

IN THE COURT OF APPEAL FOR ZAMBIA APPEAL NO. 004/2023  
HOLDEN AT KABWE/NDOLA/LUSAKA  
(CRIMINAL JURISDICTION)

HASSAN FARAH

AND

THE PEOPLE



APPELLANT

RESPONDENT

CORAM: Mchenga DJP, Muzenga and Chembe JJA

ON: 14<sup>th</sup> November 2023, 21<sup>st</sup> February 2024 and  
19<sup>th</sup> August 2024

For the Applicant: M.Musendema, H.H Ndhlovu and Company

For the Respondent: V. Choongo, State Advocate, National  
Prosecution Authority

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## J U D G M E N T

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Mchenga DJP, delivered the judgment of the court

Cases referred to:

1. Davis Mwape v. The People [1979] Z.R.54
2. Musonda & Another v. The People [1976] Z.R 218
3. Ian Hamalambo v. The People, CAZ Appeal No. 12 of  
2019
4. Patrick Masissani v. The People [1977] Z.R. 331

**Legislation referred to:**

1. The Anti-Human Trafficking Act No. 11 of 2008
2. The Immigration Act No. 18 of 2010.
3. The Juveniles Act, Chapter 53 of the Laws of Zambia

1.0 **INTRODUCTION**

- 1.1 The appellant appeared before the Subordinate Court (Honourable C. Nsokolo) sitting at Serenje, charged with two offences.
- 1.2 In the first count, he was charged with the offence of consenting to being smuggled contrary to **Section 9(1) of the Anti-Human Trafficking Act.**
- 1.3 The charge in the second count was that of failing to appear before an immigration officer upon entry into the Nation, contrary to **Sections 11(1) and 12(1)(b)** as read with **Sections 52(1) and 56(1) of the Immigration Act.**
- 1.4 At the time he appeared in court, the proceedings were interpreted to him by a Somali interpreter and he confirmed that his age was 22 years old.
- 1.5 When the charges were read out, he admitted both

charges. He was convicted following his admission of the circumstances in which the offences were committed as set out in the statement of facts.

1.6 He was committed to the High Court for sentencing in the first count, and was fined K10,000.00 for the second count.

1.7 In the High Court (Limbani, J.), he was sentenced to 15 years imprisonment with hard labour for the offence of consenting to being smuggled. He has appealed against this conviction.

2.0 **PROCEEDINGS BEFORE THE TRIAL COURT**

2.1 Following his admission of the charges, the appellant who was unrepresented, in confirming his admission, told the trial Magistrate that he came from Somalia and he entered the country using a truck. He also told the trial Magistrate that he paid the truck driver US\$30, to transport him into Zambia.

2.2 According to the statement of facts, on 30<sup>th</sup> July 2022, the police received information of a motor vehicle travelling from Nakonde, that was carrying prohibited immigrants. Police officers stopped a Mitsubishi Pajero in the Kalwa area of Serenje

District, and 8 foreigners, who included the appellant, were apprehended.

2.3 The foreigners in that motor vehicle, who included the appellant, had agreed to be smuggled into the country and had not appeared before an immigration officer when they entered the country.

2.4 The appellant admitted these facts, and upon his admission he was convicted.

3.0 **GROUND OF APPEAL**

3.1 The six grounds of appeal advanced in support of the appeal raise two issues.

3.2 The first is that the trial court was not properly constituted because the appellant was tried as an adult, when he was in fact a juvenile when the offence was committed. The second issue is that his plea was equivocal.

4.0 **COURT NOT PROPERLY CONSTITUTED: ARGUMENTS FOR AND AGAINST**

4.1 In support of the argument that court was not properly constituted, the cases **Davis Mwape v. The People<sup>1</sup>** and **Musonda and Another v. The People<sup>2</sup>** were referred to and it was submitted that the trial

Magistrate erred when she failed to conduct an inquiry into the age of the appellant and depended on ocular observation to determine his age.

4.2 Further, counsel submitted that it was on account of poor interpretation that the appellant said he was 22 years old, when he was asked how old he was.

4.3 Reference was then made to **Section 63 of the Juveniles Act** and it was submitted that since the appellant was 17 years old at the time he was tried, he should have been tried in a Juvenile Court.

4.4 In response to these arguments, it was submitted on behalf of the State that there is no evidence to support the claim that the appellant was misled by the interpreter to give 22 years as his age. Since he was 22 years at the time of the trial, there was no need to try him before a Juvenile court.

5.0 **COURT'S CONSIDERATION OF ARGUMENTS ON APPELLANT'S AGE**

5.1 It is not in dispute that at the time the appellant took plea, he indicated that his age was 22 years. However, the indication that he was 22 years has been attributed to poor interpretation.

- 5.2 The record of proceedings shows that the proceedings were interpreted to the appellant by one Ahued Mohammed Jana. It was submitted that the Somali that this interpreter spoke was different from the one spoken by the appellant.
- 5.3 From the record, there is no indication that the appellant ever protested over the interpretation. We are at pains to understand how poor interpretation could have led to the appellant to indicate that he was 22 years old, when he was only 17 years old. We are not persuaded by the argument.
- 5.4 We are satisfied that during the trial the appellant indicated that he was 22 years old. We find no basis for holding that his age was otherwise.
- 5.5 We have had the opportunity of seeing the appellant slightly a year after he took plea, we do not think that there would have had been any basis, a year earlier, for the trial magistrate to order further inquiry over his age on the basis that he was probably a child.

5.6 Consequently, we find that he was tried before the correct court. He was not a juvenile and there was no need to invoke **Section 64 of the Juveniles Act**. We find no merit in the argument that the appellant was tried before the wrong court and we dismiss it.

6.0 **PLEA BEING EQUIVOCAL**

6.1 Counsel for the appellant submitted that even though the appellant pleaded guilty, the conviction must not stand because in his plea he said he was ferried into the country in a truck while the statement of facts in indicate that it was a Pajero. In the circumstances, the plea of guilty should be set aside because it was equivocal; the case of **Ian Hampongo v. The People<sup>3</sup>** was referred to in support of the proposition.

6.2 In response to this argument, the respondent equally referred to the case of **Ian Hamalambo v. The People<sup>3</sup>** and it was submitted that the plea was not affected by the type of vehicle to bring the appellant into the country. This is because under **Section 9(1) of the Anti-Human Trafficking Act**, the mode of transportation is not an ingredient of the offence.

7.0 COURT'S CONSIDERATION OF AMBIGUITY OF PLEA

7.1 A plea is said to be equivocal where an explanation justifying the misconduct which is the subject of the offence is rendered at the taking of the plea. The explanation renders the plea equivocal where it in effect repudiates the admission.

7.2 In the case of **Patrick Masissani v. The People**<sup>4</sup>, it was held that a plea of guilty can also be rendered equivocal where facts material to a conviction are disputed.

7.3 In this case, the explanation by the appellant that he entered the country using a truck was not at variance with the facts because the facts did not mention what mode of transport he used to enter the country. They only made reference to the motor vehicle in which he was found when they were intercepted in Serenje.

7.4 In any case, as submitted by the state, the mode of transport when the appellant entered the country was not material to the charge under **Section 9(1) of the Anti-Human Trafficking Act**. The question was whether

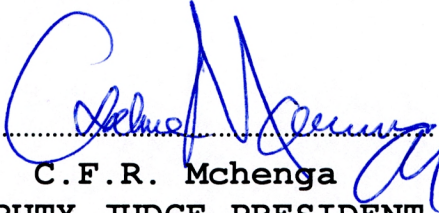


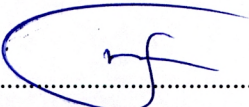
he agreed to being smuggled into the country, a fact to which he admitted.


7.5 In the premises, we find no merit in the argument that the plea was equivocal.

8.0 **VERDICT**

8.1 There being no merits in all the arguments in support of this appeal, we dismiss it and uphold the sentence imposed by the High Court.

  
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C.F.R. Mchenga  
DEPUTY JUDGE PRESIDENT

  
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K. Muzenga  
COURT OF APPEAL JUDGE

  
.....  
Y. Chembe  
COURT OF APPEAL JUDGE

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