

(Criminal Jurisdiction)

B E T W E E N :

AMROSE SIMAPESE

Appellant

VS

THE PEOPLE

Respondent

Coram: Bweupe, D.C.J. Sakala and Muzyamba, JJS.,

On 5th April, 1994

For the Appellant: Mr. S. W. Chirambo, Senior Legal Aid Advocate

For the Respondent: Mr. N. Mukelabai, Senior State Advocate

J U D G M E N T

Bweupe, D.C.J. delivered judgement of the Court.

The appellant appeared before two separate Courts on two counts of Stock Theft. He was convicted and sentenced to six years imprisonment with hard labour and five years of Stock Theft by the Court of the Magistrate Class I and the Court of the Principal Resident Magistrates at Livingstone. His appeal to this Court is against sentence only.

We have examined the record which shows that when the appellant appeared before the learned Judge he indicated that he wished to withdraw the appeal against conviction in the case in which he was sentenced to 5 years. He proceeded with a case in which he was sentenced to six years. He has complained to us to day that there was an error on the part of the Magistrate Class I in making the sentence of five years to run consecutively with the sentence of six years the appellant was then serving.

We have considered the submissions given by the Senior Legal Aid Counsel, Mr. Chirambo, that the appellant being a first offender at the time, the sentences, should have been made to run concurrently. We agree with that submission.

We, therefore, order that the sentence of five years imposed should run concurrently with the six years sentence imposed by trial Principal Resident Magistrate. We would allow the appeal to that extent only.

B. K. Bweupe
DEPUTY CHIEF JUSTICE

E. L. Sakala
SUPREME COURT JUDGE

W. M. Muzyamba
SUPREME COURT JUDGE