

IN THE SUPREME COURT FOR ZAMBIA    APPEAL NO. 38a,38b,38c,38d,38e/2002

HOLDEN AT NDOLA

(Criminal Jurisdiction)

B E T W E E N:

**LAMECK MWANZA  
BENSON NKUNIKA  
BISHOP MANDEVU  
PETER BANDA  
DANIEL JAMES LIYONDA**

APPELLANTS

AND

**THE PEOPLE**

RESPONDENT

CORAM: Ngulube, CJ, Sakala and Chitengi, JJS

On 4<sup>th</sup> June, 2002

For the appellants - D.B. Mupeta, Senior Legal Aid Counsel

For the respondent - L.E. Eyaa, Senior State Advocate

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

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Ngulube, CJ, delivered the judgment of the Court.

Case referred to:-

1.    **Chaponda –v- The People (1973) ZR 175.**

The appellants were appearing in a Magistrate's Court in Chipata. They were charged with various poaching offences either jointly or singly. In the course of the trial, one of the accused persons brought to the attention of the trial Magistrate that his employers ZAWA had already decided to take disciplinary action and dismissed the officer, that accused. The Magistrate called for an explanation. Although ZAWA rescinded their action, no satisfactory explanation was advanced whereupon the Magistrate delivered a ruling objecting to complainants taking action when matters were still in Court. Meanwhile, ZAWA had also written to the Court inviting the Court to recuse itself from the trial. That appears to have annoyed the Magistrate even more, with the result that the Magistrate declared that he would punish ZAWA by dismissing their case altogether and acquitting all the accused persons. Accordingly, he summarily acquitted each and every accused person specifically saying he was doing so as a measure of punishment for the contempt committed by ZAWA.

The matter came before a Judge of the High Court on review and the Judge was of the opinion that the acquittals could not be allowed to stand. The Judge considered quite properly that ZAWA could have been punished separately without prejudicing the trial altogether. For that reason, in

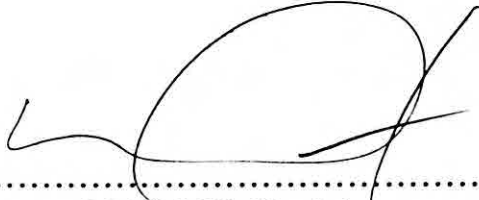
exercise of revisionary powers, the learned Magistrate was reversed and the case ordered to go and proceed and be determined on the merit.

On behalf of the appellants, Mr. Mupeta at first tried to argue that there was duplicity until it was pointed out that the indictment had been substituted. He then advanced a strong moral argument about the inconvenience and embarrassment to be suffered by the appellants as a result of the order of retrial which was occasioned by the orders of the Magistrate. We wish to confirm that justice should be for everybody including the prosecution and the public at large. It is in fact in the interest of the public that those who are alleged to have committed offences should be seen to have been tried and either convicted or acquitted after due process. We affirm that an acquittal in the absence of a verdict is a nullity. We cite one case which is **CHAPONDA -v- THE PEOPLE** (1) as an example of this.

The truth of the matter is that the order of the learned reviewing Judge is unexceptionable. Accused persons should not be acquitted without entering any verdict on the basis that a Court feels offended by the conduct of a complainant. This was a miscarriage of justice which was quite correctly, corrected by the reviewing Judge. The appeals are dismissed. We confirm that the appellants shall be retried but they will be on the bail we have just granted them.



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**M.M.S.W. Ngulube,  
CHIEF JUSTICE.**



.....  
**E.L. Sakala,  
SUPREME COURT JUDGE.**



.....  
**P. Chitengi,  
SUPREME COURT JUDGE.**

