

ANDREW MABETA MAPOWA v THE PEOPLE (1979) Z.R. 30 (S.C.)

SUPREME COURT  
GARDNER, BRUCE-LYLE, JJ. S. AND CULLINAN, J.S.  
6TH AND 20TH FEBRUARY, 1979  
S.C.Z. JUDGMENT NO. 10 OF 1979.

Flynote

Criminal law and procedure - Jurisdiction - Power to commit to High Court for sentencing under s. 217 of Criminal Procedure Code where statutory minimum sentence outside sentencing powers of trial magistrate.

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Criminal law and procedure - Jurisdiction - Cases where statutory minimum sentence is to be imposed - Jurisdiction to try vested in senior resident magistrates and resident magistrates.

Headnote

The appellant was convicted of stock theft by a Class III magistrate. After conviction it was disclosed that he had a previous conviction for the same offence and was, therefore, liable to a statutory minimum sentence of seven years which was outside the jurisdiction of the trial magistrate. The appellant was committed to the High Court for sentence purportedly under s. 217 of the Criminal Procedure Code.

**Held:**

- (i) Section 217 of the Criminal Procedure Code gives a discretionary power to a magistrate, who is of the opinion that greater punishment should be imposed than he has power to impose, to commit the convicted person to the High Court for sentence.
- (ii) The provisions of s. 217 do not cover cases of statutory minimum sentences outside the sentencing powers of trial courts, and only senior resident magistrates and resident magistrates who have such powers of sentencing have jurisdiction to try cases where mandatory minimum sentences should be imposed.

**Case referred to:**

(1) The People v Chilembe (1975) Z.R. 40

**Legislation referred to:**

Criminal Procedure Code, Cap. 160, s. 217.

For the appellant: Mrs F.N. Mumba, Director of Legal Aid.  
For the respondent: A.H.O. Oder State Advocate.

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Judgment

**GARDNER, J.S.:** delivered the judgment of the court.

The appellant was convicted of stock theft; the particulars of the offence being that he stole one ox valued at K200.

The case was dealt with by a magistrate class III and, after conviction, it was disclosed that the appellant had a previous conviction for stock theft. By the provisions of Act 29 of 1974 the appellant was therefore liable to a statutory minimum sentence of seven years' imprisonment with hard labour. Because the trial magistrate had no power to pass such a sentence he committed the appellant to the High Court for sentence purportedly in accordance with s. 217 of the Criminal Procedure Code. The appellant was then sentenced by the High Court to the minimum sentence of seven years' imprisonment with hard labour.

In the case of *The People v Chilembe* (1) Cullinan, J., held that s. 217 of the Criminal Procedure Code gave a discretionary power to a magistrate, who was of the opinion that greater punishments should be imposed than he had power to impose, to commit a convicted person to the High Court for sentence. In that case it was held that the provisions of s. 217 were not enacted to cover cases of statutory minimum sentences outside the

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sentencing powers of trial courts and that only senior resident magistrate, and resident magistrates, who had such powers of sentencing, had jurisdiction to try cases where mandatory minimum sentences should be imposed. The ruling in that case has been adopted and, in fact, a procedural direction has been given to magistrates to comply with it.

As the proper procedure was not adopted in the case before us we find that the purported trial in the magistrates' court was a nullity. We quash the conviction and set aside the sentence and we order that the appellant be retried by an appropriate subordinate court of the firm class 19 to be presided over by a resident magistrate or a senior resident magistrate.

Retrial ordered

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