

**R. v. MUTEMWA MUHONGO alias LYEMBU.**CRIMINAL REVIEW CASE No. 316 OF 1939.

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*Criminal Procedure Code section 187 (2)—procedure on plea of guilty—  
examination of witness to ascertain quantum of sentence.*

On a plea of guilty the case should not be tried out although it is not illegal to do so. Accused should be convicted forthwith. A witness can, however, be examined to ascertain the quantum of sentence.

Law, C.J.: In view of the accused's unequivocal plea, which was accepted and recorded as one of guilty, the Magistrate should have followed the mandatory provisions of section 187 (2) Criminal Procedure Code. He should have convicted and sentenced the accused forthwith; no other form of order against the accused seems to have been justified on the plea. A magistrate is relieved from taking that action, however, only if there appear to be sufficient cause to the contrary. In such circumstances the reasons for that sufficient cause should be recorded in explanation why he has not convicted and sentenced the accused or made any other order against him. In his judgment the Magistrate explains that he tried the case at length for the purposes of quantum of sentence. Apart from his omission to record his reasons for so doing, I cannot say that this action in trying-out the case was illegal. It was merely an unnecessary procedure, and to that extent unusual and irregular, and occasioned a great deal of trouble and loss of time to himself and others concerned with the case. It would seem that the examination of one witness (or two at the most) would have sufficed to enable him to form an opinion as to what would be adequate punishment, and would have been sufficient cause for not convicting and sentencing the accused forthwith.