

IN THE SUPREME COURT OF ZAMBIA SCZ Appeal Nos. 38 & 39
HOLDEN AT NDOLA of 1994
(Criminal Jurisdiction)

FRIDAY KALONGA
DAVID CHILESHE

1st Appellant
2nd Appellant

vs

THE PEOPLE

Respondent

Coram: Chaila, Chirwa and Muzyamba JJJs on 6th September
1994

For the 1st Appellant: In Person

For the Respondent: Mr. R.O. Okafor, Principal State
Advocate

J U D G M E N T

Chirwa J.S delivered the judgment of the Court.

This judgment is in respect of the first appellant Friday Kalonga. The first appellant Friday Kalonga was jointly charged with two others on one count of aggravated robbery contrary to Section 294(1) of the Penal Code Cap. 146. The allegation was that the three on 14th day of June, 1992 at Kasama jointly and whilst acting together did steal one motor vehicle namely a Toyota Hilux registration number AAK 5025, one Zambian green National Registration Card, 1 x 12 bore shotgun greener serial number 58754, two rounds of ammunition, one spanner kit, blankets and so many other goods from one Father Chisha and that at or immediately before or immediately after the time of stealing used actual violence to the said Father Chisha in order to retain the said property or to prevent resistance to its being stolen.

Upon his conviction he was sentenced to 36 years imprisonment with hard labour and the sentence was made to run after whatever sentence he was serving. He did not appeal to this court.

2/...However, we have

However, we have treated this matter as an application to appeal to this court out of time and as such we grant it. The appellant is only appealing against the sentence of 36 years imprisonment with hard labour. He has put in a written mitigation statement in which he alleges that he now realises the sin he committed against God and mankind and wishes to be forgiven for the sins.

We take note of the circumstances of this robbery and also the injuries sustained by Father Chisha in this robbery. We also bear in mind the mitigation offered before us by the appellant. Bearing all this in mind we feel the sentence of 36 years imprisonment with hard labour a bit excessive under the circumstances. We therefore, set aside this sentence of 36 years imprisonment with hard labour and in its place we substitute a sentence of 20 years imprisonment with hard labour and this sentence will run after whatever sentence the appellant may be serving. To that extent the appeal succeeds.

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M.S. Chaila
SUPREME COURT JUDGE

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D.K. Chirwa
SUPREME COURT JUDGE

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W.M. Muzyamba
SUPREME COURT JUDGE