

## R. v. LEVE MWAZA AND OTHERS.

CRIMINAL REVIEW CASE No. 295 OF 1939.

*Common nuisance—causing annoyance to a person—Penal Code section 151—Townships Regulations (Cap. 26)<sup>1</sup>, Regulation 4 (9).*

Causing annoyance to an individual is not a common nuisance and in such a case the charge should be laid under Regulation 4 (9) of the Townships Regulations and not under section 151 of the Penal Code.

See also *R. v. Mulenga and Lesa* p. 66 *ante*, and *R. v. Imbuwa* p. 113 *post*.

Law, C.J.: Public or common nuisances are such inconvenient or troublesome offences as annoy the whole community in general, and not merely some particular person. The very existence of the nuisance depends upon the number of persons annoyed (Roscoe's *Criminal Evidence*. 15th Edition, page 919; see also Stone's *Justices' Manual*, 69th Edition. page 1329). In the present case, the charge against the accused was "... and thereby caused annoyance to the public, to wit, native female Malone, *contra* section 151 Penal Code". Though the accused pleaded guilty to this inconsistently worded charge, in essence he pleaded guilty to causing annoyance to an individual, which does not constitute the offence of common nuisance. The accused should have been charged under regulation 4 (9) Townships Regulations (Cap. 26),<sup>1</sup> for making a loud or unseemly noise to the annoyance or disturbance of any person, to wit, native female Malone. In the circumstances, however, there has been no miscarriage of justice, and the conviction and sentence will stand. Section 151 Penal Code is really intended to cover those cases where the nuisance is continuous or regularly repeated.

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<sup>1</sup> Now Cap. 120.—*Editor*.