

R. v. ALUFONSO LUKWESA.

A CRIMINAL REVIEW CASE OF 1937.

Criminal Procedure Code sections 8 and 12—sentence submitted to High Court for confirmation must be sentence actually passed not merely recommended.

When a Subordinate Court sends a record to the High Court for confirmation of sentence, such sentence must be one which has actually been passed and must not be merely a "recommended" sentence; the High Court has no power in its revisional jurisdiction to impose a sentence recommended by the Subordinate Court or some sentence other than the sentence so recommended.

A Subordinate Court may, pursuant to section 197A of the Criminal Procedure Code, commit to the High Court for sentence an accused who is of the apparent age of not less than seventeen years if it is of the opinion that greater punishment should be inflicted than it has power to inflict.

Francis, J.: Any sentence sent up for confirmation by the High Court must be a "sentence which has been passed" in accordance with the requirements of the law. The sentence in this case is submitted as one "recommended". From this I can only draw the conclusion that it has not yet been imposed.

Because of distance and the length of time already taken up in this case, I have given consideration to all of the several powers conferred upon the Court in its Revisional Jurisdiction, with a view to discovering some way out of the difficulty. Although the point may, to the layman, appear but technical, I cannot find that I have any authority to impose the sentence myself, and in the absence of such authority, I do not propose on this occasion even, to indulge in irregularity by so doing.

I am afraid the record must go back again, with an order that the elemental requirement be complied with. It is probable that the Magistrate has been acting under the old procedure in Cap. 4¹ section 27 (1), but this has long ago been repealed.

¹ Magistrates' Courts Ordinance which was repealed and replaced by the Subordinate Courts Ordinance in 1933.—*Editor*.