

## R. v. JACK CHINGARA AND OTHERS.

A CRIMINAL REVIEW CASE OF 1933.

*Lusaka Township Regulations, 1922, Part II, Regulation 1 (2)—public place—native compound at Lusaka not a public place.*

The sub-regulation in question makes the following an offence:

“Playing or betting in any street or public place at or with any table or instrument of gaming or pretended game of chance.”

The expression “public place” was not at the time of the present case defined in the Lusaka Township Regulations and the High Court applied the test of what constitutes a “public place” as laid down in the English decisions.

See *R. v. Gould* p. 43 *ante*.

The offence of gambling is now, *inter alia*, contrary to Regulation 4 (10) of the Townships Regulations made pursuant to section 27 of the Townships Ordinance (Cap. 120). The definition of “public place” appears in Regulation 3 of those Regulations and is identical to the definition of “public place” in By-law 2 of the Ndola Municipal By-laws. Attention is drawn to the judgment of the Federal Supreme Court in *Regina v. Mumanga* 1956 R. & N. 53 on the interpretation of the definition of “public place” in By-law 2 of the Ndola Municipal By-laws. In that case the Court held that for the purpose of By-law 240 of the Ndola Municipal By-laws (which by-law has now been repealed) the Ndola location is not a “public place” within the meaning attributed to that term by Ndola Municipal By-law 2.

Hall, J.: In my opinion, the native compound at Lusaka is not a “public place” within sub-regulation 26 of regulation 1 of the Lusaka Township Regulations, 1922.

It is clear from the evidence of Kirk, and also from the regulations dealing with the native compound in question, that there is a very restricted right of user of the compound, and I am unable, in view of the law obtaining, to differentiate between a compound constituted for a number of natives to reside in (such as I understand the Lusaka compound to be) and, e.g., a building erected for a number of Europeans to dwell in (as, for instance, buildings now being erected in London on clearance of slum areas) which have an open-air yard allotted thereto. Clearly, the public would not have unrestricted right of entry into the latter any more than they would have into my garden and land surrounding my house.

Convictions must be quashed.

*Rex v. O'Connor*, reported at p. 45 *ante*, was not quite in point. I attach a copy of the ruling of Gordon Smith, Acting Judge, therein.

