

R. v. MULENGA AND LESA.

CRIMINAL REVIEW CASE No. 245 OF 1939.

Behave in a disorderly manner to the annoyance of a person—person must be specified—charge must be certain.

In cases under Municipal By-laws or Townships Regulations where a person is charged with disorderly behaviour, the person annoyed must be specified otherwise the charge is bad for want of certainty. See also *R. v. Mwanza* p. 77 *post*, and *R. v. Imbuwa* p. 113 *post*.

Thomson, A.J.: The two accused in this case were charged that on 19th July in the Ndola Location they did "behave in a noisy manner to the annoyance of any person" in contravention of By-law No. 212 (38)¹ of the Ndola Municipal By-laws. To the charge they both pleaded guilty and both were convicted, small fines being imposed.

I have no option but to hold that the charge was bad for want of certainty and was one that no person could have pleaded to or should have been called upon to plead to. In the case of alleged offences against this by-law (and the corresponding regulation in townships) it is necessary to allege and prove annoyance or disturbance as the case may be to a specified person and in this case that has not been done. The Magistrate will appreciate my meaning when I observe that what was done was very much on a par with charging someone that he did "steal something" at a certain time and place in contravention of section 243 of the Penal Code.

The proceedings were bad from the beginning and both convictions must be quashed.

¹ The relevant By-law is now 212 (37).—*Editor*.