

R. v. KAFUNGWA.

CRIMINAL REVIEW CASE No. 231 OF 1939.

Criminal Procedure Code sections 187 (2) and 210—summary adjudication—answer of accused should be recorded as nearly as possible.

In the judgment hereunder is set out the procedure which should be adopted when a person is accused of murder and, before the preliminary inquiry is completed it is found necessary to alter the charge. It also sets out the correct method of recording that the Magistrate intends dealing with a case summarily instead of committing a person for trial. An indication is given of how a Magistrate should take and record the plea of an accused person. At the time when this case was heard the offence of manslaughter was triable by Subordinate Courts, Class I, II and III. Now persons accused of this offence must be committed for trial by the High Court.

See also *R. v. Kasonde* p. 14 *ante* and *R. v. Changala and Two Others* p. 30 *ante*.

Robinson, A.C.J.: Please thank the Magistrate for sending me the above case for review. The Magistrate has reached the right conclusion and I think the second paragraph of section 15 Penal Code is ample authority for the acquittal of the accused child, who is only 10 years old, apart from, and as well as, the reasons given by the Magistrate.

My only criticism of the record, which is admirably clear, is that when the formal discharge on the charge of murder was entered, it would have been better if the Magistrate had made a note, e.g., "all the facts are before the Court. I now propose charging the accused with manslaughter and, under the circumstances, intend finally to determine the matter myself under section 210 Criminal Procedure Code". The charge sheet then would be put in and the plea taken. The plea, which always should be recorded as nearly as possible in the accused's own words (section 187 (2) Criminal Procedure Code), should probably have read "Yes—I admit I hit him and he died". It is then for the Court to construe the meaning of that and in this case it probably would have entered a plea of "Not Guilty". It would then be noted that the Crown evidence is as already recorded in the depositions and the witnesses should be offered for cross-examination, as they had not already been cross-examined (proviso to section 210 Criminal Procedure Code).

The rest is in order.

I am very glad the Magistrate sent the case in because, although there is nothing radically wrong, the entry in the monthly return of "Plea: Guilty; Judgment: Not Guilty", could not have passed unnoticed.

Speaking generally on the question of pleas, it is usually essential for the Court to have some knowledge of the Crown story before it is in a position to charge the accused. Having got the facts, the Magistrate can then ask the accused, "Is it true you broke the latch of a hut in the middle of the night and stole that blanket?" (produced in Court). If he admits it, it can then be recorded, "Yes, I admit this. I broke the latch and pulled the door open and stole that blanket. It was the middle of the night". The Court can then unhesitatingly enter a plea of guilty after the words in inverted commas. If he says "It is true I went in and stole the blanket but the door was wide open. The sun was just rising", the plea would be not guilty (if the charge was burglary) and, moreover, the Court can then help the accused in his defence.