

IN THE COURT OF APPEAL OF ZAMBIA.

AT LUSAKA

(COMES: MUSTAPA, J.A., CHA, J.A. and KIMBIRA, Ag. J.A.)

CRIMINAL APPEAL NO. 50 OF 1986

KIMBIRA CHIMBIRA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

(Appeal from the conviction of the
High Court of Zambia at Lusaka,
(CHA, J., dated the 28th day of
June, 1986)

in

Case No. Cr. Case No. 4 of 1985

JUDGMENT OF THE COURT

MUSTAPA, J.A.:

The appellant was convicted of cattle theft in the Economic Crimes Court and sentenced to 7 years imprisonment. It transpired that the two lay members of the Court did not take or subscribe the oath prior to the commencement of the proceedings in the trial, in contravention of section 7 (1) of the Economic and Organised Crime Control Act of 1984. Section 7 (1) reads:

"Every lay member shall, prior to the commencement of the proceedings or sessions, take and subscribe the oath prescribed in the Second Schedule of this Act, in the presence of a Judge of the High Court".

The trial judge realised the omission after the trial had been completed and the opinions had been given by the lay members. He then purported to swear the two lay members before he delivered judgment.

In our view the provisions of section 7 (1) are mandatory and their non-compliance vitiated the whole trial, which in fact was a nullity.

...../2.

We decline the trial a nullity, quash the conviction and set aside the sentence. We order a re-trial and in the meantime the appellant is to remain in custody pending the re-trial, which should take place with the minimum of delay.

DATED at ANUSHA this 10th day of September, 1987.

A. K. KUMAR
JUDGE OF APPEAL

A. K. A. CHAK
JUDGE OF APPEAL

D. K. LAKSHMI
Jg. JUDGE OF APPEAL

I certify that this is a true copy of the original.


(C. H. KOFFE)
DEPUTY REGISTRAR