

LEONARD MUNGABANGABA v THE ATTORNEY-GENERAL (1981) Z.R. 183
(H.C.)

HIGH
MOODLEY,
27TH
(1981/HN/403)

COURT

AUGUST,

1981

J.

Flynote

Constitutional law - Detention - Time - Computations of time in which grounds for detention are to be served to comply with statutory requirement of fourteen days.

Headnote

The applicant was detained under a Presidential Detention Order signed on the 9th February, 1977. He was served with the grounds of

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detention on the 23rd February, 1977. It was contended for the applicant that if one includes the date on which the Presidential Detention Order was signed, and the date on which the grounds for detention were served, then it would appear that the statement for the grounds of detention were served on the applicant on the fifteenth day from the commencement of his detention. It was therefore contended that this was in breach of Art. 27(1)(a) of the Constitution which requires the grounds to be served within fourteen days after the commencement of detention.

Held:

- (i) For purposes of Art. 27(1)(a) of the 10 Constitution, the computation of time for furnishing the statement of the grounds for detention should be exclusive of the day on which the actual detention order was signed and the period of 14 days should be calculated thereafter.

Case referred to:

(1) Migotti v Colvill (1878-79) 4 Common Pleas Division 233.

Legislation referred to:

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

Constitution of Zambia, Cap.1, Art. 27(1)(a).

Interpretation and General Provisions Act, Cap. 2, s. 35(a)

For the applicant: N D Patel, Counsel.

For the respondent: R G Patel, Acting Assistant Senior State Advocate.

Editorial

Note:

Where the learned trial judge refers to the day on which the actual detention order was signed, it would appear that this would only be applicable if the detention commenced on the same day as it was signed. In the case of a detention commencing on a day after the date of signing, it appears to

be the intention of this judgment to indicate that the day of commencement of detention should be excluded from the calculation of the relevant time.

Judgment

M.M. MOODLEY, J.: This is an application for the issue of a writ of habeas corpus ad subjiciendum.

The applicant Leonard Mungabangaba was detained pursuant to a Presidential Detention Order dated the 9th February, 1977 in terms of reg. 33(1) of the Preservation of Public Security Regulations of the Preservation of Public Security Act, Cap.106. The statement of the grounds for detention was served on the applicant on the 23rd February, 1977.

The statement of the grounds for detention reads as follows:

"That you on unknown month and date, but in 1976 at Kasempa District of the North-Western Province, you and Fanwell

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Munena were recruited by Adamson Mushala to become his agents and you actively took part in the following:

- (a) Assisted Mushala terrorist gang by delivering letter of propaganda written by Adamson Mushala and members of his terrorist gang to villagers affixing such letters onto trees along the roads for the purpose of gaining support from members of the public for his terrorist gang.
- (b) Assisted Mushala terrorist gang by giving information about the reactions of villagers over Mushala terrorist gang after reading his letters of propaganda delivered by you.
- (c) Failed to report to the police and security forces about the presence of the Mushala terrorist gang in the area when in fact you were aware that the Mushala terrorist gang is wanted by the police and security forces.

These acts are prejudicial to public security and its preservation and for the preservation of public security, it has been found necessary therefore to detain you."

A due return to the writ having been made, Mr N.D. Patel for the applicant submits that the applicant's detention was unlawful and contrary to Art. 27(1)(a) of the Constitution in that the grounds for detention were not furnished to the applicant within the specified period of 14 days as required by the Constitution. This is the sole point taken by counsel for the applicant against the Presidential Detention Order. The issue therefore turns on whether the grounds for detention had been lawfully served on the applicant within the mandatory period of 14 days.

Article 27(1) (a) of the Constitution reads as follows:

"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 or 26, as the case may be, the following

provisions shall apply . . .

- a. He shall, as soon as is reasonably practicable and in any case not more than 14 days after the commencement of his detention or restriction, be furnished with the statement in writing in a language that he understands specifying in detail the grounds upon which he is restricted or detained, "

Counsel for the applicant submits that the applicant was detained under a Presidential Order signed on the 9th February, 1977. He was served with the grounds for his detention on the 23rd February, 1977. It is contended on behalf of the applicant that if one includes the date on which the Presidential Detention Order was signed, namely the 9th February, 1977, and the date on which the statement of the grounds for detention were furnished, namely, 23rd February, 1977, then it would appear that the statement of the grounds for detention was served on the applicant on the fifteenth day from the commencement of his detention. Accordingly, it is contended that since Art. 27 (1) (a) of the Constitution requires the statement of the grounds for detention to be

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furnished not more than fourteen days after the commencement of detention then the service of the grounds of detention on the fifteenth day after the commencement of detention was in breach of the mandatory provisions of the Constitution and, in those circumstances, the detention of the applicant was unlawful. In support of his contention counsel for the applicant relies on the case of *Migotti v Colvill* (1) and in particular the following passage from the judgment of Denman, J., reported at page 234:

"It has been held in many cases that as a general rule, except where it is necessary in order to settle which of two acts done on the same day is to prevail, the law takes no notice of part of a day, and that the first day to be counted is the day any part which is occupied in the particular business which is to endure for a certain number of days in order to fulfil any requirement of the law."

Then further on at page 236 Denman, J., states:

"But I can find no authority saying that the general rule ought not to apply to the case of a sentence of imprisonment. Nor can I see any ground for doubting that it applies to the case where the sentence is for a calendar month or given number of calendar months just as much as a sentence for so many days."

I should state that the issue to be resolved in the case of *Migotti v Colvill* (supra) turned on the computation of time namely, what constituted a calendar month. In that case it was held that a person sentenced to imprisonment for a space of one calendar month is entitled to be discharged on the day in the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect. On the 31st October, the plaintiff was sentenced to be imprisoned for one offence for one calendar month and for a second offence for a period of fourteen days commencing after the expiration of the calendar month. Pursuant to his sentence, he was detained in custody until the fourteenth of December. It was held that the detention was lawful for the calendar month did not expire until the thirteenth of November; he was not entitled to be discharged from the second term of imprisonment until the full period of fourteen days computed from the first December had expired.

Mr. R.G. Patel for the respondent in reply submits that the detention of the applicant was lawful and that the argument raised by the applicant against his continued detention had no valid basis in law, because the statement of the grounds for detention had been served on the applicant within the time specified in Art. 27 (1) (a) of the Constitution Counsel for the respondent relied on s. 35 (a) of the Interpretation and General Provisions Act, Cap. 2. Section 35 (a) reads as follows:

"In computing time for the purpose of any written law:

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done "

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Thus submits Mr Patel for the respondent, the applicant was detained under a Presidential Detention Order dated the 9th February 1977 and if one excludes that day then in terms of s. 35 (a) of the Interpretation and General Provisions Act, Cap. 2, the applicant had been lawfully served with the statement of the grounds for his detention on the fourteenth day, namely 23rd February, 1977. In those circumstances, submits Mr Patel, there was no breach of the mandatory provisions of Art. 27 (1) (a) and the application for the writ should be dismissed.

Having considered the submissions on behalf of the applicant and the respondent, I am satisfied that the court is bound by the provisions of s. 35 (a) of the Interpretation and General Provisions Act Cap. 2. Counsel for the applicant, in reply, contends that this particular Act should not apply to the interpretation of the provisions of the Constitution since mandatory constitutional safeguards should be strictly enforced. Counsel argues that the Constitution was superior to an Act of Parliament which should not be relied on to interpret the provisions of the Constitution. With due respect to counsel for the applicant I must disagree with his submissions in this regard. Section 3 of the Interpretation and General Provisions Act (the definition section) defines "written law" as meaning an Act, an applied act, an ordinance and a statutory instrument. The word "Act" is an enactment of Parliament. The word "Constitution" means the Constitution of Zambia as by law established.

The preamble to the Constitution of Zambia Act Cap. 1 reads as follows:

"An Act to enact a new Constitution of the Republic of Zambia and to repeal the Zambia Independence Act, 1964 and to revoke the Zambia Independence Order, 1964, and the Constitution scheduled thereto, and to provide for the matters incidental thereto or connected therewith."

Thus it follows that the Constitution of Zambia is a schedule to the Constitution of Zambia Act, Cap.1 which is an enactment of Parliament and to which the Interpretation and General Provisions Act, Cap.2 must apply. Accordingly, I hold that for purpose of Art. 27 (1) (a) of the Constitution, the computation of time for furnishing the statement of the grounds for detention should be exclusive of the day on which the actual detention order was signed and that the period of fourteen days should be calculated thereafter. I therefore find that the respondent had properly complied with the mandatory provisions of Art. 27 (1) (a) of the Constitution by serving the statement of the grounds for detention on the applicant on the fourteenth day after the commencement of his detention. And the detention of the applicant is lawful. In view of the fact that the applicant has raised a point of law of some importance I would order that each party should bear its own costs.

Application refused
