SILAS CHIBWE v ATTORNEY-GENERAL (1980) Z.R. 22 (H.C.)

HIGH COURT
SAKALA, J.
26TH JUNE, 1980
1980/HP/692

Flynote
Constitutional Law - Detention - Preservation of Public Security - Unlawful externalisation of funds - Whether prejudicial to public security.
Constitutional law - Detention - Grounds for detention -Signing of - Whether necessary to be signed by President.
Constitutional law - Detention - Immunity - Whether President estopped from detaining person who has been granted immunity.

Headnote
The applicant was detained under the Preservation of Public Security Regulations, reg. 33 (1). He was served with grounds of detention signed by the Secretary to the Cabinet. It was alleged that the applicant had on two different dates conspired with others to unlawfully externalise large sums of money. It was further alleged that these activities were prejudicial to public security.

In his application, the applicant argued that he had been granted immunity and this had been violated, further that the grounds were not signed by the President but by the Secretary to the Cabinet, and lastly that the grounds of detention were unrelated to the Preservation of Public Security and therefore unlawful.

Held:
(i) The President's powers of detention are so wide that he is not estopped by an immunity from detaining a person whom he

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believes to be dangerous to public security. However, even if the applicant was granted a general immunity then his activities to the detaining authority showed that he was still dangerous and thus he could not seek cover under it.
(ii) It is not a constitutional requirement that the grounds for detention have to be signed by the President. Under s. 9 of the Statutory Functions Act, Cap. 3, the Secretary to the Cabinet is empowered to signify the authority of the President by his signature.
(iii) The expression "Public Security" is inclusive and not exclusive. To conspire to unlawfully externalise funds from a country whose economy is experiencing great difficulties in foreign exchange is prejudicial to public security which activity if left uncontrolled would lead to certain economic consequences and hardships on the people of this country.

Cases referred to:

(1) Buitendag (1974) Z.R. 156.
(2) Kapwepwe and, Kaenga v The People (1972) Z.R. 248.
(3) Chipango v Attorney-General (1970) Z.R. 31.
(4) Chakota v Attorney-General - 1979/HP/1482.
(5) Munalula and 6 ors v Attorney-General S.C.Z. Judgment No. 2 of 1979.
(6) State of Bombay v Atma Ram Vaidya A.I.R. 1951 S.C. 157.
(7) Herbert v Phillips and Sealey (1967) 10 W.I.R. 435.
(8) Naresh Chandra v State of West Bengal A.I.R. (46) 1959, S.C. 1335.
(9) Seegers v Attorney-General (1976) Z.R. 117.
(10) Mudenda v Attorney-General 1979/HP/1564.
(11) Maseka v Attorney-General 1979/HP/97.

Legislation referred to:
Public Security Regulations, Cap. 106, reg. 33 (1).
Constitution of Zambia, Cap. 1, Art. 27 (1).
Statutory Functions Act, Cap. 3, s. 9.

For the Applicant: Chimbelu Esq. , Chimbelu & Co.
For the Respondent: A.G. Kinariwala Esq. , State Advocate.

Judgment
SAKALA, J.:

This is an application for the issue of a writ of habeas corpus *ad subjiciendum.* In support of the application, the applicant has filed three affidavits. The first affidavit filed on the 29th May, 1980, exhibits three documents. These are a revocation order dated 19th September, 1979, marked "SC1" revoking the applicant's detention order of the 25th June, 1979, detention order marked "SC2" dated 20th May, 1980, made by His Excellency the President pursuant to reg. 33 (1) of the Preservation of Public Security Regulations and grounds of the applicant's detention marked "SC3" dated 20th May, 1980. The second and third affidavits are supplementary and in reply respectively. The affidavit

in reply was filed after the hearing of the application aimed at affording the applicant an opportunity to make a reply to affidavits in opposition which were received few minutes before the hearing. The respondent filed two affidavits in opposition. The affidavit in opposition by one Gabriel Musa Chisanga Siwakwi, exhibits two documents marked "GMCS 1" a detention order dated 25th June, 1979, made by His Excellency the President and "GMCS 2" dated 7th July, 1979, containing the grounds of the applicant's detention of the 25th June, 1979. All the evidence in this application has been by way of affidavits.

The applicant's affidavit filed on the 29th May, 1980, reveals that he holds a number of agencies for obtaining import and other licences on behalf of various bodies in his livelihood. About ten or eleven months ago on the 25th June, 1979, he was detained for about two months on the authority of the President for allegedly being implicated in a conspiracy to externalise various sums of money

amounting to about ten million kwacha. That detention was revoked. The applicant deposed that the conspiracy was alleged to have involved some people of Asian origin and certain officials in the Ministry of Commerce, Industry and Foreign Trade. He states that he was promised immunity or indemnity from prosecution or any other penalty or inconvenience by a team of investigators including one called Mr Bottomley of the Special Investigation Team on Economy and Trade (hereinafter referred to as SITET) in consideration for information on people he had dealings with in the allegedly irregularly obtained import licences and on the alleged irregular methods for obtaining the same. In consideration of the immunity or indemnity, he revealed the names of the people he had dealings with. As a result of this information a number of people who applied for import licences through him were detained. But the officials in the Ministry who dealt with him were transferred. As a result of the immunity and information he supplied he was released. But on the 20th May, 1980, eleven months after his release, he was again detained. The applicant contends that the grounds of his present detention are the same as those of the first detention for which he was released following the immunity which was in exchange of certain information. The applicant admits being a middle man through his agency in the transactions which led to the first detention but contends that he acted in good faith and had no reason to suspect any irregularities in the transactions. Paragraphs (13) and (14) of his affidavit of the 29th May, 1980, read as follows:

> "13. That in regard to the detention order of the 20th day of May, 1980, and the grounds in respect thereof I confess ignorance of fact regarding any illegalities or improprieties and further that in any event:
>
> (i) The Order of detention is unlawful and invalid ab initio in that the Order was served on me without the grounds relating thereto - that the grounds were served on me two days later
> (ii) The grounds served on me on the 22nd day of May do not disclose a crime or a threat to Public Security and in that event

> both the order and the grounds are bad, unconstitutional, unlawful and bad at all laws
> (iii) That if anything the grounds implicitly of illegalities for which charges against me can be filed under either the Penal Code or the Exchange Control Act
>
> 14. That in the premises to detain me under the Preservation of Public Security Act is an abuse of process and that my detention is unconstitutional, unlawful, malicious and improper (also having regard to the immunity promised and granted to me as aforesaid) and I therefore humbly pray for a writ of Habeas Corpus *ad Subjiciendum* to issue."

But Paras 4 to 8 of the supplementary affidavit read as follows:

> "4. That I do not fully understand and appreciate the English language and that the grounds for my latest detention referred to in my earlier affidavit were not explained to me in a language I understand fully namely my mother tongue;
> 5. That in any event I do not understand the grounds even in English as they stand because

of vagueness in that the grounds alleged a conspiracy without explaining its nature;
6. Further that the grounds as stated in the last paragraph are vague in that they speak of suppression of crime ". . . disobedience of the law as well *as for* the preservation of public security . . .";
7. That consequently I do not know which of the two I am being detained for;
8. That while the detention order was signed by His Excellency the President the grounds were not so signed by him nor on his behalf (see exhibits) and that in the premises the detention unlawful."

The affidavit in reply consists mainly of arguments and denials. But paras 3 and 8 of that affidavit read as follows:

"3. That I have had read and explained to me what purports to be the affidavits in opposition of George Richard Bottomley and Gabriel Musa Chisanga Siwakwi dated the 12th and 13th days of June, 1980, respectively,
8. That this my reply is not mandatory nor am I under an obligation in the absence of any new points being raised in the affidavits in opposition to file one."

Before reviewing the affidavits in opposition, I would like to make certain observations on the applicant's affidavits. In para. 13 (1) of the affidavit of 29th May, the applicant alleges that the order of detention is unlawful and invalid *ab initio* because it was served without grounds but grounds were served only two days later. The point was not taken up by his counsel in this court. In any event it is untenable in law. The Constitutional requirement is that grounds are to be furnished "as soon as is

reasonably practicable" but "not more than fourteen days after commencement of detention." It is not a Constitutional requirement that the grounds be furnished at the time of serving the detention order. The supplementary affidavit in paras 4 to 8 introduces further and completely new grounds from these in the first affidavit. The affidavit in reply for the first time introduces the element that the contents of only the affidavits in opposition had had to be read and explained to the applicant. In the same reply the applicant alleges that his reply is not mandatory and was not under obligation to file it. All I can say is that no one compelled the applicant to file a reply. As a matter of fact the reply was filed on the application of his counsel.

Turning to the affidavit in opposition by Mr Bottomley, an Assistant Superintendent in the Zambia Police Reserve employed as a Senior Research Officer in the Special Investigation Team Economy and Trade (SITET) of the Ministry of Home Affairs, it reveals that the applicant was detained on the 6th July, 1979, and not on the 25th June, 1979, as alleged. Mr Bottomley admits in his affidavit that the applicant was promised immunity from prosecution but denies that the applicant was promised immunity from any other penalty or inconvenience as alleged. He denies that the grounds of the present detention are the same as those of the order of the 25th June, 1979. He states that in the first order, the period covered the offences between 1st January, 1977, and 22nd June, 1979. In the present order the period covered offences between 20th September, 1979, and 1st May, 1980. The

grounds in the first order related to conspiracy between the applicant and one Ravindra Bhimsinh Devalia whereas the grounds of he present detention relate to conspiracy between the applicant and Messrs Rajun Lekhraj Mahtani and Gopaldas Dharamadas Metharam Mirpuri. Mr Bottomley has denied that the applicant acted in good faith or that he had no reason to suspect any irregularities in the transaction. He has further denied that the applicant's detention was an abuse of process or improper. Mr Bottomley has also deposed that on the 8th and 14th August, 1979, he interviewed the applicant in connection with the offences subject of the applicant's grounds of detention of 9th July, 1979. The interview was carried out in the English language which the applicant fully understood and the applicant's statement was recorded by him in the English language which statement was subsequently read over to the applicant in the presence of his then lawyer Mr A.M. Mtopa. The applicant signed the statement and certified it correctly recorded.

The affidavit in opposition by Gabriel Musa Chisanga Siwakwi, a Detective Chief Inspector in the Zambia Police Force, attached to the Special Investigation Team Economy and Trade, (SITET) in the Ministry of Home Affairs states that the applicant understood the English language fully well. On the 6th July, 1979, in company of Mr George Richard Bottomley and Mr Edward Chileshe he conducted a search at the applicant's office during which a number of questions were put to the applicant in the English language which the applicant understood fully and answered them in the English language. On the same day, he served the applicant the Presidential Detention Order dated 25th June, 1979. He fully explained .

to him the contents in the English language which he fully understood. On the 10th July, 1979, he served the applicant the grounds of detention in respect of the Presidential Detention Order and he fully explained to him the contents in the English language; the applicant fully understood them. He pointed out that exhibit "SC2" was served by him on the applicant on the 22nd May, 1980, the contents were fully explained to the applicant in the English language. The applicant understood them.

The foregoing is the evidence in these proceedings. It is common cause that the applicant was first detained pursuant to a Presidential Detention Order made on the 25th June, 1979. In respect of that order he was released pursuant to a Presidential Revocation of Detention Order dated 19th September, 1979. He was again detained pursuant to another Presidential Detention Order made on the 20th May, 1980. This is the order the applicant now challenges. The grounds for the earlier detention as per document exhibited by the affidavit of Detective Chief Inspector Siwakwi read as follows:

> "TO: SILAS CHIBWE
> WHEREAS on the 6th day of July, 1979, you were detained by Order of the President made on the 25th day of June, 1979, under Regulation 33 (1) of the Preservation of Public Security Regulations.
> AND WHEREAS it is provided by Article 27 (1) of the Constitution that every person detained shall, not more than fourteen days after the commencement of his detention, be furnished with a Statement in writing specifying in detail the grounds upon which he is

detained.
NOW THEREFORE you are hereby informed that the grounds upon which you are detained are:
That between 1st January, 1977, and 22nd June, 1977, you conspired with Ravindra Bhimsinh Devalia in Zambia to unlawfully externalise ten million kwacha. These activities are prejudicial to public security and there is a genuine apprehension that if left at large you will continue to persist in these unlawful acts and therefore it has been found necessary to detain you."

The grounds for the present detention as per document exhibited in the affidavit of the applicant read:

"TO: SILAS CHIBWE
WHEREAS on the 20th day of May, 1980, you were detained by Order of the President made on the 20th day of May, 1980, under Regulation 33 (1) of the Preservation of Public Security Regulations.
AND WHEREAS it is provided by Article 27 (1) of the Constitution that every person detained shall, not more than fourteen days after the commencement of his detention be furnished with a

Statement in writing specifying in detail the grounds upon which he is detained.
NOW THEREFORE you are hereby informed that the grounds upon which you are detained are:
That between the 20th September, 1979, and 1st May, 1980, you conspired with Rajun Mahtani and Gopaldas Dharamadas Metharam Mirpuri in Zambia to unlawfully externalise three million kwacha. These activities are prejudicial to public security and there is a genuine apprehension that if left at large you will continue to persist in these unlawful acts and therefore for the purposes of the suppression of crime and prevention of the concerted defiance of and disobedience of the law as well as for the preservation of public security it is necessary to detain you."

The applicant has contended in his affidavit that the grounds for the earlier detention for which he was released following the grant of immunity are the same as the grounds for the present detention. The grounds in both documents relate to conspiracy, but I cannot accept that they are the same. They relate to different periods, different people and different amounts. If criminal charges had to be preferred against the applicant based on the contents of the two documents I have no doubt in my mind that the contents would be subject of different counts in a charge sheet.

On behalf of the applicant, Mr Chimbelu has advanced arguments in this court under five heads. These are:

"1. That the immunity granted to the detainee during the first detention has been violated and that, the executive agents should be estopped or plainly stopped from dishonouring the

same;
2. That the grounds furnished to the detainee were in a language he did not understand well contrary to constitutional requirements;
3. That the grounds were in any event vague;
4. That the grounds were not furnished by the detaining authority - but by the Secretary to the Cabinet: What is the Secretary to the Cabinet's authority to do so. That if there was any delegation of authority it was improperly exercised and is therefore unlawful;
5. That the grounds for the detention are unrelated to the Preservation of Public Security and therefore unlawfully exercised."

I propose to deal with the arguments in the order presented.

The question of immunity is common ground. The point of contention is that according to the applicant, the immunity covered not only prosecution but any other penalty or inconvenience. The respondent disputes this. Mr Chimbelu has submitted that the applicant understood the immunity to mean that he was not going to be prosecuted. On that basis Mr Chimbelu argued that the applicant should be protected by law and the respondents are estopped from going back on that agreement. But on the same argument Mr Chimbelu doubts the basis on which the police

can grant immunity. On the other hand, Mr Kinariwala on behalf of the respondent has submitted that this court is not the proper forum to enforce an immunity from prosecution particularly that the applicant has not been threatened with any prosecution.

This court does not know the nature of the immunity or indemnity. But the point of immunity is well taken and has certainly some force in it. But the argument based on immunity overlooks the evidence and the extent of the powers of detention under the Preservation of Public Security Regulations. I have already observed that the applicant was released from his earlier detention pursuant to the immunity. He was only redetained about eleven months later on what I have said different grounds. From the evidence before me I am satisfied that the applicant was not granted a general immunity. But even if this were so I do not think that the detaining authorities would be precluded from detaining a person whose activities they believe continue to endanger public security simply because of the immunity. It is settled law that the detaining authorities are not precluded from detaining a person who has been acquitted of criminal charges even if the grounds of detention were identical to the criminal charges of which he has been acquitted. (*Buitendag* (1).) This court ventures to say that an argument based on an acquittal is perhaps more forceful than that based on immunity.

Baron, D.C.J., in *Kapwepwe and Kaenga v The People* (2) at p. 260 put the extent of the powers of detention in the following words:

> "The machinery of detention or restriction without trial is, by definition, intended for circumstances where ordinary criminal law or the ordinary criminal procedure is regarded by the detaining authority as inadequate to meet the particular situation."

After giving various reasons for the inadequacy he went on on the same page to say:

> "These are far-reaching powers. In particular it must be stressed that the President has been given power by Parliament to detain persons who are not even thought to have committed any offence . . . "

If the President's powers of detention are so wide how can it be said that he is estopped by an immunity from detaining a person whom he believes to be dangerous to public security? An acquittal does not prevent him from detaining a person on grounds identical to the charges. If the applicant was granted a general immunity then his activities to the detaining authority showed that he was still dangerous and thus he cannot seek cover under the immunity. This application, on the basis of immunity, can therefore not succeed.

The second argument is that the grounds furnished to the applicant were in a language he did not understand well contrary to the constitutional requirement. On behalf of the applicant it was contended that the applicant does not understand the English language very well and no effort was made at the time of serving grounds to ascertain whether he

understood the English language very well. It was submitted that Art. 27 (1) (*a*) of the Constitution requires that grounds be furnished on a detainee in a language he understands. It has been contended that the applicant acknowledged receipt of the grounds by signing his name because he was told to sign them whether he liked it or not. Relying on the case of *Chipango v The Attorney-General* (3) Mr Chimbelu submitted that to furnish grounds in a language which a detainee does not understand amounts to furnishing no grounds at all rendering the detention invalid. Mr Kinariwala pointed out that attached to the document containing the grounds of detention is a certificate of service signed by the officer who served the grounds indicating the contents of the document were fully explained to the applicant. Mr Kinariwala argued that if the applicant did not understand the English language, the attestation clauses in the applicant's affidavits should have show that the contents had been first explained to him in the language he appeared to have understood well and where the contents had been interpreted by some other person and not the Commissioner for Oaths that person's name should have appeared in the attestation clauses. He pointed out that this was not the case here. It was Mr Kinariwala's submission that the applicant's allegation that he does not understand the English language was an afterthought because it was never raised in his first affidavit. Citing the case of *Chakota v The Attorney-General* (4), Mr Kinariwala pointed out that the furnishing of grounds in the language the applicant understands is a constitutional requirement which must be complied with but this requirement is applicable where the detainee is illiterate and cannot understand or appreciate the English language with sufficient certainty. There was therefore no need to furnish him with the grounds in any other language other than the English language.

It is a constitutional requirement that a statement furnished in writing to a detainee in terms of Art. 27 (1) (*a*) "be in a language that he understands." The phrase "be in a language that he understands . . ." appears to have been considered for the first time in the case of *Geofrey Chakota v The*

Attorney-General (4). There were four applicants in that case. The common issue raised in each case was that the grounds of detention furnished to the applicants were in a language which each of them did not understand and consequently the provision of Art. 27 (1) (*a*) of the Constitution of Zambia was not complied with. Three of the applicants in that case were proved illiterate. They could not understand, read or write English. One of them however knew a bit of English. At p. 8 of his judgment my brother Commissioner Kakad had this to say:

> "In my considered view where a detained person is illiterate, the detaining authority should, at the time of serving a written statement of grounds under Article 27 (1) (*a*) make certain that the grounds are fully explained and translated in a language that the detainee understands; and a certificate of such explanation stating the language in which it was explained should be attested by the officer who explained the grounds to the detainee. Where a detainee is illiterate in English, the detaining authority following the above

> procedure would in my view be considered as having strictly complied with the provision "a statement in writing in a language that he understands" under Article 27 (1) (*a*). The interpretation and explanation of the grounds to a detainee illiterate in English, in a vernacular language that he understands, I consider, affords a constitutional protection and places him in a position to be able to make representation as provided under Article 27 (1) (*a*)."

I entirely agree with this opinion. In that case the case of the three applicants who could not understand, read or write English turned on the fact that they were illiterate in their mother tongues as well and thus it made no difference in what language the grounds were written. In addition the applicants admitted that the grounds had been explained to them subsequently and had made representations before the Tribunal. Thus all the applications were dismissed in that case.

In the instant case whether the applicant is literate or illiterate in the English language is a matter of evidence. The question of language is only raised in his supplementary affidavit in which he alleges that he does not fully understand and appreciate the English language and the grounds were not explained in a language he understands namely, his mother tongue. I do not know whether he can write and read in his mother tongue.But to the grounds of detention is attached a certificate of service indicating that the grounds were explained although the language is, not stated. His affidavits do not indicate that their contents were explained to him. Under the High Court Rules O. 5 (20) (*g*) it is a requirement that where a witness is illiterate this fact will be stated in the affidavit and it will also be stated that the affidavit was read over, or translated into his, own language and the witness appeared to understand. This was not stated in the present case. Yet the affidavit in reply allowed after the hearing purports that the affidavits in opposition were read and explained to the applicant. This is the man who holds a number of agencies for import and other licences on behalf of various bodies. This is the man who had dealings with officials in the Ministry of Commerce, Industry and Foreign Trade with regards to import licences. I think it is common knowledge that most transactions if not all pertaining to import licences are conducted in English. Even if it were not so, the evidence of Mr Bottomley is that he recorded a statement from the applicant in the

English language which he understood and signed as his statement in the presence of his then lawyer a Mr A.M. Mtopa. The applicant in his affidavit in reply says he is not obliged to reply to matters raised in the affidavits in opposition. I am inclined to agree with Mr Kinariwala that the applicant's contention that he does not understand the English language is an afterthought. I accept the respondent's evidence on the point and hold that the grounds of detention were fully explained to the applicant. He understood them well. I further hold that the applicant fully understands and appreciates the English language with sufficient certainty. The application cannot therefore succeed either on this point.

The third argument is one of vagueness of grounds. It was argued on behalf of the applicant that he is presently detained on grounds which are

essentially the same as the first detention leaving him in a quandary as to whether there was anything he did not tell the SITET officials.. It was also argued that the alleged activities in the grounds were not mentioned. The applicant, it was argued, does not know whether he is detained for the suppression of crime or preservation of public security. It was thus submitted that in these circumstances, he would be unable to make a meaningful representation. Mr Kinariwala replied to this submission by citing the cases of *Kapwepwe and Kaenga v The Attorney-General* (2) and *Munalula and Others v The Attorney-General* (5), in which the Supreme Court pointed out that if grounds could be understood by a detainee with sufficient certainty, it cannot be said that the grounds are vague. He argued that the grounds in the instant case disclose an offence of conspiracy which is an offence under the Penal Code. They also disclose unlawful externalization of funds, an offence under the Exchange Control Act. The period covered is nine months with specific dates given. These, he submitted are matters which the applicant can clearly understand. He submitted that it was not necessary to set out in detail the evidence that would substantiate the allegations.

The law on the question of vagueness of grounds is now well settled in Zambia. The question has been discussed in several cases including the case of *Kapwepwe and Kaenga v The Attorney-General* (2) in which both Doyle, C.J., and Baron, D.C.J., cited the following passage from the majority judgment delivered by Kania, C.J., in the case of *State of Bombay v Atma Ram Vaidya* (6):

> "What is meant by vague? Vague can be considered as the antonym of 'definite'. If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is however improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the detained person to make a representation against the order of detention it cannot be called vague."

In the West Indian case of *Herbert v Phyllis and Sealey* (7) A M. Lewis, C.J., had this to say:

> "The object of requiring a detainee to be furnished with a statement specifying in detail the grounds upon which he is detained is to enable him to make adequate representations to the independent and impartial tribunal which the same section of the constitution requires to be set up for the review of his case. The statement is not required to contain the evidence which has come to the knowledge of the Governor and which it may be against the public interest to disclose. But it must, in detailing the grounds for detention, furnish sufficient information to enable the detainee to

> know what is being alleged against him and to bring his mind to bear upon it. A ground which is vague, roving or exploratory is insufficient to enable a detainee to bring his own mind to bear upon any acts or words of his which may possibly have attracted the attention of the authorities and from which the Government has drawn conclusions adverse to him which satisfy the Governor that it is necessary to exercise control over him. With such a ground an innocent person would not know where to begin with the representation of his case to the tribunal."

In the Supreme Court of India, in the case of *Naresh Chandra v State of West Bengal* (8) at pp. 13 and 14 it was stated:

> "Vagueness is a relative term. Its meaning must vary with the facts and circumstances of each case. What may be said to be vague in one case may not be so in another and it could not be asserted as general rule that a ground is necessarily vague if the only answer of the detained person can be to deny it. If the statement of facts is capable of being clearly understood and is sufficiently definite to enable the detained person to make his representation, it cannot be said it is vague."

These passages were also cited with approval in the recent case of *Munalula and Others v The Attorney-General* (5). In the instant case, the grounds related to, (i) a conspiracy between the applicant and Messrs Mahtani and Mirpuri, (ii) to unlawfully externalise three million kwacha, (iii) between 20th September, 1979, and 1st May, 1980. According to the detaining authority these activities are prejudicial to public security, and in the mind of the detaining authority, there is a genuine apprehension that if the applicant is left at large he will continue to persist in this unlawful act and for purposes of suppression of crime and prevention of the concerted defiance of and disobedience of the law as well as for the preservation of public security it is necessary to detain the applicant. It does not need a lawyer to understand and appreciate these grounds. The offences have been spelt out. The people involved have been named. The period has been stated. The purpose of the action has been spelt out, what is then vague? I am satisfied that the grounds provide sufficient information to enable the applicant to make a meaningful representation. There is therefore no basis for him being in a state of quandary. I hold that the grounds are not vague.

The fourth argument is that the grounds were not signed by the detaining authority but by the Secretary to the Cabinet. Counsel for the applicant pointed out that he was not aware under what

authority the Secretary to the Cabinet should sign the grounds of detention. He argued that the signing of grounds is crucial because His Excellency the President must direct his attention to the grounds upon which he deprives a subject of his liberty. He cited the observation by Cullinan, J., in the case of *Seegers v The Attorney-General* (9) where he said at p. 121:

> "The grounds subject of this case go further than the reasonable belief. They contain conclusion of fact. The statement of such a

> conclusion however even though furnished by the Secretary to the Cabinet does not establish the subjective satisfaction of the President in the matter. The statement clearly refers only to the order made on the 6th February, 1976. I do not see how it can be construed as referring to the Presidential Detention Order made some two weeks later."

It was submitted by Mr Chimbelu that it is imperative on the detaining authority to seriously address their minds to the grounds by signing the same. So that if the grounds are signed by somebody else, there is no way of knowing that the detaining authority has addressed its subjectivity to the grounds. Mr Kinariwala observed that many cases have come before the High Court as well as the Supreme Court in which the grounds of detention have been signed by the Secretary to the Cabinet. The authority of the Secretary to the Cabinet has not been challenged. It is being challenged for the first time. He submitted that the authority to sign the grounds by the Secretary to the Cabinet is contained in s. 9 (1) of the Statutory Functions Act, Cap. 3 of the Laws of Zambia, the Secretary to the Cabinet having replaced the Secretary - General to the Government under the new Constitution.

This is another point well taken by the counsel for the applicant. But I consider it to be merely technical. Regulation 33 (6) of the Preservation of Public Security Regulations empowers a Police officer of and or above the rank of an Assistant Inspector to arrest any person in respect of whom he has reason to believe that there are grounds which would justify his detention under the regulation. A person arrested may be detained for period not exceeding twenty-eight days pending a decision whether a detention order should be made against him. Under reg. 33 (1) whenever the President is satisfied that for purposes of preserving public security it is necessary to exercise control over any person the President may make an order against such a person directing that he be detained. It is quite clear under these provisions that a Presidential Detention Order only comes into play after the Police have established that there are grounds which would justify a person's detention. In my understanding the Presidential Detention Order is made on the basis of the grounds presented to His Excellency the President. It is therefore safe to assume that before His Excellency the President makes a detention order he has already addressed his mind to the grounds. Otherwise how does he become "satisfied that for the purpose of preserving public security it is necessary to exercise control over any person?". The subjectivity of the President in my view cannot be determined by his signature. The very fact that there is Presidential Detention Order is in itself proof that the President has addressed his mind to the grounds of detention. It is not in my opinion a constitutional requirement that the grounds for detention have to be signed by the President. The constitutional requirement is that grounds must be furnished within a certain period. If it was Parliament's

intention that the grounds should be signed by the President, it would have said so; I do not understand the passage in the judgment of my brother Cullinan, J., to have decided that when the grounds are signed by the

Secretary to the Cabinet then the President has not addressed his mind to them. Section 9 of the Statutory Functions Act of Cap. 3 of the Laws of Zambia fully covers the point. The Secretary to the Cabinet is by that section empowered to signify the authority of the President by his signature. The point of signature, therefore, although well taken, cannot in my view render the applicant's detention unlawful.

The fifth and last argument is that the grounds for the detention are unrelated to the preservation of public security and therefore unlawfully exercised. The argument on this ground on behalf of the applicant was that the grounds in both detentions allege breaches to the Exchange Control Act. It was contended that the Preservation of Public Security Act being a much earlier act than the Exchange Control Act, the mischief set out to be suppressed by that act cannot be said to be the same as that in the latter act. It was further the contention of counsel for the applicant that the Preservation of Public Security Act must be used for proper purposes. Thus where an act like the Exchange Control Act provides penalties the regulations made thereunder must be made to work otherwise the various laws with penalty sections would be rendered useless if the Preservation of Public Security Act was used for everything. It was submitted that the powers of detention in this case was abused. Mr Kinariwala pointed out that the term "public security" is defined in s. 2 of Cap. 106. The definition, he said, is inclusive and not exclusive. It includes suppression and prevention of crime. Mr Kinariwala urged the court to take judicial notice of the fact that Zambia is in great difficulties with foreign exchange. Certain development projects have suffered because of this. Thus he submits, that if a person involves himself in activities of unlawfully externalising large amounts of money, the economy of Zambia is bound to suffer.

The expression "public security" is defined in s. 2 of the Preservation of Public Security Act as follows:

> "In this Act, the expression 'public security' includes the securing of the safety of persons and property the maintenance of supplies and services essential to the life of the community, the prevention and suppression of violence, intimidation, disorder and crime, the prevention and suppression of mutiny, rebellion and concerted defiance of and disobedience to the law and lawful authority, and the maintenance of the administration of justice."

In the case of *Mudenda v The Attorney-General* (10), Silungwe, C.J., observed that the section is couched in very wide terms. He accepted the submissions that the definition is not exhaustive. I also had the opportunity to discuss the definition of public security in the case of *Maseka and The Attorney-General* (11). In that case, I pointed out that the expression 'public security' is inclusive and not exclusive. I still stand by what I said in that case. In my view, to conspire to unlawfully externalise three million kwacha from a country whose economy is experiencing great difficulties in foreign exchange is certainly prejudicial to public security which activity if left uncontrolled would

lead to certain economic consequences and hardships on the people of this country. The detaining

authorities in this case are saying that the applicant's activities are prejudicial to public security and there is the genuine apprehension that if the applicant is left at large he will continue to persist in these unlawful acts. In order therefore to suppress the crime and prevent these concerted defiance of and disobedience of the law and for the preservation of public security they have found it necessary to detain the applicant. The applicant's grounds of detention are in my view related to preservation of public security. On this ground also this application must fail. In the result the applicant fails on all the five arguments. Accordingly, I hold that he is lawfully detained. Each party will bear its own cost

Application rejected.
