

IN THE SUPREME COURT OF ZAMBIA

Appeal No. 12 & 13/2006

HOLDEN AT KABWE

(Criminal Jurisdiction)

B E T W E E N:

STANFORD CHILEKWA

1stAppellant

JANET MUKOSHA

2nd Appellant

- Vs -

THE PEOPLE

Respondent

Coram: Sakala, CJ, Chibesakunda and Chitengi, JSS.

on 7th November, 2006 and 16th January, 2007

For the Appellants : Captain F. B. Nanguzyambo
Director of Legal Aid

For the Respondent: Mrs. F. L. Shawa Siyunyi
Deputy Chief State Advocate

JUDGMENT

Chitengi. JS delivered the Judgment of the Court.

Cases referred to: -

- 1. *R V Bates 6 CR Appeal R153***
- 2. *Clarke V The People (1973) ZR 179***
- 3. *Liyongile Muzwanolo Vs The People (1986) ZR 46***

Statutes referred to: -

- 1. *State Security Act Chapter 111 of the Laws of Zambia Section 14.***

The two Appellants were convicted of **Espionage** contrary to **Section 3(d) of the State Security Act Chapter 111 of the Laws of Zambia**. The particulars of the offence alleged that **Stanford Chilekwa** and **Janet Mukosha** on a date unknown but between 10th October and 2nd November, 2002 at Serenje in the Serenje District of the central Province of the Republic of Zambia jointly and whilst acting together for the purpose prejudicial to the safety or interests of the Republic of Zambia without lawful excuse did damage 315 copper wires valued at K14,808,103.13 the property of Tanzania Zambia Railways.

In relation to prosecution for any offence under the State Security Act Section 14 of the same Act says: -

“14. Where any person is brought before a court on a charge under this Act no further proceedings in respect thereof shall be taken against him without the authority in writing of the Director, save as may be necessary by remand to secure due appearance of the person charged.”

It is clear from these provisions that while a person may be arrested and brought before a court on a charge under the State Security Act no prosecution can be undertaken against him unless the Director of the Public prosecutions has given his written authority to prosecute. In this case, there was no authority in writing given by the Director of Public

Prosecutions to prosecute the two Appellants for the offence with which they were charged.

Captain Nanguzyambo, the learned Director of Legal Aid, submitted that there being no written authority of the Director of Public Prosecutions to prosecute the two Appellants, the trial was a nullity and on this reason alone the appeal should be allowed. As authority for this proposition, the learned Director, cited the cases of **R V Bates⁽¹⁾**, **Clarke V The People⁽²⁾** and **Liyongile Muzwanolo V The People⁽³⁾**.

Mrs. Siyunyi, the learned Deputy Chief State Advocate, who had no option, properly conceded to the submissions by the learned Director.

As we said obiter in **Clarke V The People⁽²⁾**, in which we quoted **R V Bates⁽¹⁾**, and in **Liyongile Muzwanolo⁽³⁾**, that the absence of the written authority of the Director of the Public Prosecutions takes away the jurisdiction of the court. In this particular case, there not having been the written authority of the Director of Public Prosecutions to prosecute the two Appellants, the High Court lacked jurisdiction to try the Appellants. The result is that the trial in the High Court was a complete nullity.

The appeal is allowed the convictions are quashed and the sentences are set aside.

But that is not the end of the matter. We have to consider whether this is a proper case for retrial. The Appellants have been in custody for over three years now. The offence with which the Appellants are charged carries a mandatory minimum sentence of 20 years imprisonment. The legislature, therefore views this offence with extreme severity. In the circumstances, we are of the considered view that justice of this case will only be served if we order a retrial of the case in accordance with the law. The matter is remitted to the High Court for trial on production of the written authority of the Director of Public Prosecutions.



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E.L. SAKALA
CHIEF JUSTICE



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L. P. CHIBESAKUNDA
SUPREME COURT JUDGE



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PETER CHITENGI
SUPREME COURT JUDGE