GODFREY MIYANDA v THE ATTORNEY-GENERAL (1981) Z.R. 157 (H.C.)

HIGH COURT
KAKAD, J.
17TH NOVEMBER, 1981
(1981/HP/1062)

Flynote
Constitutional law - Detention - Detention under Preservation of Public Security Regulations - Detainee arrested in foreign country - Jurisdiction of detaining authority - Whether court can inquire into circumstances of detention.
Constitutional law - Detention under Preservation of Public Security Regulations - Detainee arrested in foreign country - Detention Order made while detainee is in foreign country - Effect of order.

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Constitutional law and detention - Detention under Preservation of Public Security Regulations - Detention order wrongfully headed - Whether detention order lawful.
Constitutional law - Detention - Detention under Preservation of Public Security Regulations - Declaration of state of emergency - Validity of Public Security Regulations.
Constitutional law - Detention - Detention Order - Order not signed by the President- Lawfulness of detention.
Constitutional law- Detention - Grounds for detention - Grounds not particularised - Whether grounds are vague - Test to be applied.
Constitutional law - Detention - Detention under Preservation of Public Security Regulations - whether Art. 15 of the Constitution applicable.
Constitutional law - Detention - Public Security - When detainee is a threat to public security.

Headnote
The applicant was detained on 22nd May, 1981 and was served with a detention order on 23rd May, 1981. His detention took place at Nsele Airport within the Republic of Zaire. He applied for the issue of a writ of *habeas corpus ad subjiciendum* challenging the validity of his detention. He alleged vagueness and non-particularisation of the grounds for his detention and that there was an abuse of power relating to his constitutional rights of liberty and equal protection. Issues arose whether:

(1) The applicant's arrest in Zaire by Zambian authorities was illegal and unlawful.
(2) the applicant's removal into Zambia from a foreign country nullified the applicant's detention in question,
(3) the detaining authority having brought the applicant into Zambia from a foreign jurisdiction had power to detain him under Public Security Regulations,
(4) the court can question the circumstances in which the applicant was brought into Zambia from the Republic of Zaire.

Held:

(i) Where a wanted person is arrested abroad and brought into Zambia and once that person is within Zambia, the detaining authority has all the jurisdiction to detain that person under the Public Security Regulations. Each country has its own ideas and its own rules in such matters.

(ii) It is trite that an order of arrest or detention would not be effective until the said order is served on the person concerned and the person concerned is in fact apprehended.

(iii) There is in fact a declaration of a state of emergency in Zambia. The Preservation of Public Security Regulations are therefore valid.
(Shamwana v Attorney-General S.C.Z Judgment No.35 of 1980 followed).

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(iv) Article 27 of the Constitution does not require that the statement containing grounds of detention should be signed by His Excellency the President.

(v) Whenever an allegation of vagueness in a ground for detention is made, the test is whether a detainee has been furnished with sufficient information to enable him to bring his mind to bear upon it and to enable him to make a meaningful representation to the detaining authority or the Detainee's Tribunal.

(vi) The position of persons detained under reg. 33(1) of the Public Security Regulations is governed by the provisions of Art. 10 27(1) of the Constitution and not by Art. 15(b) of the Constitution.

(vii) Whether a detained person is a threat to public security and whether he continues to remain so despite change in the circumstances is a matter for the consideration of the detaining authority. The detaining authority's satisfaction is subjective.

Cases referred to:

(1) R. v D/C Depot Battaliers, P.A.S.C., Colchester, *Ex parte* Elliot, [1949] 1 All E.R. 373.
(2) Shamwana v A.G., S.C.Z Judgment No. 35 of 1980.
(3) Chibwe v A-G 1980/HP/692.
(4) Attorney-General v Musakanya SCZ Judgment No. 17 of 1981.
(5) Musakanya v A-G S.C.Z. Judgment No. 15 of 1981.

Legislation referred to:

Constitution of Zambia, Cap. 1 Arts. 27(1), 15.
Preservation of Public Security Regulations, Cap. 106, reg. 33(1).

For the applicant: In person.
For the respondent: A. Kinariwala, Senior State Advocate.

Judgment

J.N. KAKAD, 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 was filed on 21.7.81 and exhibits the detention order and the grounds of detention. The second affidavit filed on 29.9.81 is supplementary to the first affidavit.. The third affidavit filed on 10.11.81, exhibits

fourteen exhibits inclusive of the two exhibits attached to the first affidavit, and is in reply to the five affidavits in opposition filed by the respondent on 28.10.81 and 30.10.81, respectively.

In the first affidavit the applicant deposed that he is a Zambian citizen, 36 years old, married with 7 children and is resident of Lusaka. He, prior to his detention, was employed as a sales representative with Mazembe Tractor Company and by virtue of that employment it was necessary for him to travel abroad. Before his detention he was in the

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Republic of Zaire. He deposed that on 22.5.81 he was arrested and detained at Nsele Airport within the Republic of Zaire, without being informed of the reasons for his arrest and detention. According to him he was forcibly returned to Zambia whilst his properties were left in Zaire. According to him his removal from Zaire was not in accordance with or in pursuance of any international law or any existing Zambian law, and his removal into Zambia was not in accordance with any exiting Zambian law. He stated that he had been denied legal guarantee and legal representation. He deposed that there was prejudice against him at the time of his detention and his detention was discriminatory. According to him, his detention is a continuing vendetta designed to persecute him and to hinder him from seeking redress. He deposed that he was not brought before a court of law concerning the allegations for which he is detained. According to him there has been an abuse of power relating to his constitutional rights in general and in particular to his liberty and equal protection. He stated that the State has failed to uphold the Constitution. He deposed that the grounds of detention served on him on 29.5.81 are not particularised and are vague.

The second and supplementary affidavit of the applicant runs into pages and deals, in detail, with the facts deposed in his first affidavit.

In the five affidavits in opposition, the applicant's allegations of unlawful arrest, abduction and inhuman treatment are traversed. According to the respondent the appellant was lawfully arrested and lawfully handed over to Zambian authority by Zairean authority, and such was as in accordance with the agreement between the respective Governments. Inhuman treatment except for security purposes is denied .

The applicant has challenged the validity of his detention on various grounds. I will deal with them in the order they are raised.

It is common cause that the applicant was detained under r. 33 (1) of the Preservation of Public Security Regulations. Equally it is common cause that the detention order was made on 22.5.81 and was served on the applicant on 23.5.81. It is not in dispute that the grounds of detention were served on the applicant on 29.5.81 in conformity with Article 27 (1) (a) of the Constitution of the Republic of Zambia.

At the hearing of the application the counsel for the respondent objected to part of the allegations in paragraph 6(e) of the applicant's affidavit in reply, on the grounds that that part raised an issue of alibi. The learned counsel for the State contended that that was the first time that the applicant had raised the issue of alibi, and if the applicant wished to pursue with alibi then the State be given an

opportunity to investigate and reply. At that the applicant conceded that at times during 1.10.80 and 15.10.80 he was within Zambia. He informed the Court that he did not wish to rely on the issue of alibi and applied to the Court to strike out the objected portion of para. 6(e) of his affidavit in reply. That was done so.

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In his first ground the applicant submitted that the detention order was *mala fide*. He contended that his detention was ordered because of the prejudice the detaining authority had on account of his activities, between 1969 and 1977, referred to in para. 5 of his supplementary affidavit. He contended that it was because of his criticism of the Party policies and because of his disagreement with H.E. the President that he was victimised and detained under the detention order in question. He stated that H.E. the President in a press conference in 1977 had pronounced that he (the applicant) was to feel the wrath of the Party. According to him this fact supported his allegation of prejudice. He contended that had it not been for the alleged prejudice he would not have lost his liberty.

The Senior State Advocate, on the issue of '*mala fide*' and 'prejudice' submitted that the events referred to by the applicant in para. 5 of the applicant's supplementary affidavit had no relevance to the applicant's detention in question. He contended that the matters brought out by the applicant in para. 5 of the supplementary affidavit were scandalous and were adduced with the intention of prejudicing this Court. He. urged the Court to strike out para. 5 of the applicant's supplementary affidavit under O. 41 rule 6 of the Rules of Supreme Court (White Book). He submitted that the applicant's disagreement with the detaining authority and his dismissal as MSB Director, were events between 1969 and 1977, and had no relationship to the detention in question. According to him, if that was so, H.E. the President would have detained him during or before the events related to the present detention i.e. before 1977. He said that H.E. the President did not have to wait for 3 years to detain the applicats for the alleged events between 1969 and 1977.

In paragraph 5 of the applicant's supplementary affidavit, the applicant has detailed 15 events between the years 1969-1977, showing (1) his disagreement with Party policies, (2) his disagreement with H.E. the President on the Philosophy of Humanism, (3) his criticism of the Party and its contradicting policies, and (4) his criticism of the Leadership Code.

During 1969 and 1977, the applicant was in Zambia Army holding a high rank. Between 1975 and 1977 he was seconded to M.S.B. as Director. I gather from the evidence that in 1977 the applicant was removed as Director of M.S.B. and later his Commission in the Zambia Army was withdrawn. It is thereafter that he joined Mazembe Tractor Company as salesman. According to the grounds of detention served on the applicant on 29.5.81, it is evident that the alleged grounds related to (i) the applicant's alleged involvement in the alleged conspiracy to overthrow the Government of Zambia, (ii) the applicant's alleged overthrowing of the Zambian Government, and (iii) of failing to report the above activities to the security officers or to police.

Looking at the grounds of detention and looking at the issues of prejudice as enumerated and detailed in para. 5 of the applicant's supplementary affidavit, it is, to my mind, obvious that the alleged events

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between 1969 to 1977 have no bearing to facts alleged in the grounds of detention.

In my new it is inconceivable that the detaining authority, if what the applicant has alleged is true, would have worked for 3 years to victimise the applicant for the events between 1969 and 1977. For the same reasons, I find it difficult to believe that the applicant's present detention is a vendetta for the alleged events between 1969 and 1977. The allegations on the grounds of detention, it is apparent, have no relevance to the facts alleged in para. 5 of the applicant's supplementary affidavit. I cannot see how the applicant, if he was to be victimised for the events between 1969 and 1977, would have been left free to do what he liked and to travel when he liked until he was apprehended in Zaire on 22.5.81. I do not consider the President's statement in 1977 regarding the applicant feeling the wrath of the Party had any implication on the applicant's present detention. The events for which H. E. the President had made statement in 1977 had no bearing to the events alleged in the applicant's ground of detention. The applicant in his affidavit has alleged inhuman treatment after he was detained on 23.5.81. In my opinion, the applicant's alleged treatment after detention, even if true, cannot affect the validity of the detention order. I am satisfied that the applicant's detention in question is not a victimisation or a vendetta in lieu of the alleged events between 1969 and 1977. In my judgment, the detention order in this case is not *mala fide*.

In the second ground the applicant raised the question of his arrest in Zaire and contended that the deprivation of his liberty in Zaire was not sanctioned by law. He contended that his arrest in Zaire was not in accordance with Zambian law and the Constitution. According to him, whilst in Zaire, and when arrested by Zambian authorities, he was a free man. He contended that when arrested in Zaire by the Zambian authority, he was not informed of the reasons of arrest. He submitted that prior to his arrest on 22.5.81 he had agreed to return to Zambia on certain conditions which he had conveyed to the authorities in Zambia. According to him, he had received no reply to his offer and was surprised at his arrest on 22.5.81. He contended that no police officers from Zaire were involved when he was arrested by Zambian officers. According to him, he was kidnapped by Zambian officers. He contended that his removal from Zaire by the Zambian authority was illegal and unconstitutional, therefore, his detention in Zambia is unlawful.

The Senior State Advocate in reply to the allegations of illegal removal from Zaire did not deny the circumstances in which the applicant was brought from Zaire to Zambia. He submitted that the applicant's removal from Zaire to Zambia was agreed upon between the Governments of Zaire and Zambia and it was in accordance with that agreement that the applicant was arrested in Zaire and brought to Zambia. According to him the applicant 22.5.81 was lawfully handed over by Zairean authorities to Zambian authorities and at the time the

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applicant was handed over by Zairean authorities, he was in custody of Zairean Officers. He contended that the applicant's removal from Zaire was neither unlawful nor an abduction.

It is not in dispute that the applicant on 22.5.81 was arrested by Zambian Security officers at Nsele

Airport within the Republic of Zaire. The applicant when arrested on 22.5.81 was therefore not within the jurisdiction of Zambia. He was under a foreign jurisdiction. The applicant contended that the Zambian authority had no jurisdiction to arrest him in Zaire and consequently his arrest and detention in question is unlawful and illegal. According to the Respondent the applicant was lawfully handed over by the Zairean Government in accordance with the agreement between the said Governments and therefore the applicant's arrest in Zaire was perfectly valid and legal. The issues, as I sea them, are: (1) whether the applicant's arrest in Zaire by Zambian authority was illegal and unlawful; and (2) or whether the applicant's removal into Zambia from a foreign country nullified the applicant's detention n question.

On the first issue, the applicant contends that at the time the Zambian Officers arrested him at Nsele Airport within Zaire, he was not in custody of Zairean Officers and therefore it was not the Zairean authority who had handed him over to the Zambian authority. The applicant to his affidavit in reply filed on 10.11.81 attached his warn and caution statement which is Ex. GKM/HC/2. At page 9 of the said warn and caution statement the applicant stated:

> "One of the important demands was if it had been complied with to have enabled Zairean Government to free me and give my passport or hand me to other agencies. I wish further to state that I made efforts to return but I did not succeed. I wrote further letters to the Zairean authorities demanding that either they let me know why they were holding me or hand me over to other organisations who might help in disposing off the case which had been dragging on since 29th October, 1980, when the Zairean authorities took me in their custody."

At page 10 of the warn and caution statement, the applicant stated:

> "Since January, 1981 and even before that I have been pestering the Zairean to meet me and discuss why I should continue to be in their custody. I have never had any response. On 22.5.81 I was informed that I was finally to meet Mr Nkama, that is the Officer I had been demanding to meet. I was driven by the Zairean soldiers to what I thought was a Nkama's office but instead I found myself at the Zairean Air Force base and I was instructed to get out of the bus which was parked very close to a civilian type aircraft. Two people whom I have never met before came from the aircraft and started to search me and one of them handcuffed me. Property which was on my person was removed and handed to persons I did not see. I was then taken into the aircraft marked 9 T - AEJ. On the aircraft my legs were chained to their ankles and one of the two who had searched me handcuffed himself

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> to my right hand. Aboard the aircraft were other persons namely Mr A K. Mbewe, Deputy Commissioner Sinyinda who never spoke to me. Also I recognised one of the two pilots as former Airforce Major Franco Mulenga. He took off roughly about 1800 hours Zairean time. We arrived in Zambia and parked at the Mine Air Services Shed from where I was put in a Peugeot 504 and brought to Lilayi Police".

Looking at the above stated facts, it is evident that the applicant, since October, 1980, was in *de*

facto custody of the Zairean Government. I, therefore, cannot see how the applicant can say that he was a free man in Zaire. Secondly, the applicant in the said statement confirms that on 22.5.81 he was handed over by the Zairean soldiers to the Zambian Officers. This further shows that at the time the applicant was handed over, he was in the custody of Zairean soldiers and therefore in custody of the Zairean Government. Therefore it cannot be said that the applicant was a free man in Zaire. I am convinced that it was the Zairean Government which had handed over the applicant to the Zambian authority, i.e. the Zambian Government. The applicant's contention that he was not handed over to the Zambian authority by Zairean authority has no substance. The evidence of the applicant, I find, substantiated the respondent's contention that the applicant on 22.5.81 was in lawful custody of the Zairean Govenment and was lawfully handed over by the Zairean Government to the Zambian Government. This I believe in accordance with the agreement between the said Governments, as contended by the respondent. I find that the applicant has no valid basis to allege that the Zambian authority had illegally arrested and abducted him from Zaire. I am therefore satisfied that the applicant on 22.5.81 was neither illegally arrested nor abducted nor kidnapped from Zaire by the Zambian Government. In my judgment the applicant on 22.5.81 was properly and legally arrested at Nsele Airport, Zaire by the Zambian authority, and his removal from Zaire, I find, was concurrence of the Zairean Government.

The other issues are (1) whether the detaining authority having brought the applicant into Zambia, from a foreign jurisdiction had power to detain him under the Public Security Regulations, and (2) whether the Court can question the circumstances in which the applicant was brought into Zambia from the Republic of Zaire.

It is not in dispute that the Detention Order was served on the applicant on 23.5.81 whilst the applicant was within the Zambian jurisdiction.

In R. v D/C Depot Battaliers, P.A.S.C., *Colchester Ex parte* Elliot (1) the appellate Court in dealing with *habeas corpus* matter on appeal, held:

> "(1) If a person is arrested abroad and is brought before a Court in this country charged with an offence which that Court has jurisdiction to hear, the Court has no power to go into the question, once that person is in lawful custody in this country, of the circum-

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> stances in which he may have been brought here, but the Court has jurisdiction to try him for the offence in question."

At page 376 Lord Goddard, C.J., observed:

> "On the applicant's behalf two points have been taken. It is said that this arrest was illegal because (1) the British authorities had no authority to arrest him in Belgium and he was arrested contrary to Belgian law, and (ii) his arrest was not in compliance with the provisions of s. 154 of the Army Act. The point with regard to arrest in Belgium is entirely false. If a person is arrested abroad and he is brought before a Court in this country charged with an offence which that Court has jurisdiction to hear, it is no answer for hint to say, he

being then in lawful custody in this country.'I was arrested contrary to the laws of the State A or the State B when I was actually arrested'. He is in custody before the Court which has jurisdiction to try him. What is it suggested charge at once without its being heard. He is charged with an offence against English law, the law applicable to the case. If he has been arrested in a foreign country and detained improperly from the time that he was first arrested until the time he lands in this country, he may have a remedy against the person who arrested and detained him, but that does not entitle him to be discharged. through it may influence the Court if they think there was something irregular or improper in the arrest."

Further at page 377, Lord Goddard stated:

' I refer, to show how generally accepted this statement of the law is, to a more recent case in Scotland, *Sinclair v H.M. Advocate* (2). There a person was brought before the Court of Justiciary who had been arrested in Portugal. The Lord Justice - Clerk (Lord MacDonald), who gave the judgment said (12 R. (at sesi) to UI): ' It is said that the Government of Portugal did something wrong, and that the authorities in this country are not going to be entitled to obtain any advantage from the alleged wrong doing. As I have said, we cannot be the judges of the wrong doing of the Government of Portugal. What we have here is that a person has been delivered to a properly authorised officer of this country, and is now to be tried on a charge of embezzlement in this country. He is therefore properly before the Court of a competent jurisdiction on proper warrant. I do not think we can go behind this. There has been no improper dealing with the complainer by the authorities in this country, or by their officer, to induce him to put himself in the position of being arrested, as was the 45 case in two of the cases cited'.

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Lord McLaren put the matter extremely shortly and clearly judgment in which he said (ibid: 45)

"With regard to the competency of the proceedings in Portugal, I think this is a matter with which we really have nothing to do. The extradition of fugitive is an act of sovereignty on the part of the State who surrenders him. *Each country has its own ideas and its own rules in such matters*. Generally it is done under treaty arrangements but if the State refuses to bind itself by treaty and prefers to deal with each case on its merits, we must be content to receive the fugitive on these conditions, and we have neither title nor interest to inquire as to the regularity of proceedings under which he is apprehended and given over to the official sent out to receive him into custody."

That again, is a perfectly clear and unambiguous statement of the law administered in Scotland. It shows that the law of both countries is exactly the same on this point and that we have no power to go into the question, once a prisoner is in lawful custody in this country, of the circumstances in which he may have been brought here. The circumstances in which the applicant may have been arrested in Belgium are no concern of the Court".

In the above quoted judgment the persons were arrested in foreign countries for offences committed

in United Kingdom and were brought into United Kingdom from abroad to face charges before a court of law. In this case the applicant was detained, whilst within Zambia, under the Preservation of Public Security Regulations, which the detaining authority has power to do so. In my view, the findings in that judgment are applicable to the detention in question, because the detaining authority in Zambia at the time, had legal jurisdiction to detain the applicant as much as the Court of Law in United Kingdom had jurisdiction to try those persons. Though the decision in the above quoted case is not binding on this Court, I consider it proper to take it into account when considering the question of jurisdiction in this case. In my judgment where a wanted person is arrested abroad and brought into Zambia and once that person is within Zambia, the detaining authority has, all the jurisdiction to detain that person under the Public Security Regulations. As I have said before, the applicant was detained under the Detention Order in question on 23.5.81 whilst he was within Zambia. The applicant was therefore properly detained on 23.5.81.

Equally, on the authority of *R. v Elliot* (ante), I find that this Court has no power to go into the question of the circumstances in which the applicant was brought into Zambia, because the detention order in question was served on the applicant within Zambia, and whilst the applicant was within Zambian jurisdiction. In my judgment it is no concern of this Court as to how and why Zairean Government had handed over the applicant to the Zambian Government. "Each country has its own ideas and its own rules in such matters." See *R. v Elliot* (ante). I therefore find that the removal of the applicant from Zaire into Zambia,

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assuming that it was improper, and not render the applicant's detention unlawful.

In his third ground the applicant contended that the Detention Order in question was invalid because, according to him, it was deemed to be served on him on 22.5.81 when he was in Zaire. The applicant argued that as the detention order was made on 22.5.81 and as he on that date was within the Republic of Zaire, it was deemed that his detention was with effect from 22.5.81 and therefore the Order was presumed to be served on him at Zaire on 22.5.81.

There is no dispute that the Detention Order in question was made on 22.5.81 and that it was served on the applicant on 23.5.81 whilst the applicant was within Zambia. The situation here could be compared to a warrant of arrest in a criminal matter. Say a warrant of arrest was issued by a Court on 22.10.81 and the person named in the warrant was arrested on 30.10.81, could it be said that the person was under de facto arrest with effect from 22.10.81 i.e. the day on which the warrant was issued? I don't think so. It is trite that order of arrest or detention would not be effective until the said order was served on the person concerned and the person concerned was in fact apprehended. The applicant's contention is clearly erroneous and cannot be sustained. The applicant's detention, therefore, was effective with effect from 23.5.81 and not 22.5.81. There was nothing improper or irregular in serving the said order on 23.5.81 when made on 22.6.81. This issue therefore does not render the detention in question unlawful.

In the fourth ground, the applicant raised the issue of 'heading' on the Form of the Detention Order in question. He contended that as the heading on the Detention Order stated "Preservation of Public Security Ordinance", the said order therefore did not fall under the Preservation of the Public

Security Regulations. I see no merit in that argument as I consider it purely a technical issue. The said Detention Order when read further clearly states that the order in question was under Regulation 33 (1) of the Preservation of Public Security Regulations. The applicant's mind was clearly directed to the Regulation and not to the Ordinance. However it would be advisable for the authority to look into the matter and rectify the heading on the Form. This issue in no way renders the detention order unlawful.

In the fifth ground the applicant submitted that at the time the Detention Order was made and served on him, there was no state of emergency proclaimed as required under the Constitution, and therefore the Preservation of Public Security Regulations were not in force on 23rd May, 1981. These very issues were raised in the Supreme Court of Zambia in the case of *Edward Jack Shamwana v The Attorney-General*, SCZ Judgment No. 35 of 1980, (*see* Supreme Court Judgments, 1980 p. 160); and were decided once and for all. In that ease the learned Chief Justice Silungwe, C.J., in the leading judgment found:

> "By a resolution passed on April, 21st, 1965 the National Assembly extended the life of the declaration for a further period six

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> months (see Vol. III of the National Assembly Debates, April - Mary, 1965, at page 5). This extension was followed by six monthly renewals of the declaration until section 8 of the Constitution (Amendment) (No.5) Act No. 33 of 1969, made the six monthly renewals unnecessary. As a result of the amendment the declaration continues in force for an indefinite period unless and until it is revoked by either the President or the National Assembly. As there has been no revocation, the declaration is to-date still in force under the provisions of section 15 of the Constitution of Zambia Act 27 of 1977".

The above decision answers the applicant's contentions concerning the state of emergency and the validity of the Public Security Regulations and require no further consideration. This contention has no leg to stand and does not render the detention unlawful.

Arguing the fifth ground the applicant contended that the grounds of detention served on him on 29th May, 1981 were not valid and were of no effect because they were signed by the Secretary to the Cabinet and not by H.E. the President. The Senior State Advocate in reply referred to the case of *Silas Chibwe v The Attorney-General*, 1980/HP/692. This very issue was taken in that case, but in a different form. Dealing with the issue my learned brother Sakala, J., observed:

> "It is therefore safe to assume that before His Excellency the President issues a detention order he has already addressed his mind to the grounds. Otherwise how does he become 'satisfied' that for the purposes 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 a 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 certain

> period. If it was Parliament's intention that the grounds should be signed by the President, it would have said so."

I have no reason to disagree with the above decision. Nowhere in Article 27 (i) (a) is it provided that the statement containing grounds of detention should be signed by H.E. the President. Does it therefore matter whether the statement containing grounds of detention was signed by H.E. the President or not? In my judgment the grounds of detention served on the applicant on 29th May, 1981, met the requirements of Article 27 (i) (a) of the Constitution and were therefore effectively served on the applicant. The applicant's detention cannot be rendered unlawful on account of the Act that the statement containing the grounds of detention were not signed by H. E. the President.

Sixthly, the applicant contends that the grounds of detention served on him are vague. Referring to the ground he submitted that how was he expected to know who the 'unknown persons' were, when the State

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itself did not know about the unknown people. He said that he could say whether the State was lying or telling the truth. According to him, the State should have provided the particulars concerning the people with whom he had conspired. Referring to the other grounds, he contended that the State should have specified the exact date and specific place of the alleged activities. According to him, he knew as to when he was in Lusaka between 1st October, 1980 and 15th October, 1980. He said that he was not saying that he was not in Lusaka. He contended that despite of his knowledge as to the time he was in Lusaka between 1st October, 1980, and 15th October, 1980, it was necessary for the authority to specify the exact place and date in order that he could direct his mind to the alleged events.

The Senior State Advocate in reply submitted that the grounds in question were clear and had directed the applicant's mind to the period and place. According to him, on the facts stated in the grounds, it was not impossible or difficult for the applicant to direct his mind to the alleged events. He contended that it was not necessary for the authority to state a specific date or specific place or names of other conspirators, if the detaining authority was unaware of them. He referred to two Supreme Court appeals concerning Musakanya. He stated that the detaining authority did not have to give the names of persons if it was not aware off the names of those persons the applicant had opposed at the time of the alleged conspiracy. According to him failure to detail names of persons did not render the grounds vague. He submitted that the alleged coup at the time was a 'notorious' fact and therefore the applicant was capable of applying his mind to the alleged coup. Referring to the second and the thrd grounds he contended that they were not vague.

In *The Attorney-General v Valentine Shula Musakanya*, S.C.Z. Judgment No.17 of 1981, the learned Chief Justice, Silungwe, C.J., delivering the judgment of the Supreme Court, observed:

> "Fundamentally, the Attorney-General's appeal hinges on the question whether a ground for detention can be said to be vague merely because of a failure to state in it a specific date on which the detainee allegedly participated in activities prejudicial to public security. Mr Kinariwala argues . . . a ground.

In *R. v Kapwepwe and Kaenga* (1) followed by *Munalula and six others v The Attorney-General* (2) this Court laid down the test to be applied whenever an allegation of vagueness on a ground for detention is made. The test is whether a detainee has been furnished with sufficient information to enable him so that he can bring his mind to bear upon it and to enable him to make a meaningful representation to the detaining authority or the Detainee's Tribunal. An illustration which is entirely in point here was given by Baron, D.C.J., as he then was, in *R. v Kapwepwe and Kaenga* (1) concerning the application of the foregoing test. He said at p 262 lines 29-44, that -

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' . . . if the grounds were -
". . . that during the months of January and February, 1972, you addressed meetings in Lusaka at which you advocated the use of violence against persons of different political or tribal affiliations . . . "

This would enable the detainee to make representation on the basis of alibi or mistaken identity and also on merits. For instance he could say "I have never addressed meetings in that place", or "During the months in question I was engaged in a course of study in Dar-es - Salaam" . . . or the detainee might say "It is true that I addressed meetings in Lusaka during the months in question, but I deny that I addressed violence of any kind" this representation is no more than a denial, but the information given cannot be held to be inadequate only for that reason."

Another way of looking at the illustration without in any way altering its meaning is this:

' . . . that on dates unknown but between 1st January and 29th February, 1972, you addressed meetings in Lusaka at which you advocated the use of violence organisation'.

This formulation is similar to the first ground . . . one day.
"In my view . . . will be vague'.

"What all this comes to is that alibi is not synonymous with or analogous to vagueness. It, therefore, follows that grounds are not necessarily vague merely because the absence of specific date therein precludes a detainee from putting forward a particular alibi. Obviously, where the detaining authority is aware of a specific date on which a detainee is alleged to have participated in activities prejudicial to public security, it is duty bound to specify the dates where, however, such a date is not known to the detaining authority, then there, of course, is no requirement to give a specific date. There is nevertheless no dimiunition in the detaining authority's duty to satisfy the requirement of Article 27 (i) (a) of the Constitution by providing adequate information to enable a detainee to make meaningful representation.It is trite that a criminal charge which alleges in its particulars that the offence charged was committed on a date unknown but during a certain specified period, is perfectly valid charge, even though the accused person may or may not be deprived of the opportunity to put forward an alibi in respect of the particular period. It would then, of course, be the duty of the prosecution to prove the commission of the offence during the particular period. In the case nevertheless, an absence of a specific date in the grounds of detention cannot, per se

render the grounds vague, just as in the case of a criminal charge."

In this case, the applicant contends that the first ground is vague because the specific date, the specific place and particularly the particulars of "unknown persons" were not stated in the grounds.

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The three grounds of detention are:

"(1) That on a date unknown, but between 1st and 15th October, 1980, you were approached by a person or persons unknown Lusaka with whom you conspired on a plan to overthrow the lawfully constituted Government of the Republic of Zambia by force.

(2) That in pursuance of the said conspiracy, on date unknown, but during the same period namely; between 1st and 15th October, 1980, you procured 160 AK47 rifles and 100 rounds of amunition, for use by you and the ex - Katangese gendarmes led by Deogratias Symba, who were recruited for the purpose of carrying out the said plan.

(3) That you failed to report the above activities to the Police or other Government Security officers."

At the time the applicant was detained, the alleged attempted coup was no doubt a matter of public knowledge and concern. I don't think I would be wrong to say that the alleged attempted coup at the time was a notorious fact. Looking through pages 8 and 9 of the applicants warn and caution statement Ex. GKM/HC/2, it appears to me that the applicant in March, 1981, when in Zaire was aware of the allegations concerning his alleged involvement in the alleged attempted coup. The applicant on reading the grounds of detention therefore could not have been taken by surprise concerning the statement in the first ground "you were approached by a person or persons unknown", it could be said the detaining authority having directed the applicant's mind to the person, the place and to the alleged attempted coup in the first ground, had meant that the applicant himself was aware of such person or persons with whom he is alleged to have conspired.

Such a situation, it is common knowledge, exists in criminal cases where a person is charged of committing an offence with "a person or persons unknown". Despite that the accused would be in a portion to direct his mind to the alleged offence, and would also be in a position to raise any defence he wishes to raise. In that situation, the charge would not be considered to be defective for lack of particulars. In this case in the first ground the applicant's mind was in clear and unequivocal terms directed to his alleged involvement in the conspiracy. The persons and the place were stated. The period was a matter of a fortnight. Conspiracy to overthrow the Government could not be considered a light affair that one would forget. Secondly, as I have stated before, the applicant since March, 1981, was aware of the allegations against him of his involvement in the alleged attempted coup. Thirdly, the alleged activities in the first and in the second grounds are clearly interdependent and underlinked, except that they are separately stated. In view of the observations in the case of *The Attorney-General v Musakanya* (ante), it is my view that in light of other information given in the first ground, the failure to name the "person or persons" would not render that ground vague. The other particulars, I consider were sufficient to enable the

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applicant to make representation on the basis of alibi or mistaken identity or on merits. It should be noted that the applicant in this matter has not put forward alibi. In the second ground the information is in greater detail. By any stretch of imagination, it cannot be said that the second ground is vague. I don't think the applicant has any serious quarrel with the second and third grounds. In my judgment, the information supplied in all the three grounds were more than sufficient for the applicant to direct his mind to the alleged activities, to enable him to make a meaningful representation. The grounds of detention were therefore not vague to render the applicant's detention unlawful.

In his second ground the applicant raised the question of the provision of Article 15 of the Constitution and contended that his detention was unlawful. This issue was dealt with and decided by the Supreme Court in *Musakanya v Attorney-General*, (5) The Supreme Court Judgment in that appeal was delivered on 8th October, 1981. The appellant Musakanya at that point of time was in the same situation as the applicant was at the time this application was filed.

The Supreme Court in *Musakanya v The Attorney-General* (ante) held that the position of persons detained under Regulation 33 (1) of the Public Security Regulations is governed by the provisions of Article 27 (i) of the Constitution and is not caught by Article 15 (3) (b) of the Constitution. The Supreme Court stated:

> "This then illustrates that a detention which is made for the purpose of preserving public security is a constitutional derogation from the provisions (inter alia) of Article 15 and cannot, therefore, be challenged on the grounds that it is inconsistent with, or in contravention of that Article. The position of a person detained for the purpose of preserving public security is governed by the provisions of Article 27 (i), not those of Article 15 (3) (b) or of the Criminal Procedure Code unless such person is also charged with a criminal offence in which event all of these provisions would become relevant".

On the authority of *Musakanya v The Attorney-General* (ante), the applicant's contention on Article 15 of the Constitution, cannot be sustained. In any case, it appears that the events in this case have over taken the issue.

Lastly, the applicant contends that he, having been taken to Court, is no more a threat to public security, and therefore his continued detention is unlawful.

In Basu's Commentary, (15th Edition) at 139, (dealing with court's powers) it is stated:

> "2. It cannot go into the question whether on the merits the detaining authority was justified to make the order of detention or to continue it. Thus the High Court cannot interfere on the ground that in view of the fact that times have changed, further detention would be unjustified"

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Whether the applicant in this case, is at present a threat to public security and whether he continues to remain so, despite the change in circumstances, is, in my judgment, a matter for the consideration

of the detaining authority, and is no concern of this Court. It is the detaining authority's subjective satisfaction. This Court therefore cannot say that the applicant is no more a threat to public security. In the result, I cannot rule that the applicant's continious detention is unjustified or unlawful.

For the foregoing reasons, I find that the applicant is lawfully detained. The application for a writ of habeas corpus therefore fails.

In new of the fact that the applicant has raised important issues, I order that each party bears its own costs.

Application rejected
