

**SCZ APPEAL NO. 31 OF 2000**

**IN THE SUPREME COURT OF ZAMBIA**

**HOLDEN AT LUSAKA**

**(CRIMINAL JURISDICTION)**

**PETER MWANACHUNGA**

**APPELLANT**

**Vs**

**THE PEOPLE**

**RESPONDENT**

**CORAM:** Ngulube, C.J., Chirwa and Chibesakunda JJS  
on 3<sup>rd</sup> and 17<sup>th</sup> October 2000

**For the Appellant:** In Person

**For the Respondent:** Mr. V.A.L. Kabonga, Senior State Advocate

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**J U D G M E N T**

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**Chirwa, J.S. delivered judgment of the Court: -**

At the hearing of the appeal on 3<sup>rd</sup> October 2000 we dismissed the appeal and we promised to give reasons later. We now render the reasons for dismissing the appeal.

The appellant, PETER MWANACHUNGA, a Police Officer was convicted on two counts under the Penal Code, Cap. 87 by the Court of Resident Magistrate sitting at Lusaka. The first Court was aiding a prisoner by the name of BENSON SIKALI to escape from lawful custody contrary to

Section 120 (a) of the Penal Code, Cap. 87. The particulars alleged on this count that the appellant on 22<sup>nd</sup> November 1997, at Lusaka, in the Lusaka District of the Lusaka Province of Republic of Zambia, did aid a prisoner by the name of BENSON SIKALI to escape from lawful custody at Kabangwe Police Post. Upon his conviction on this first Court the appellant was sentenced to 24 months imprisonment with hard labour with effect from 6<sup>th</sup> August 1998. The second count was Theft by Public Servant, Contrary to Sections 272 and 277 of the Penal Code, Cap. 87. The particulars of the offence on the second Court alleged that the appellant, on 21<sup>st</sup> November 1997 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, being a person employed in the Public Service, namely in the Ministry of Home Affairs as a Police Officer did steal one goat valued at K20,000-00 which came into his possession by virtue of his employment. On his conviction, the appellant was sentenced to 6 months IHL with effect from 6<sup>th</sup> August 1998. This sentence was made to run concurrently with that on first count. His appeal to the High Court was unsuccessful hence this appeal to this court.

- The evidence before the Court was that on 20<sup>th</sup> November 1997 PW3 lost some goats. On 21<sup>st</sup> November 1997 he got some information that someone was detained at Kabangwe Police Post in connection with goat meat found on him. He went to the Police Post and confirmed that the goat was his and valued at K20,000-00. PWs 1 & 2 on 21<sup>st</sup> November 1997 around 0630 hours as they were preparing to go to the field to plough got some information that there was someone carrying a bag from where blood was dripping. They followed the man and apprehended him and took him to

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and upon being interrogated, he revealed that he and the appellant had taken the meat to Highway butchery. PW5 went to the butchery with Joseph Chilufya where they found the appellant with a plastic bag containing some goat meat. Further pieces of meat were recovered from PW4. The appellant was arrested by PW9 and he denied the charges.

On being put on his defence the appellant gave evidence on oath and called two defence witnesses. The appellant admitted being on duty as a shift officer on 21<sup>st</sup> November 1997 from about 16:24 hours. Whilst on duty he and Detective Constable Shimo took from the cells one suspect by the name of John Sikali to skin a goat. He reported to the officer in charge who advised him to look for a place to preserve the skinned goat. He went leaving the suspect in custody of Constable Shimo. On his return, he took the meat for keeping opposite the Police Post when coming back the suspect escaped. He made a report to the Officer-in-charge who advised him to forget the incident. In essence he denied that he deliberately let the suspect go. On the goat meat he claimed that he was given permission to keep and preserve the meat. He agreed that he is not allowed to take unconvicted suspect to labour, nor to sell exhibits. His witnesses are parents of the wife of the suspect who escaped and they were used to re-capture him. As we have already said, the learned trial magistrate considered the evidence before him and he was satisfied that the prosecution had proved the two counts and disbelieved the appellant.

In his written heads of argument, the appellant on the first count submitted that he was unfairly charged alone for the escape of the suspect when they were four on duty. He says that the prisoner escaped when he was being taken to the toilet on the instructions of Detective Constable Shimo and when the suspect escaped he could not fire as he had run in the direction where there were many people and he was afraid of killing innocent people. After the suspect had escaped he reported to the Officer-in-charge who told him to forget. However after sometime his relationship with the Officer-in-Charge soured and as a result it was ordered that he be arrested and this was done after four months.

We have considered the grounds advanced on first count and we must say they do not fit in with conduct of the appellant and also with his own evidence at trial. If the Officer-in-Charge on being told of the escape of the suspect told him to forget, why did he enter into the trouble to look for the escaped suspect? His evidence at trial clearly showed that he removed the suspect from custody to skin the goat. The evidence of the prosecution also indicates that the appellant collected the suspect from the cells and PW6 & 8 advised the appellant against the use of the suspect to skin the goat but the appellant told them off that he was a shift officer and could do what he wanted. Further the appellant was found with pieces of meat not on the day of escape of the suspect but the following day. The meat was not put in safe custody opposite the Police Post but in possession of the appellant and some other person to whom he had sold some pieces. The evidence on count one is overwhelming, there is no merit in the appeal on this count.

Coming to count two here again the conduct of the appellant cannot support his argument in his appeal. If he went to keep the meat in a freezer opposite the Police Post, how come he and another person sold some pieces of meat to PW4? Further if he left the meat at the opposite butchery when he knocked off at mid-night, how come that his Officer-in-charge the following morning found him with a plastic with meat in it? His assertion that when the relationship with his Officer-in-charge soured and that is why he was arrested and also the story of keeping the meat in the butchery opposite the Police post are all after thoughts after realizing that he did a silly thing. He never intended to keep the meat, he wanted to sell it and use the money contrary to the interest of his employer. Here, too we see no merit in the appeal against the conviction on the second count. This appeal was dismissed for the reasons we have given.

**M.M.S.W. NGULUBE**  
**CHIEF JUSTICE**

**D.K. CHIRWA**  
**SUPREME COURT JUDGE**

**L.P. CHIBESAKUNDA**  
**SUPREME COURT JUDGE**