

IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT KABWE  
(Criminal Jurisdiction)

SCZ APPEAL NO. 104/1995

B E T W E E N

OSCAR KASHWEKA

APPELLANT

VS

THE PEOPLE

RESPONDENT

Coram: Bweupe, DCJ, Chaila and Lewanika, JJS

16th April, 1996

For the Appellant: Mr. V.A.L. Kabonga, Director of Legal Aid

For the Respondent: Mr. James Mwanakatwe, Principal State Advocate

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J U D G M E N T

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Chaila J.S. delivered the judgment of the court.

The appellant was charged with one count of aggravated robbery contrary to Section 294 of the Penal Code. The particulars of the offence were that on the 8th day of July, 1994, at Mongu in the Mongu District of the Western Province of the Republic of Zambia, being armed with a knife did rob Joseph Kakoma of 1 travelling bag, 1 radio cassette, 1 lumber jacket and K49,000.00 cash at or immediately before or immediately after the time of such robbery, did use or threatened to use actual violence to the said Joseph Kakoma in order to obtain or retain the said property or to prevent or overcome resistance to its being stolen or retained.

The brief facts of the case were that on the material date the complainant met the appellant at a drinking place after he had done some shopping. They drank together for sometime. They then decided to go together. The complainant was persuaded to go with the appellant to his home. On the way the appellant attacked the complainant using an okapi knife. He was ordered to drop the bag in which the goods were packed. He was made to run. The appellant followed the complainant until the complainant joined some three people. Then the appellant withdrew. The following day the appellant after the police had got the report was apprehended with some stolen goods which were found on him including an okapi knife. He was convicted of the offence and was sentenced to 15 years imprisonment with hard labour.

Mr. Kabonga the Director of Legal Aid has advanced one major ground and this ground is that the learned trial judge misdirected himself in having been biased against the appellant. He informed the court that he was going to rely on Article 18(1) of the Constitution of Zambia. This Article deals with the impartiality of all High Court tribunals. On being questioned by this court whether he was raising a constitutional issue, he said no. He said the learned trial judge was biased in his approach when deciding the case. He has argued mainly that the learned trial judge was wrong in describing the appellant in his judgment as a cunning man who wanted the offence of aggravated robbery to be reduced to just a simple case of theft. Mr. Kabonga has argued that the learned trial

judge was unjustified to come to such description of the appellant. He has argued that in fact the appellant gave an explanation that after the complainant had left the goods at his home in his custody, the complainant did not return the following day and because of hunger he decided to sell the goods. Mr. Kabonga argued that the learned trial judge should have accepted that explanation and should have made him entertain a reasonable doubt as to the guilt of the appellant. On the okapi knife Mr. Kabonga argued that the knife was a common weapon which is normally carried by many people and that among the African people it is used as a defence and therefore the having of the knife by the appellant does not conclude that the knife was used against the complainant. He urged us to allow the appeal against aggravated robbery and to convict him of a simple theft.

Mr. Mwanakatwe for the State has supported the conviction. The identification of the appellant was not in dispute. The goods were found on him and the matter merely rested on the question of credibility of the parties. On the knife Mr. Mwanakatwe argued that an okapi knife was found on the appellant and this is the very knife which was used to threaten the complainant. This is an odd coincidence supporting the evidence of the complainant.

We have considered very seriously the arguments of both learned Counsels. We have considered the evidence on record, and we entirely agree with the submission that the question

of identity was not in issue. The appellant himself accepted that they were together for a long time and moved together and the goods were left with him. The only difference was on the question of threats and use of a knife. The learned trial judge considered the pieces of evidence before him and he concluded that the complainant was telling the truth. Because of this finding the prosecution case should have been more strengthened if the people who helped the complainant gave evidence after running away from the appellant. Mr. Mwanakatwe argued that there was no need to call them since there was ample evidence.

Mr. Kabonga has complained bitterly on the attitude of only relying on one person. There is no rule of law which requires the State to call all the witnesses if they are of the opinion that one witness can prove the case. In this particular case the complainant gave evidence and he was supported by the finding of being in possession of the okapi knife and the evidence of the people who bought the goods. We find that even without the evidence of the other three people there was sufficient evidence on which any reasonable tribunal would find the appellant guilty. The judge in summing up described the man as a cunning fellow. From the evidence on record the man proved himself to be very cunning. We do not think that the learned trial judge erred in any way in describing the appellant as a cunning fellow.

For the reasons we have given this appeal is dismissed.  
There is no appeal against a minimum sentence of 15 years.

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B.K. BWEUPE  
DEPUTY CHIEF JUSTICE

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M.S. CHAILA  
SUPREME COURT JUDGE

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D.M. LEWANIKA  
SUPREME COURT JUDGE

IN THE SUPREME COURT OF ZAMBIA      APPEAL NO. 103 OF 1996  
HOLDEN AT NDOLA  
(CIVIL JURISDICTION)

COPPERFIELDS COLD STORAGE COMPANY

VS

SUNTRUST INVESTMENTS LIMITED

Coram: Bweupe DCJ., Chaila and Muzyamba JJS.  
11th September, 1997 AND 14th January, 1998.

For the Appellant : MR. N. NOYO, HAKI CHAMBERS.

For the Respondent: Mr. Micheal Masengu of Micheal Masengu  
and Company.

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JUDGMENT

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BWEUPE DCJ., DELIVERED THE JUDGMENT OF THE COURT.

This is an appeal against the decision of the High Court at Kitwe granting the Respondent specific performance of a contract dated 27th March, 1992.

The undisputed facts were that the parties entered into a contract of sale for plots No 3 Matuka Avenue and 120 Accra Road for consideration of K34,000,000.00. The Respondent paid a total sum of K14,000,000.00. the Respondent further despatched to the appellant nine post