

R. v. JOHN SIWAKWI.

CRIMINAL REVIEW CASE No. 268 OF 1939.

Penal Code section 228—abduction—essential ingredients of offence—reply to charge.

To convict of abduction it is necessary that the abduction should take place with intent to cause the victim to be secretly and wrongfully confined. Unless accused pleads guilty to all the elements of the offence a plea of "not guilty" should be entered.

Robinson, A.C.J.: This case was received for confirmation of sentence on 30th October. On looking through it, it appeared to me that the case against the accused had not been proved. The charge was laid *contra* section 228 Penal Code and although the wording on the charge sheet was that John Siwakwi did abduct one Maliya Namuchimba with intent to cause her to be wrongfully confined, the section of the Penal Code requires more than that. An essential ingredient in the offence is that the abduction should take place with intent to cause the victim to be *secretly and wrongfully* confined. I could find no evidence of any secrecy and therefore the case record was sent to the Attorney-General to ask whether he wished to support the conviction. He has now replied that he does not desire to do so.

The conviction is therefore quashed and the prisoner must be released *forthwith*.

The Magistrate should take the greatest care to see that all the ingredients making up the offence are clearly set out in the charge and made clear verbally to the prisoner. If, in answer to this charge, the only reply was "I took her away", a plea of not guilty should have been entered. The "intent" forms the whole gravamen of the offence and that was not pleaded to. If a full admission is made in answer to the charge and the Court is satisfied that the prisoner fully understands the true implication of the offence and the facts which he freely admits do constitute that offence, then the actual words used by the prisoner in answer to the charge (section 187 (2) Criminal Procedure Code) must be recorded and they can be construed by the Court as a plea of guilty. The facts should then shortly be set out and no evidence taken.