

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(CRIMINAL JURISDICTION)**

HPA/54/2014

BETWEEN:

**THE PEOPLE
VERSUS
VENANT MWITEREHE**



**APPELLANT
RESPONDENT**

**BEFORE Honourable Mrs. J. Z. Mulongoti
on theday of 2014.**

For the Appellant : Mr. K. Muzenga, Chief Legal Aid Counsel,
Legal Aid Board

For the Accused : Mrs. M.M. Bah, Matandalo Senior State Advocate,
National Prosecutions Authority

JUDGMENT

Authority Referred to:

1. Section 341 of the Criminal Procedure Code Chapter 88 of the Laws of Zambia

The appellant was acquitted of **Assault Occasioning Actual Bodily Harm** by the trial Magistrate. The case has come before me as a case stated. The Public Prosecutor has raised five questions which he seeks the opinion of this Court on. Section 341 of the Criminal Procedure Code [CPC] Chapter 88 of the Laws of Zambia, which provides for case stated, reads:

“After the hearing and determination by any Subordinate Court of any summon, charge, information or complaint, either party to the proceedings before the said Subordinate Court may, if dissatisfied with the said determination, as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing, within fourteen days after the said determination, to the said Subordinate court to state and sign a case setting forth the facts and the grounds of such determination, for the opinion thereon of the High Court.”

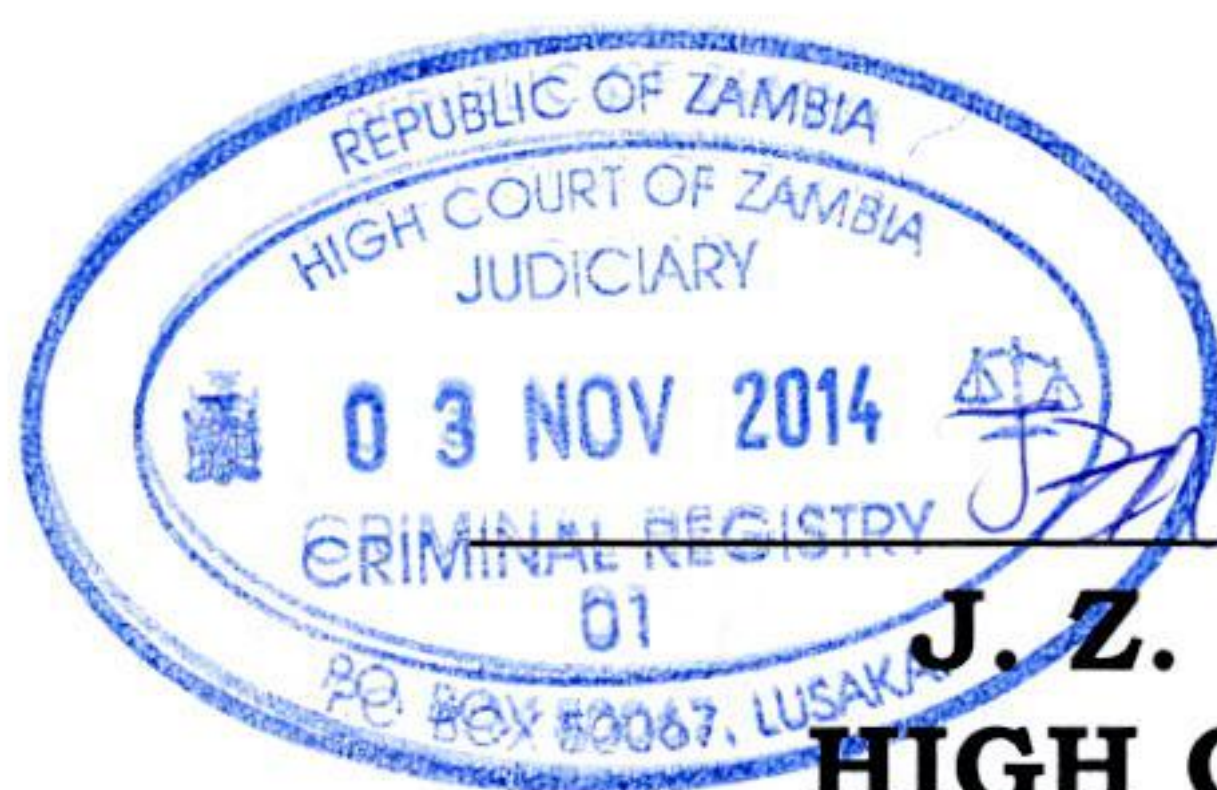
It is clear that it is the Subordinate Court which must state the case for the opinion of the High Court. Perusal of the record herein, clearly shows the five questions were raised by the prosecutor for the opinion of the court, which is irregular and against the provisions of the CPC. Further,

the said questions are actually grounds of appeal from the way they were drafted. They are not questions on points of law but of facts. If the State wished to appeal against the acquittal, it should have simply done that instead of invoking the procedure for a case stated wrongly.

Accordingly, I dismiss the matter for being irregular and misconceived.

If the State wishes they are at liberty to commence afresh and let the Subordinate Court, (Magistrate) state the case in line with the Section 341 of the Criminal Procedure Code.

Delivered at Lusaka this ^{3rd} day of ^{Nov}2014.



J. Z. MULONGOTI
HIGH COURT JUDGE