

R. v. JALI KACHIPILI.

A CRIMINAL REVIEW CASE OF 1935.

Complaint made to the Police—no reasonable probability of conviction—summary prosecution—charge dismissed—no provision for ordering Public Prosecutor to pay costs of accused person—duty of Public Prosecutor in such circumstances to decline to prosecute.

Where a complaint is made to the Police and, after investigation, it is evident that no Court would convict the person complained against, the Public Prosecutor should decline to prosecute, particularly as, if the charge is dismissed, the Court dismissing the charge is not empowered to order a Public Prosecutor to pay the costs of the accused person pursuant to section 160 (2) of the Criminal Procedure Code.

The observation of the Resident Magistrate and approval by FRANCIS, J. to the effect that a charge should not be brought in the absence of proof believed to be sufficient for conviction was followed in *R. v. Muchuma* 4 N.R.L.R. 64.

See also *R. v. Smith* p. 146 *post* and *R. v. Kempton* p. 148 *post*.

As to the award of compensation against the Crown on the dismissal of a frivolous or vexatious charge see *R. v. McLennan Kumwembe* 2 N.R.L.R. 108.

Resident Magistrate, Ndola: I am bringing this case before the notice of the High Court not with any wish to criticise the Police, for whose work and fairness I have the greatest admiration, but in order to obtain an expression of opinion by the Judge on a question which, I know, frequently exercises the minds of police officers. Is it for a police officer to decide whether there is substance in a complaint brought to his notice or should the matter be decided by a Court? I submit that a junior police officer should not, where he is in doubt, take upon himself the responsibility of deciding this question if there is a superior officer within reasonable reach to whom the matter can be referred, but certainly some officer ought to consider and decide whether there is any likelihood of a conviction or not. No person should be brought into Court on any charge, trivial or serious, unless there is a reasonable probability that the evidence in support of the charge will be "sufficient"; to do otherwise is to expose members of the public to the stigma of prosecutions which are unwarranted, and to waste the time of the Court.

If my view is a right one, I hope that His Honour the Judge will bring this view to the notice of the Commissioner of Police so that European police officers may have guidance in a matter which often causes them concern.

Francis, J.: Record perused—I agree with the judgment of the Magistrate.

With reference to his request I should be glad if you would transmit it for perusal of Commissioner of Police. . . .

I agree with the latter part of (the penultimate) paragraph and would observe that in view of the protection especially given under section 160 (2) Criminal Procedure Code the Police should exercise scrupulous care in such matters.