

R. v. SANDONGO MALICOPO LUMBALA.

CRIMINAL REVIEW CASE No. 86 OF 1938.

Escape—con. Penal Code section 101—severity of sentence—sentence reduced on review.

Any person who, being in lawful custody, escapes from custody, is guilty of a misdemeanour (Penal Code section 101). The maximum punishment for this offence is imprisonment for a term not exceeding two years or a fine or both imprisonment for such term and a fine (Penal Code section 40). In the judgment hereunder the Court expresses an opinion as to a proper sentence for an unplanned escape.

See also *R. v. Mooto* 1 N.R.L.R. 127.

Francis, C.J.: Imprisonment with hard labour for twelve months for escape from lawful custody is a very severe sentence under any circumstances. Where the offence is committed by a person of a low order of intelligence "from a gang cutting poles behind the garden" of any prison in Northern Rhodesia, the sentence in my view is harsh and unconscionable.

If, as is shown to be the case, the accused had a predisposition to escape, why does the prison authority offer him encouragement thereto by extramural employment?

I am unable to allow this sentence to stand and set aside the confirmation order of the Provincial Commissioner.

The sentence is reduced to three months I.H.L. consecutive to any sentence at present being served.