

**IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT KABWE**
(Criminal Jurisdiction)

Appeal No. 81/2022

BETWEEN:

REAGAN MULENGA

APPELLANT

AND

THE PEOPLE

RESPONDENT



CORAM: Mchenga DJP, Chishimba and Muzenga, JJA
On 17th November, 2022 and 16th June, 2023

For the Appellant: Mr. B. M. Kapukutula, Senior Legal Aid Counsel, Legal Aid Board

For the Respondent: Mr. B. Siakwa, State Advocate, National Prosecutions Authority

J U D G M E N T

MUZENGA, JA, delivered the Judgment of the Court.

Cases referred to:

1. **Ministry of Home Affairs, the Attorney General v. Lee Habasonda (on his own behalf and on behalf of SACCORD) (2007) ZR 207**

2. **Savenda v. Stanbic Bank (Z) Limited – SCZ Selected Judgment No. 10 of 2018**
3. **Muyunda Muziba and Another v. The People – SCZ Selected Judgment No. 29 of 2012**

Legislation referred to:

1. **The Court of Appeal Act, No. 17 of 2016**
2. **The Criminal Procedure Code, Chapter 88 of the Laws of Zambia**

1.0 INTRODUCTION

- 1.1 The appellant was convicted of the offence of unlawful possession of prescribed trophy, sentenced to 5 years imprisonment with hard labour and committed to the High Court for confirmation of sentence.
- 1.2 On confirmation, Mr. Justice K. Limbani found the Magistrate's Judgment defective, quashed the conviction and sentence, and ordered that another judgment be prepared by the Magistrate.
- 1.3 The appellant has thus appealed against the order of the High Court Judge.

2.0 PROCEEDINGS BEFORE THE SUBORDINATE COURT

- 2.1 The prosecution called a total of 5 witnesses. After hearing evidence of the prosecution and the defence, the learned magistrate proceeded

to render a judgement, in which the appellant was convicted and sentenced to five (5) years imprisonment with hard labour. The Magistrate also referred the matter to the High Court for confirmation of the sentence.

3.0 PROCEEDINGS BEFORE THE HIGH COURT

- 3.1 In its confirmation ruling, the High Court Judge found the Magistrate's judgment to be defective as it did not meet the requirements of what a judgment should contain. Reliance was placed on **Section 159(1) of the Criminal Procedure Code**, the case of the **Ministry of Home Affairs, the Attorney General v. Lee Habasonda**¹ and the case **Savenda v. Stanbic Bank (Z) Limited**.²
- 3.2 The Judge accordingly quashed the conviction and sentence, ordered that the case be referred back to the trial magistrate for writing another judgment as the one on the record was not a judgment at all.

4.0 GROUNDS OF APPEAL

- 4.1 Disenchanted with the order of the court below, the appellant filed one ground of appeal couched as follows:
- (1) The learned court below erred in law and fact when he ordered that the learned trial Magistrate re-write the judgment.**

5.0 THE APPELLANT'S ARGUMENTS

- 5.1 In support of the sole ground of appeal, learned counsel for the appellant contended that after finding that the judgment of the trial magistrate was incompetent, the High Court Judge ought to have sent the matter back for re-trial before a different magistrate or discharged the appellant all together if, by the nature of the matter, the appellant would be prejudiced if a re-trial is ordered.
- 5.2 We were urged to quash the High Court's order and send back the matter for re-trial before a different magistrate.

6.0 RESPONDENT'S ARGUMENT

- 6.1 On behalf of the respondent, learned Counsel contended that he was not in support of the order made by the learned Judge. It was his contention that the High Court Judge misdirected himself with regard to what constitutes a Judgment. According to counsel, **Section 169(1) of the Criminal Procedure Code Chapter 88 of the Laws of Zambia** is instructive on what a judgment should constitute. It provides as follows:

"The judgment in every trial in any court shall, except as otherwise expressly provided by this Code, be prepared by the presiding officer of the court and shall contain the

point or points for determination, the decision thereon and the reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it."

- 6.2 It was further contended that in the case of **Ministry of Home Affairs, the Attorney General v. Lee Habasonda¹** and **Savenda v. Stanbic Bank (Z) Limited²** the Supreme Court guided that "every judgment must reveal a review of the evidence, where applicable a summary of the arguments and submissions, if made, findings of fact, the reasoning of the court on the facts and the application of the law and authorities, if any, to the facts."

- 6.3 It was submitted that from the foregoing, the following are the elements to look for in a judgment:

- (a) **Must be prepared by the presiding officer of the court;**
- (b) **Must have a review of the evidence, where applicable;**
- (c) **Must have a summary of the arguments and submissions, if made;**
- (d) **Must have a point or points for determination;**
- (e) **Must have a finding or findings of fact;**

- (f) **Must have the decision thereof;**
- (g) **Must have the application of the law and authorities if any to the facts;**
- (h) **Must have reasons for the decision;**
- (i) **Shall be dated and signed by the presiding officer in open court at the time of pronouncing it.**

- 6.4 According to counsel, the judgment of the trial court satisfied all these requirements. It was submitted that the trial magistrate did review the evidence of both the prosecution and the defence. The judgment in question has a summary of the arguments by both parties. We were urged to uphold the conviction and sentence passed by the trial court.
- 6.5 In the alternative, learned counsel was of the view that should we agree with the learned judge of the court below that the said judgment does not constitute a judgment as per **Section 169(1) of the Criminal Procedure Code** and the cases of the **Ministry of Home Affairs, the Attorney General v. Lee Habasonda¹** and **Savenda v. Stanbic Bank (Z) Limited²** we should exercise the powers conferred unto us under **Section 16 of the Court of Appeal Act No. 7 of 2016** and send the matter back for re-trial in the interest of justice.

7.0 THE HEARING

- 7.1 At the hearing of this appeal learned Counsel for the appellant Mr. Kapukutula and learned Counsel for the respondent Mr. Siafwa, informed the Court that they would rely on their respective arguments.

8.0 CONSIDERATION AND DECISION OF THE COURT

- 8.1 We have considered the record, the sole ground of appeal and the arguments of both Counsel. The issue in this appeal is whether the judgment of the trial court met the threshold in **Section 169 of the Criminal Procedure Code** and consequently the propriety of the Order by the Court below.
- 8.2 In 2007, the Supreme Court guided on what constitutes a judgment in the case of **Minister of Home Affairs, the Attorney-General v. Lee Habasonda**¹ the Apex Court held *inter-alia* that:

"Every judgment must reveal a review of the evidence, where applicable, a summary of the arguments and submissions if made, findings of fact, the reasoning of the court on the facts and the application of the law and authorities if any, to the facts."

- 8.3 The Supreme Court later in the case of **Muyunda Muziba and Another v. The People**³ considered importance of a judgment and had this to say:

"We must add, from the outset, that the judgment of the trial Court must always be an important part of any record of appeal. There are a number of previous decisions that this Court has made which clearly show how important a judgment of a trial Court is to the entire life of a criminal case."

- 8.4 In its ruling, the court below observed that the judgment on record is incomplete and thus no judgment at all as it does not meet the required standard. We have taken time to read the record of appeal and the judgment in question. To begin with, the record is unclear as it has several typos and incorrect words. Little or no sense could be made of what is contained therein. We were only able to make sense of what transpired after having read the summary of evidence in the judgment. We wish to urge people involved in the preparation of records of appeal to take extra care and proof read the typed records.
- 8.5 Coming to the judgment of the trial court, we agree with the observations made by the High Court judge that the said judgment was not in conformity with the principle of judgment writing as

espoused by the Supreme Court in the authorities referred to herein. Judgment writing is not a casual exercise, a lot of thought must be put in. It must be legible, concise, well-reasoned and logically written. We therefore agree that the judgment of the trial court did not meet the threshold of what constitutes a judgment.

- 8.6 What remains to be considered is the propriety of the order made by the Judge, after finding that the judgment was defective, to have the trial Magistrate re-write the judgment. We hold the view that the position taken by the Judge was misconceived. Once a judgment is found to be defective, the appellate court has the option of ordering a re-trial or acquitting the appellant. Ordering the trial court to re-write the judgment is none of them. Whether or not one or the other will be preferred will depend on the circumstances of each case, including the propriety of subjecting the appellant to a second trial, how much time has passed from the time proceedings in the trial court were concluded, and whether the evidence would have supported a conviction among other considerations.

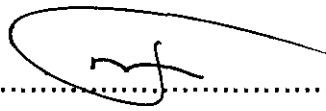
8.7 We have no hesitation in agreeing with learned counsel for the appellant that the order made by the judge was flawed and we quash it. We thus allow the single ground of appeal.

9.0 CONCLUSION

9.1 Having allowed the appeal, we quash the order of the High Court and in its place, we accordingly send back this matter for re-trial before a different Magistrate.


C. F. R. MCHENGA
DEPUTY JUDGE PRESIDENT


F. M. CHISHIMBA
COURT OF APPEAL JUDGE


K. MUZENGA
COURT OF APPEAL JUDGE