

**ALLAN CHIBUYE**



**Before the Hon. Mr. Justice Davies C. Mumba in Open Court this 14<sup>th</sup> day of July, 2017.**

**For the State:**

**Mr. M. Lupiya, State Advocate  
Mr. S. Zulu, State Advocate  
Ms. V. Sangwa, State Advocate**

**For the Juvenile Offender: Ms. K. Chitupila, Senior Legal Aid Counsel  
Ms. E.I. Banda, Senior Legal Aid Counsel**

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**JUDGMENT**

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**CASE REFERRED TO:**

1. Musonda and Another v The People (1976) Z.R. 266 (reprint)

**LEGISLATION REFERRED TO:**

1. The Narcotic Drugs and Psychotropic Substances Act, Cap. 96 – ss.6 and 44
2. The Criminal Procedure Code, Cap. 88 – s. 217
3. The Juveniles Act, Cap. 53 – ss.2, 64, 68, 70 and 73

Upon his own plea of guilty, ALLAN CHIBUYE was found guilty of the offence of Trafficking in psychotropic substances, contrary to section 6 of the Narcotic Drugs and Psychotropic Substances Act, Chapter 96 of the Laws of Zambia, as read with statutory instrument No. 119 of 1995. The allegations were that ALLAN CHIBUYE on the 21<sup>st</sup> day of February, 2017 at Ndola in the Ndola District of the Copperbelt

Province of the Republic of Zambia, did traffic in a psychotropic substance, namely 77.1 grammes of marijuana, a herbal product of *cannabis sativa* without lawful authority.

The record has been sent to this Court for sentence because the 'convict' has been treated as the second offender liable to a mandatory minimum sentence of ten years. For the reasons that will soon emerge from this judgment, I have no difficulty in deciding that this Court has no jurisdiction to deal with this case.

The brief history of the case is that on 25<sup>th</sup> July, 2016 while the 'convict' was a juvenile aged 17 years, he was arrested for the same offence of trafficking in a psychotropic substance. He pleaded guilty to the charge and a finding of guilty was entered. Upon the charge being proved, he was placed on 12 months' probation by the trial magistrate on 23<sup>rd</sup> August, 2016. Before the elapse of one year, the juvenile offender has yet committed a similar offence of which he has been 'convicted'. According to the record, the trial Magistrate has considered that he is a second offender and must be punished according to section 44 of the Narcotic Drugs and Psychotropic Substances Act, Cap. 96 which provides that:

**"Any person convicted on a second or subsequent offence for trafficking shall be liable to imprisonment for a term of not less than ten years."**

My considered view is that the above provision of the law only applies to adults and not to juvenile offenders (see sections 68 and 70 of the Juveniles Act, Cap. 53).

I am satisfied that the juvenile offender, Allan Chibuye has not ceased to be a juvenile since the commission of the first offence. It is on record that on the first

charge sheet his age was indicated to be 17 years, and on the second charge sheet it is shown to be 20 years. I have accepted the fact that when the first offence was committed, the offender was a juvenile aged 17, as of last year. I have no reason to depart from the finding of the trial Court that the juvenile offender was aged 17 years when he committed the same offence for the first time. Therefore, this year the offender is 18 years and qualifies to be treated as a juvenile. According to Section 2 of the Juveniles Act, Cap. 53, a 'juvenile' means a person who has not attained the age of nineteen years. Since Allan Chibuye is a juvenile, his case falls to be disposed of in accordance with section 64(1) of the Juveniles Act, Cap. 53. The said section 64(1) enacts as follows:

**"64.(1) Where a juvenile is brought before a juvenile Court for any offence other than homicide or attempted murder, the case shall be finally disposed of in such Court."**

Considering that the offender, Allan Chibuye is still a juvenile, this Court has no jurisdiction to deal with his case. I am fortified by the decision of the Supreme Court in the case of **Musonda and Another v The People**<sup>1</sup> where it was held, *inter alia*, that:

**"The Court having found that the appellants were both juveniles, it should have ordered that the matter be heard and disposed of in the juvenile Court in accordance with the provisions of section 64 of the Juveniles Act Cap. 217; the High Court had no jurisdiction to hear the matter."**

The facts of the case of *Musonda*<sup>1</sup> were that the Appellants were charged with aggravated robbery. There was nothing on the documents before Court at that stage to indicate the appellants' ages. When the stage of the trial was reached at which a police officer gave evidence as to statements alleged to have been made by the

appellants, a trial within the trial was held and at its conclusion the statements were admitted in evidence. These statements disclosed the ages of the appellants as eighteen and seventeen years respectively. The appellants were convicted and sentenced to the minimum statutory sentence of fifteen years' imprisonment with hard labour. When the matter first came before the Supreme Court, the Court remitted the matter to the High Court for the age of each of the appellants to be determined. The facts found by the High Court as to the dates of birth disclosed that both appellants were juveniles at the date of their conviction and sentence. Accordingly, the Supreme Court held that the High Court had no jurisdiction to hear the juvenile's case.

In the present case, the age of the juvenile offender is on record. I have accepted the age of 18 years to be his correct age as of this year; and consequently this Court has no jurisdiction to dispose of the case.

Having regard to all the facts of this case, I find that this is an appropriate case for determination by the Juvenile Court of competent jurisdiction. Therefore, the case is remitted to Ndola Subordinate Court for the imposition of the appropriate order on the juvenile offender in conformity with the provisions of section 73 of the Juveniles Act, Chapter 53 of the Laws of Zambia. Section 73(2) of the Juveniles Act provides as follows:

**"73.(2) Whenever a juvenile is found guilty of an offence for which, but for the provisions of this Act, a sentence of imprisonment would have been passed, the Court by which the juvenile is found guilty may, instead of passing such sentence of imprisonment, order him to be detained in a reformatory."**

The juvenile offender will remain in custody until his case has finally been disposed of. I urge the Juvenile's Court to dispose of this matter expeditiously.

Delivered in Open Court at Ndola this ... <sup>14<sup>th</sup></sup> day of ..... *July* ..... 2017.

  
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**DAVIES C. MUMBA**  
**HIGH COURT JUDGE**

