

CHARLES BANDA v THE PEOPLE (1981) Z.R. 26 (S.C.)

SUPREME COURT

GARDNER, AG. C.J., CULLINAN, J.S. AND MUWO, AG. J.S.  
6TH JANUARY, 1981  
(S.C.Z. JUDGMENT NO.1 OF 1981)

Flynote

Sentence - Enhancement of - When Appellate court can enhance.

Headnote

The applicant was convicted by the subordinate court of burglary and theft on his own unequivocal plea of guilty and he was sentenced to two years imprisonment with hard labour.

On appeal to the High Court against sentence, the appellate judge increased the sentence by one year. On appeal:

**Held:**

- (i) It is only if the sentence is wrong in principle or totally inadequate that it should be increased. *Kalunga v The People* (1) followed.
- (ii) The sentence of two years imprisonment imposed by the magistrate on the applicant was not wrong in principle and was not totally inadequate.

**Cases**

**referred**

**to:**

- (1) *Kalunga v The People* (1975) Z.R. 72 (S.C.)

For the applicant: In person.

For the respondent: R. Balachandran, State Advocate.

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Judgment

**MUWO, AG. J.S.:** delivered the judgment of the court. The applicant was convicted by the Subordinate Court at Mumbwa

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of burglary and theft on his own unequivocal plea of guilty, and he was sentenced to two years imprisonment with hard labour.

On appeal to the High Court against sentence, the appellate judge increased the sentence by one year. This court has, on a number of occasions, stated that it is only if the sentence is wrong in principle or totally inadequate that it should be increased. In the case of *Kalunga* (1), this court stated as follows at p. 73:

"(ii) It is not proper to enhance a sentence simply because the appellate court, had it tried the

case, would have imposed a somewhat greater sentence. Just as an appellate court will not interfere with a sentence as being too high unless that defence comes to the court with a sense of shock, equally it will not interfere with a sentence as being too low unless it is of the opinion that it is totally inadequate to meet the circumstances of the particular offence."

In the present case the learned appellate judge increased the sentence solely on the basis that he was "inclined to enhance it". There was, therefore, no justification for the increase in sentence. We consider that the sentence of two years imprisonment imposed by the, magistrate on the applicant was not wrong in principle and was not totally in-adequate. Accordingly we propose to restore the original sentence. This application is allowed and will be treated as the appeal.

The appeal is allowed to the extent that the sentence of three years has been set aside and the original sentence of two years restored.

Appeal allowed

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