

**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA  
(CRIMINAL JURISDICTION)**

**HP/29/2024**

BETWEEN:

**THE PEOPLE**

AND

**MICHAEL MULENGA**



**Before:**

***The Hon. Mr. Justice Charles Zulu***

For the State:

Mr. F.M. Sikazwe, Principal State Advocate &  
Mr. M. Museta, State Advocate, National  
Prosecution Authority.

For the Accused:

Mrs. M. Tatila-Mulumbwa & Ms. D.Kabuka,  
Legal Aid Board.

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**JUDGMENT/SENTENCE**

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Case referred to:

- 1. John Mwansa and Samuel Mwansa v the People (SCZ Appeal No. 170 and 171 of 2014.***

Legislation referred to:

- 1. The Penal Code Chapter 87 of the Laws of Zambia.***
- 2. The Children's Code Act No. 12 of 2022.***



## **1.0 INTRODUCTION**

- 1.1 The convict, Michael Mulenga now aged nineteen years was found guilty of aggravated robbery contrary to section 294 (1) of the ***Penal Code Chapter 87 of the Laws of Zambia***.
- 1.2 In mitigation the convict's Counsel, Ms. Kabuka submitted that the convict was a first offender, youthful and remorseful for his conduct. The Court was urged to impose an order generally favourable to a child offender, because at the time the offence was committed the convict was a child.

## **2.0 DETERMINATION**

- 2.1 I have considered the mitigation tendered by Counsel. In making a determination as to the appropriate sentence or order to be imposed, regard is had to the fact that at the time the offence was committed the now convict was a child within the meaning of section 2 of the ***Children's Code Act No. 12 of 2022***.
- 2.2 I am mindful that the enactment of the ***Children's Code Act*** was meant to foster the best interest of a child in conflict with law *inter alia* through restorative justice.
- 2.3 And in terms of sentencing or otherwise, section 79 of the ***Children's Code Act*** provides:
- 79. (1) A juvenile court or Children's Court may deal with a child in one or more of the following ways:***  
***(a) dismiss the case against the child or discharge the child;***  
***(b) make a probation order in respect of the child;***



- (c) send the child to a child approved centre or child reformatory centre;**
- (d) commit the child to the care of a fit person or child care facility;**
- (e) in the case of a child who is a young person, order the young person to pay a fine, damages or costs;**
- (f) order the child's parent, guardian or person having parental responsibility for the child to pay a fine, damages or cost;**
- (g) order the child's parent, guardian or person having parental responsibility for the child to give security for the good behaviour of the child;**
- (h) make a restorative justice order in accordance with programmes established under section 84; or**
- (i) in any other manner that the juvenile court or Children's Court determines in the administration of justice.**

2.4 It is clear that the Court's jurisdiction to impose a custodial sentence as a means of dealing with a child offender remains tenable under the new regime. And in exercising this discretion, generally a measure of last resort, the court must have regard to the circumstances of the case, in particular the prevalence of the offence balanced with the interest of the public. This proposition conforms to the reasoning by the Supreme Court in the case of **John Mwansa and Samuel Mwansa v the People**. This case albeit decided under the repealed regime remains relevant, because the provisions relating to sentencing have considerably remained intact. In that case the Supreme Court held as follows:

2.5 **In *Jutronich and Others v the People*, Blagden C.J. observed that:**

***The principles which should guide a court in passing sentences are first and foremost the***



**public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it.**

**With the above in mind we wish to state that the lower court did consider the provisions of the Juveniles Act and decided that because of the seriousness and prevalence of the crime the suitable way to deal with the 2<sup>nd</sup> appellant was not [to] impose a sentence under the Juveniles Act.**

**Notwithstanding that the 2<sup>nd</sup> appellant was a juvenile, the lower court was entitled to take into account, as a matter of public interest, the seriousness of the offence and the prevalence of the offence.**

2.6 The principle of contextual judging equally entails that the court must be responsive to the interest of the public. The prevalence and growing conduct of lawlessness by young offenders otherwise called “junkies” is a serious security issue, and courts must be seen to help arrest this anti-social behavior through its sentencing mandate.

2.7 Indeed courts are constitutionally mandated to foster law and order in society. And if courts were to fail to deliver its mandate to preserve and enhance law and order, anarchy and impunity at the hands of junkies will only increase to ungovernable levels. The peace this country has enjoyed should not be allowed to be destroyed by the reign of terror on innocent citizens by “outlaws”, who want to take shield under the guise of being juveniles when their conduct is that of a fully fledged malefactor adult.

2.8 In the face of policing challenges our society now faces, at the hands of junkies, this Court cannot afford to fold its hands,



when the law affords the court space to deal with each case on its merits and make an appropriate determination as to the appropriate sentence, including imposition of a custodial sentence.

2.9 In the present case, the facts speak for themselves. An innocent woman, Catherine Bowa was attacked in the night, on her way home from her trading business by a gang of junkies in John Laing. Her hard earned proceeds of sale from her trading business in City Market, including cell phones and other items were stolen by the convict and his gang after violently abusing the woman.

**3.0 CONCLUSION**

3.1 In the light of the foregoing, I find it that this is a proper and fit case in which to order a custodial sentence, given the gravity of the offence, and the need to deter the prevalence of this growing anti-social behavior. Balancing the interest of society, and that of the convict, legally as a child at the time the offence was committed, he is spared from the imposition of the minimum mandatory sentence. Accordingly, I sentence the convict to 36 months Simple Imprisonment from the date of arrest.

**DATED THE 15<sup>TH</sup> DAY OF APRIL, 2024.**

  
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**THE HON. MR. JUSTICE CHARLES ZULU**