

HOLDEN AT LUSAKA

(CRIMINAL JURISDICTION)

B E T W E E N:

MATHIAS SIABIBI

F. CHILOPA

JOHNSON HAMPANDE

APPELLANTS

Vs

THE PEOPLE

RESPONDENTS

Coram: Chaila, Chirwa and Muzyamba, J.J.S

18th October, 1994

For the Appellants: S.W. Chirambo, Senior Legal Aid Counsel

For the Respondent: M. Mukelabai, Senior State Advocate

J U D G M E N T

Muzyamba, J.S. delivered the judgment of the court.

The appellants were jointly charged on counts 1, 2 and 3 of disgraceful conduct of a cruel kind, disobeying a lawful command and drunkenness Contrary to Sections 69, 39 (2) and 18 (1) respectively of the Defence Act, Cap 131 of the Laws of Zambia and convicted accordingly.

Appellant 3 was charged separately on count 6 of using in subordinate language to a superior officer Contrary to Section 38 (b) of the same Act and convicted as charged.

They were all sentenced to 6 months imprisonment with hard labour, presumably on each count and the sentences were made to run concurrently.

The particulars of the offences were on count 1 that on 15th April, 1992 between 17 and 18 hours at Mumbwa the appellants while travelling on a Zambia Air Force IFA truck acting together, behaved in a disorderly manner by acting violently, insulting, beating up and tearing Mrs. Lydia Siachibuye's dress which she was wearing at the time. On count 2, that during the same period the appellants while acting together disobeyed an order given to them by their superior officer No.933723 Flight Sgt. Kapelwa to stop being violent, insulting and beating up Mrs. Siachibuye. On count 3, that during the same period the appellants while acting together under the influence of alcohol behaved in unairmen like manner by being violent, insulting

and shouting at people who were on board the Zambia Air Force IFA truck, a behaviour likely to bring discredit to the service. On count 6, that the third appellant when asked for his particulars by his superior officer No.932084 Warrant Officer Kalipenta refused to do so and answered him rudely by saying 'you will know me later' or words to that effect.

The facts of the case were that the appellants were employed by Zambia Air Force as Airmen and were based at Mumbwa Air Force Base. On 18th April, 1992 at Mumbwa Township, the appellants boarded a Zambia Air Force IFA truck on which were other passengers. On the way to the base the appellants were alleged to have insulted and beaten PW.7 Mrs. Lydia Siachibuye and tore her dress which she was wearing at the time. That the appellants appeared drunk and shouted at other passengers and refused to obey lawful orders from their superior officer, PW.5 Flight Sgt. Kapelwa to stop beating PW.7 and shouting at other passengers and that at the base the third appellant refused to give his particulars when requested to do so by PW.1, Warrant Officer Kalipenta.

The appellants had originally appealed against both conviction and sentences. At the hearing of the appeal Mr. Chirambo, learned Counsel for the appellants indicated to the court that the appellants were abandoning their appeals against conviction.

As regards sentence, Mr. Chirambo submitted that the appellants were first offenders and that before they appeared before the court marshal they had paid the complainant some form of compensation and therefore that the sentence of six months imprisonment with hard labour imposed on each appellant was in the circumstances severe.

We have considered the submissions put forward and we agree with Mr. Chirambo that in the circumstances of this case the sentence of six months imprisonment imposed on each appellant was severe and comes to us with a sense of shock. We would therefore allow the appeal against sentence to the extent that the sentences are suspended for twenty-four (24) months.

M.S. CHAILA
SUPREME COURT JUDGE

D.K. CHIRWA
SUPREME COURT JUDGE

H.M. MUZYAMBA
SUPREME COURT JUDGE