

EDWARD JACK SHAMWANA v THE ATTORNEY-GENERAL (1981) Z.R. 270  
(H.C.)

HIGH COURT  
CHAILA,  
14TH  
(1980/HP/1656)

JANUARY,

1981

J.

Flynote

Constitutional law - Detention - Detention without trial - Continued detention - Failure by the State to lay charges against the detainee within reasonable time - Whether constitutes curtailment in enjoyment of the detainee's freedom of movement and personal liberty.

Constitutional law - Detention - Detention without trial - Word used in statute - Whether the meaning of the word will be the same throughout.

Constitutional law - Detention - Detention without trial - Provisions Art. 15 (3) of Constitution - Whether Applicable to persons detained under reg. 33 of Preservation of Public Security Regulations.

Headnote

This was an application brought by Shamwana asking the High Court for an order against the State. The applicant a Commissioner of the High Court and a leading member of the Zambian Bar was detained pursuant to the detention order signed by the President in accordance with reg. 33 (1) of the Preservation of Public Security Regulations. The Presidential Order was signed on 31st October, 1980. Prior to this date, the applicant had been in detention since 14th October, 1980. He was detained from 24th October up to 1st November, 1980, under a police detention order issued under Regulation 33 (6) of the Preservation of Public Security Regulations. The applicant had occasionally been interrogated by members of the Zambia Police but had not been charged with any offence.

The State served the applicant with grounds of detention. The grounds of detention clearly implicated the applicant with an attempt to overthrow the Government of the Republic of Zambia.

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By his notice of motion the applicant asked the court to release him either unconditionally or upon reasonable conditions including in particular such conditions as would be reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

On behalf of the State, the learned Assistant Senior State Advocate submitted that the provisions of Article 15 of the Constitution did not apply to the applicant. He further submitted that the applicant was arrested and detained not on reasonable suspicion of having committed criminal offences in Zambia but he was arrested and detained under regulation 33 (1) of the Preservation of Public Security Act, Cap. 106. He also submitted that in accordance with the decision in *Kapwepwe and Kaenga v The Attorney-General* (1) the detaining authorities are not obliged to prefer criminal charges against the applicant, that it is up to the to decide whether to detain the person or to

prosecute.

**Held:**

- (i) The machinery of detention or restriction without trial is by definition, intended for circumstances where the ordinary criminal law or the ordinary criminal procedure is regarded by the detaining authority as inadequate to meet the particular situation. *Kapwepwe and Kaenga* (1) followed.
- (ii) The detaining authority have got discretion either to prosecute a person or to detain him.
- (iii) Regulation 33 (1) is regarded as a law which authorises taking away personal liberty of persons without trial during the time when Zambia is at war or when a declaration under Art. 30 is in force. *Sharma v A-G.* (3) followed.
- (iv) The word "detained" in Art. 15 is used in a different context om the word "detained" in Art. 27. In Art. 27 the word "detained" is used for the purposes of preserving public security; Whereas in Art. 15 the word "detained" is used for the purposes of instances mentioned in that Article which include detention of a person pending appearance in courts on criminal charges.
- (v) The provisions of Art. 15 (3) do not apply to persons detained under reg. 33 of the Preservation of Public Security Act, Cap. 106.

**Legislation referred to:**

Constitution of Zambia Cap. 1 Arts. 13-27; Art. 29 (1) (2).

Preservation of Public Security Regulations, Cap. 106 reg. 33 (1) (2) (6).

High Court Rules O. 4 r. 1 (3).

State Proceedings Act, Cap. 92 s. 12 (1).

**Cases referred to**

(1) *Kapwepwe and Kaenga, In re* (1972) Z.R. 248.

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(2) *Munalula and 6 Ors v A-G* (1979) Z.R. 154.

(3) *Sharma v A-G* (1978) Z.R. 163.

For the applicant: In person.

For the respondent: A.G. Kinariwala, Assistant Senior State Advocate.

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Judgment

**CKAILA, J.:**

This is an application brought by Edward Jack Shamwana (whom I shall continue to refer to as "the applicant") asking the high courts for an order against the State. The Attorney-General appears as respondent to the application in accordance with the provisions of the State Proceedings Act, Cap. 92, s. 12 (1).

The application is brought by way of originating notice of motion and it is an application for redress under Art. 29 of the Constitution. This Article relates to the enforcement of the provisions of

Articles 13 to 27 (inclusive) of the Constitution - usually known as the protective provisions-which guarantee the protection of the fundamental rights and freedoms of the Individual.

Omitting provisions and words not relevant to the instant application, Art. 29 of the Constitution reads as follows:

"29 (1) Subject to the provisions of clause (6), if any person alleges that any of the provisions of Articles 13 to 27 (inclusive) has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction -

- (a) to hear and determine any application made by any person in pursuance of clause (1);
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of clause (3);

and may, subject to the provisions of clause (8), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of Articles 13 to 27 (inclusive)."

I should perhaps point out that clause 7 of Article 27 gives authority for the making of rules to regulate the practice and procedure in respect of Proceedings under Article 29. I have been unable to see any rules. In their absence High Court Rules, O. 4 r. 1 (3) applies which provides that:

"Any application to be made to the Court in respect of which no special procedure has been provided by any law or by these Rules shall be commenced by an originating notice of motion."

This is the procedure that has been adopted here. To appreciate the nature of the relief which the applicant is seeking it is necessary first to consider the facts. These are simple and substantially

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not in dispute. The applicant who is a Commissioner of the High Court and a leading member of the Zambian Bar is detained pursuant to the Detention Order signed by the President in accordance with Regulation 33 (1) of the Preservation of Public Security Regulations. The Presidential Order was signed on 31st October, 1980. Prior to this date, the applicant had been in detention since 24th October, 1980. He was detained from 24th October up to 1st November, 1980 under a police detention order issued under Regulation 33 (6) of the Preservation of Public Security Regulations. The applicant has occasionally been interrogated by members of the Zambia police but has not been charged with any offence. The State has served the applicant with grounds of detention. The grounds of detention have clearly implicated the applicant with an attempt to over-throw the Government of the Republic of Zambia.

By his notice of motion the applicant is now asking the Court to release him either unconditionally or upon reasonable conditions including in particular such conditions as are reasonably necessary to

ensure that the applicant appears at a later date for trial or for proceedings preliminary to trial upon the grounds set out in the affidavit of the applicant.

The grounds on which the applicant bases his claim are set out in his affidavit of 29th December, 1980. The full text of the grounds are as follows:

6. " I have been in detention from 24th October, 1980, up to the present day such detention having commenced in consequence of a Detention Order issued purportedly in terms of Sub-regulation (6) of Regulation 33 of the Preservation of Public Security Regulations.
7. On the 1st day of November, 1980, the Detention Order referred to in paragraph 6 above was revoked, but I was not released from detention as I was served on the same day with a Detention Order referred to in paragraph 5 under the Hand of the President of the Republic aforesaid, and dated 31st October, 1980, under subregulation (1) of Regulation 33 of the Preservation of Public Security Regulations.
8. On 31st October, 1980, I was collected from the Central Prison aforesaid and taken to Lilayi, where I was interrogated for 22 hours. This long interrogation was the subject of complaint to this Honourable Court, and a statement on oath by the police officer who interrogated me, that this was not so was disbelieved by this Honourable Court.
9. That notwithstanding such long and continued interrogation, I was again on two separate occasions taken to the Zambia Police Headquarters, where I was interrogated again on both occasions. These last two interrogations took place during the last ten days. 9A. On 24th October, 1980, my office and my house were searched

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- by the police, and about a month later, my offices were searched again for an uninterrupted period of about six hours.
10. Despite such long and separate questioning on three occasions, and such extensive search of my home and office, I have not up to date been charged with any offence.
11. I was served with alleged grounds for my detention; whilst the alleged grounds do not disclose an offence, there is a veiled allegation that I was a party to an alleged attempt to overthrow the Government of Zambia.
12. The President aforesaid has been misinformed and consequently wrongly advised into setting his hand to the Detention Order, ordering that I be detained. This is demonstrable from the fact that I have not to date been charged with any offence, and I am fortified in so saying, by the fact that this long delay is in the teeth of the aforesaid President's public pronouncement a conference, for both the local and international press, especially convened for the purpose, that all those involved in the alleged attempted *coup-de-etat*, will be brought before the Courts within a fortnight. One must assume that this assessment of time within which the suspects would be brought to Court, was based on information placed before the President aforesaid, by the persons who are investigating the matter and who advised the President aforesaid into setting his hand to the detention order, detaining me. It is now very nearly two months since the Press conference and more than eight times over the fortnight referred to by the President aforesaid.
13. I verily believe, that those in charge of the investigations are continuing to misinform the aforesaid President, and that they (the investigators) have exhibited their *mala fides* and bent

on detaining persons for good reason or bad, and are openly and flagrantly abusing the powers vested in them.

14. Clear and unmistakable proof of the investigators *mala fides* and abuse of authority was made patently manifest, by the manner in which they sought and succeeded in setting at nought the judgment of this honourable court in the matter of an Application for a writ of *habeas corpus ad subjiciendum*, made to this honourable court holden at Ndola, by Mr V.S. Musakanya who is also being detained at the Central Prisons aforesaid under like Detention Order. In that matter, the learned trial Judge ordered that the applicant therein be released forthwith. No sooner had the learned trial Judge delivered his judgment, in the exercise of this honourable court's most extra-ordinary and special powers, within seconds, the applicant in that matter was arrested and taken into custody by the Police under the Criminal Procedure Code. The *mala fides* of this arrest, and their (police) obvious disregard, and trifling with this honourable court was soon made plain and shamelessly clear, by the fact that when the applicant therein was produced

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before a Lusaka magistrate in consequence of that arrest, the State entered a nolle-prosequi, and the applicant therein was discharged without a word being said against him.

15. I have been an advocate of this honourable court since 13th April, 1964, and practised in this country as such from that date. I have taken silk, and my place at the inner bar of this honourable court. In addition to my practice, I have for sometime, now served this honourable court as a commissioner of this honourable court. I have an unblemished record, and quite apart from being convicted of any criminal offence, I have not been charged with a criminal offence. I solemnly undertake to abide by any and all of the conditions or restrictions this honourable court may in all the circumstances of my case see fit to impose, to ensure that I shall present myself, whenever called upon to do so before any tribunal that may be possessed any matter before or however arising out of the subject matter of my detention.
16. I know of no impediment to an order of this honourable court being made for my release either unconditionally or upon reasonable conditions including in particular such conditions as are reasonably necessary to ensure that I appear on a later date for trial or for proceedings preliminary to trial and on the contrary, I verily believe, on account of the manifest *mala fides* of the Police, and their lacking in frankness and their willingness to perjure themselves, as pronounced by this honourable court and herein before referred to, and their readiness to abuse their powers and trifle with this honourable court, that they will continue to so conduct themselves in total disregard of the provisions of the Constitution of Zambia that demands that persons against whom the State wishes to prefer charges must be brought to trial speedily, and that my continued detention is ultra vires the provisions of the Constitution of Zambia which guarantee and protect fundamental rights and freedoms, and that in all the circumstances of the case, my release as herein before mentioned will be totally consistent with the presumption of innocence enshrined in the Constitution of Zambia."

It will be seen that the applicant's case raises one main issue which I would call constitutional issue. The applicant claims that his continued detention and the failure by the State to charge him with any

criminal offence constitute a curtailment in the enjoyment of his freedom of movement and personal liberty.

The applicant who appeared in person has submitted that every power and every authority in Zambia is subordinate to the Constitution of Zambia. The Constitution prevails over everything else. He has argued that since Article 15 (3) speaks of 'arrested and detained.' If there is delay in the trial of the person arrested or detained then that person must be released. He has argued that Article 15 does not make any distinction between bailable and unbailable offences. The applicant has further

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submitted that the affidavit in opposition speaks of him having committed criminal offences. That then brings the case within the provisions of Article 15 (3). He has submitted that it is an established law that when a word is used in the statute the presumption is that meaning will be same throughout. He has referred the court to Odgers 5th edition at page 255 . The author at page 256 says:

"In the absence of any context indicating a contrary intention it may be presumed that the legislature intended to attach the same meaning to the same words when used in a subsequent statute in a similar connection."

In *I.R.C. v Keamare* (1956) Char. 483 at page 503 Romer, L.J., said:

"It is, of course, an accepted rule of construction that, where the same word appears more than once in a section of a statute it should receive the same interpretation wherever it occurs; and ambiguity in one place will be resolved by any clarity of meaning which is apparent from another. Nevertheless, where a word has shades of meaning which merge into each other it is, I think, permissible to vary the shade according to each individual context without transgressing the rule to which I have referred."

Viscount Simonds was a little more blunt:

"It is, no doubt, desirable that the same meaning should be given to the same word wherever it is used in a statute, though a long experience of statutes has left me with some scepticism upon that principle."

The applicant has drawn the court's attention to the word "detained" which is used in Article 15 as well as in Article 27 of the Constitution. He has argued that the meaning of the word 'detained' in Article 15 should have the same meaning as to the word 'detained' in Article 27. His argument is that since he has been detained presumably under the authority flowing from Article 27 his freedom has been curtailed and that the court is empowered under Article 15 of the Constitution to release him unconditionally or conditionally. In the applicant's opinion his detention comes clearly within the provisions of Article 15 and that the court have no choice but to release him unconditionally or conditionally. Article 15 (1) reads:

"15. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that to say:

- (a) in execution of the sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of a court of record punishing him for contempt of that court or of a court inferior to it;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

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- (d) for the purpose of bringing before a court in execution of the order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) for the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Zambia or for the purpose of restricting that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted prisoner from one country to another; or (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such order, his presence would otherwise be unlawful."

Mr Kinariwala, the learned Assistant Senior State Advocate has submitted that the provisions of Article 15 of the Constitution did not apply to the applicant. He has submitted that the applicant was arrested and detained not on reasonable suspicion of having committed criminal offences in Zambia, but he was arrested and detained under Regulation 33 (1) of the Preservation of Public Security Act, Cap. 106. To strengthen his argument Mr Kinariwala referred the court to the grounds of detention. The grounds of detention are as follows:

- (1) "That on dates unknown but between the 1st day of March, 1980, and 6th day of October, 1980, you together with Messrs; Goodwin Mumba, Deogratias Syimba, Pierce Annfield, Albert Chilambe and other persons unknown attended unlawful meetings at the office of Mr Goodwin Mumba situated along Cha Cha Cha Road

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- and your offices along Cairo Road, Lusaka where it was resolved to overthrow the lawfully constituted Government of the Republic of Zambia by force.
- (2) That on a date unknown but between 1st day of March, 1980, and 23rd October, 1980, at Lusaka you offered money to Albert Chilambe for the purchase of a Land - Rover registration Number AAD 5842 which was used for the transportation of recruits and firearms from North Western Province of the Republic of Zambia to Lusaka for the purposes of overthrowing the lawfully constituted Government of the Republic of Zambia by force.
  - (3) That you failed to report the above matters to the police or other security forces. Your aforesaid activities are prejudicial to the public security and there is genuine apprehension that if left at large you will continue to persist in these unlawful activities and therefore, for the Preservation of Public Security, it has been found necessary to detain you."

Mr Kinariwala has argued that the applicant has been detained in respect of activities prejudicial to the public security. He has argued that the specific purpose in exercising powers under regulation 33 is to exercise control over persons. He has submitted that the detention of the applicant is quite different from the detention of a person by the authority other than the President which may be for the purpose of taking him before a court of law. He has further argued that when a person is detained under regulation 33 (1) specific remedies have been provided for by law. One of the remedies is that the detainee must be furnished with grounds within fourteen days and in this particular case the applicant has been furnished with grounds of detention as required by Article 27 of the Constitution. Mr Kinariwala drew the court's attention to regulation 33 (2) which stipulates that only the President has power to vary a detention order on such conditions that the President may think fit. He has further submitted that in accordance with the decision in *Kapwepwe and Kaegna v The Attorney-General* the detaining authorities are not obliged to prefer criminal charges against the applicant. It is up to them to decide whether to detain the person or to prosecute. Article 15 (3) of the Constitution provides:

- (3) Any person who is arrested or detained :
  - (a) for the purpose of bringing him before a court in execution of the order of a court; or
  - (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (b) is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable

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conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial."

In Article 15 (2) and (3) the word 'detained' is used. Similarly the word 'detained' is found in Article 27 (1) which reads:



"where a person's freedom of movement is restricted, or he is detained, under the authority of any such law as is referred to in Article 24 of 26, as the case may be, the following provisions shall apply:"

The word "detained" appears also in Article 27 (1) (b). The applicant has urged the court to find that the word "detained" as used in Article 15 has the same meaning with the word "detained" appearing in Article 27 of the Constitution. And if the court comes to that conclusion then his detention would automatically come under the provisions of Article 15 and that the court will have no choice but to release him unconditionally or conditionally. In Oxford dictionary 5th edition the word "detain" is defined as follows: "to keep in confinement" I do not consider that it is possible to determine the meaning of the word "detained" in vacuum by a simple reference to a dictionary definition or by any rigid yardstick. In my view what is required is to look at the context in which it is used in the Constitution. In Article 15 (1) of the Constitution the instances have been laid down in which personal liberty may be interfered with. These instances are mentioned in Article 15 (1) which I have quoted above. It is interesting to note that personal liberty may be interfered with for the purpose of preventing infectious or contagious disease. In considering Article 15 of the Constitution one should not lose sight of the provisions of Article 26 of the Constitution. Article 26 provides:

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of Article 15, 18, 19, 21, 22, 23, 24, or 25 to the extent that it is shown that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under Article 30 is in force, of measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions unless it is shown that the measures taken exceeded anything which, having due regard to the circumstances prevailing at the time, could reasonably have been thought to be required for the purpose of dealing with the situation in question."

In order to arrive at the meaning of the word 'detained', as used in Article 15 and Article 27 of the Constitution it is helpful to look at the Supreme Court's decision in the case of *Kapwepwe and Kaenga v The Attorney-General* Z.R (1972) at page 248. In that case, Baron, J.P., as he then was at page 260 said:

"The machinery of detention or restriction without trial (I will hereafter use 'detention' and cognate expression 'to include

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restriction' and cognate expressions) is, by definition, intended for circumstances where the ordinary criminal law or the ordinary criminal procedure is regarded by the detaining authority as inadequate to meet the particular situation. There may be various reasons for the inadequacy; there may be insufficient evidence to secure a conviction; or it may not be possible to secure a conviction without disclosing sources of information which it would be contrary to the national interest to disclose; or the information available may raise no more than a suspicion, but one which some one charged with the security of the nation dare not

ignore; or the activity in which the person concerned is believed to have engaged may not be a criminal offence; or the detaining authority may simply believe that the person concerned, if not detained, is likely to engage in activities prejudicial to public security. And one must not lose sight of the fact that there is no onus on the detaining authority to prove any allegation beyond reasonable doubt, or indeed to any other standard, or to support any suspicion. The question is one purely for his subjective satisfaction. 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 or to have engaged in activities prejudicial to security or public order, but who, perhaps because of their known associates or for some other reason, the President believes it would be dangerous not to detain. As the learned author Jain, on Indian Constitutional Law, says at page 459:

' . . . by its very nature the subject of preventive detention implies detention on the judgment of an executive authority. It would be very difficult to lay down objective rules of conduct, failure to conform to which should lead to detention. As the very term implies, detention in such cases is effected with a view to prevent the person concerned from acting prejudicially to certain objects which the legislation providing for such detention has in view. Nor would it be practicable to indicate or enumerate in advance what acts or classes of acts would be regarded as prejudicial. The responsibility for the security of the State and the maintenance of public order is on the executive and it must therefore be left free to exercise the power of preventive detention whenever it thinks the occasion demands it."

In the case of *Vincent Namushi Munalula and Others v The Attorney- General* Judgment No. 2 of 1979 S.C.Z. the Supreme Court again gave full approval of the decision in *Kapwepwe and Kaenga's* case. Silungwe, C.J., after referring to a passage of Baron, J.P., already quoted above in *Kapwepwe and Kaenga's* case said:

"I think that the foregoing extract represents an accurate legal position on the question whether the detaining authority may detain rather than lay a criminal charge. It is perhaps necessary to emphasise here that *mala fides* apart, the detaining authority has a discretion whether to institute criminal proceedings or to detain."

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From the decisions of the Supreme Court it is quite clear that the detaining authorities have got discretion as to whether to prosecute the person or to detain. It follows therefore that the applicant's complaint of not being charged with any criminal offences does not hold any valid argument. It is purely for the detaining authority to decide whether to detain the applicant or to prosecute him.

I would also like to refer to Regulation 33 (1) of the Public Security Regulations. It reads as follows:

"33 (1) Whenever the President is satisfied that for the purpose of preserving public security it is necessary to exercise control over any person, the President may make an order against such person, directing that such person be detained and thereupon such person shall be

arrested, whether in or outside the prescribed area, and detained.

In the case of *B. J. Sharma v The Attorney-General S.C.Z.* judgment No. 13 of 1978 Baron, D.C.J., delivering the judgment of the court said at page 3:

"It cannot seriously be argued that the expressions 'any law' and 'any such law' in Articles 26 and 27 of the Constitution refer to complete statutes or statutory instruments; it is trite that sections and sub-sections of Acts of Parliament and statutory instruments, whilst they are to be construed in the context of the entire piece of legislation and indeed in the context also of other legislation in *pari materia*, are separate enactment. Hence, 'any law' and 'any such law' refer not to the regulations as a whole but to the individual regulations and sub-regulations in question, each of which is such a law. Each of them authorises, for its different purposes, during any period when the Republic is at war or a declaration under Article 30 of the Constitution is in force (relating to emergencies or threatened emergencies), the deprivation of a man's liberty without trial, and during such deprivation the safeguards set out in Article 27 must apply."

From the decision the Supreme Court in *Sharma's* case Regulation 33 (1) is regarded as a law which authorises taking away personal liberty of persons during the time when Zambia is at war or when a declaration under Article 30 is in force. As it can be seen from the *Sharma's* case the law authorises deprivation of personal liberty without trial. It is also interesting to note what regulation 33 (1) says. It empowers the President to exercise control over the movements of a person by detaining him. In arriving at the meaning of the word 'detained' as used in Article 15 and 27 of the Constitution one must not lose sight of the context in which they are used. The word in both Articles means keeping somebody in confinement but that must not be looked at in the vacuum. One must look at purposes for which somebody is confined. In accordance with the provisions of Article 15 somebody must be confined or detained for various instances mentioned in Article 15; that includes somebody being detained pending appearance in court for criminal charge or pending investigations on suspicion of having committed an offence. Whereas under regulation 33 somebody is kept in confinement either to allow the

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police to establish as to whether the Presidential Detention Order should be issued or to allow the President to exercise control over any person for the purpose of preserving public security. In my opinion the word 'detained' in Article 15 is used in a different context from the word 'detained' in Article 27. In Article 27 the word 'detained' is used for the purposes of preserving public security. Whereas in Article 15 the word 'detained' is used for the purposes or instances mentioned in that Article which include detention of a person pending appearance in courts on criminal charges.

According to the affidavit filed on behalf of the State the applicant is being detained for the purpose of preserving public security. The grounds of detention clearly state so. I therefore find that the applicant is not being detained for instances mentioned in Article 15 but for the purpose of preserving security. I hold therefore that the provisions of Article 1 (3) do not apply to the applicant. The application is therefore dismissed. There must be judgment for the Attorney-General with costs.

Application dismissed

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