VINCENT NAMUSHI MUNALULA & 6 OTHERS v ATTORNEY-GENERAL (1979) Z.R. 154 (S.C.)

SUPREME COURT
SILUNGWE, C.J., BARON, D.C.J., AND BRUCE-LYLE, J.S.
20TH DECEMBER, 1978 AND 3RD JANUARY, 1979
S.C.Z. JUDGMENT NO 2 OF 1979

Flynote

Constitutional law - Detention - Grounds for detention - Vagueness - Necessity to give detail of grounds for detention.
Constitutional law - Detention - Where grounds alleged amount to criminal offence - Whether State has a duty to prosecute.

Headnote

The applicants were detained under reg.33(1) of the Preservation of Public Security Regulations and were furnished with grounds of detention in terms of Art 27(1) (a) of the Constitution. The grounds upon which each one of them was detained are stated in the judgment.

Counsel for the appellants contended that the grounds of detention were vague and did not comply with Art 27 (1) (a), and secondly that since the grounds alleged amounted to criminal offences, criminal charges ought to have been laid against the appellants in preference to detention.

Held:
(i) It is a constitutional requirement that a statement furnished to a detainee in terms of Art 27(1) (a) must specify "In detail" the grounds upon which he is detained. "In detail" meaning that he must be supplied with sufficient information to enable him make a meaningful representation.
(ii) It is important for the detainee to know what has been alleged against him, but as to how much detail must be given and what constitutes vagueness will depend upon the circumstances of each case.
(iii) Where facts are notorious or the detainee must himself know them, it cannot be said that a failure to refer in the ground to these facts causes the ground to fail to be in detail.
(iv) Where the grounds upon which the appellants were detained amount to criminal charges the detaining authority has a discretion either to institute criminal proceedings or to detain. *Kapwepwe and Kaenga v The People* (1) followed

Cases referred to:
(1) Kapwepwe and Kaenga v The People (1972) Z.R. 248
(2) State of Bombay v Atma Ram Vaidya A.I.R. (1951) S.C. 157
(3) Herbert v Phillips and Sealey [1967] 10 W.I.R. 435

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(4) Naresh Chandra v State of West Bengal A.I.R.(46) (1959) S.C. 1335
(5) Mhango v Attorney-General (1976) Z.R. 297
(6) Mutale v Attorney - General, (1976) Z.R. 139
(7) Chipango v Attorney-General (1970) Z.R. 31
(8) Knuller v D.P.P., [1971] 3 All E.R. 314
(9) United Bus Co. of Zambia Ltd v Shanzi (1977) Z.R. 397
(10) Kasote v The People (1977) Z.R. 75
(11) Mulwanda v The People (1976) Z.R. 133

(12) Joyce Banda v The Attorney-General (1078) Z.R. 233

Legislation referred to:
Preservation of Public Security Regulations, Cap. 106, reg. 33 (1).
Constitution of Zambia, Cap. 1, Art. 27 (1) (a).

For the appellants: E.T. Kategaya, Legal Aid Counsel.
For the respondent: A.M. Kasonde, Senior State advocate.

Judgment

SILUNGWE, C.J.: These are seven separate appeals from the refusal by the High Court to issue writs of habeas corpus *ad subjiciendum*. The appeals have been heard together on grounds of expediency as all of them raise identical issues.

The seven appellants were each detained pursuant to an order made under reg. 33 (1) of the Preservation of Public Security Regulations and were furnished with grounds of detention in terms of Art. 27 (1) (a) of the Constitution. The following are the grounds upon which each one of them was detained:

> "THAT between November 1972 and January, 1973 you and several other persons did undergo military training by Portuguese and South African soldiers in Angola and South West Africa respectively with the intention that after such training you would return to Zambia to engage in acts of sabotage and to over-throw by unlawful means the Government by law established.
> AND FURTHER that you have been associated with ADAMSON B. MUSHALA a wanted person who has been terrorising members of the public.
> THESE acts are prejudicial to public security and it is feared that if left at liberty you and your associates will indulge in further acts prejudicial to public security to secure and preserve which it is considered necessary and expedient to control you by detention."

Mr Kategaya, on behalf of all the appellants, relies on two additional grounds of appeal. The first of these has two legs, both of which stand on an allegation of vagueness and the second alleges that criminal charges ought to have been laid against the appellants in preference to detention.

It is fitting to deal first with the allegation of vagueness. In so far as the first leg of the submission is concerned, it is contended that the expression "... you and several other persons did undergo military

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training. . ." was vague. Mr Kategaya submits that it was not enough for the detaining authority simply to state that his clients and severed other persons had done what was alleged against them; he said the detaining authority ought to have gone further and given the names of such persons. I do not consider that failure to give names of other persons alleged to have undergone military training together with the appellants in any way rendered vague that part of the grounds of detention. What was really important was that each one of the appellants should know what had been alleged against him, namely that between a specified period he had undergone "military training by Portuguese and South African soldiers in Angola and South West Africa respectively with the intention that after such training you would return to Zambia to engage in acts of sabotage and to over-throw by unlawful means the Government by law established". I have great difficulty in appreciating how that information can be said to be vague. I am satisfied that each one of the appellants knew perfectly well what was alleged against him and so the appeal based upon this leg of the submission must, in my view, fail.

In regard to the second leg of the first ground of appeal, it is contended that the expression ". . . you have been associated with ADAMSON B. MUSHALA . . ." is vague by reason of the fact that no details or instances of the said association were given and that, in consequence of this, none of the appellants was able to make a meaningful representation to the detaining authority.

It is a constitutional requirement that a statement furnished to a detainee in terms of Art. 27 (1) (a) must specify "in detail" the grounds upon which he is detained. The expression "in detail" simply means that the detainee must be supplied with sufficient information so that he is able to make a meaningful representation.

The term "associated" in the case before us must now be considered in order to ascertain whether, on account of it, it can be said that the information supplied to all of the appellants was vague and therefore constituted non-compliance with the constitutional provisions.

The question of vagueness has been discussed in several cases including *Kapwepwe and Kaenga v The People* (1). There both Doyle, C.J., and Baron, D.C.J., cited the following passage from the majority judgment delivered by Kania, C.J., in *State of Bombay v Atma Ram Vaidya* (2):

> "What is meant by vague? Vague can be considered as the antonym of 'definite'. If the ground which is supplied is incapable of being understood or defined with sufficient certainty it can be called vague. It is not possible to state affirmatively more on the question of what is vague. It must vary according to the circumstances of each case. It is however improper to contend that a ground is necessarily vague if the only answer of the detained person can be to deny it. That is a matter of detail which has to be examined in the light of the circumstances of each case. If on reading the ground furnished it is capable of being intelligently understood and is sufficiently definite to furnish materials to enable the

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> detained person to make a representation against the order of detention it cannot be called vague."

In the West Indian case of *Herbert v Phillips and Sealey* (3) A.M. Lewis, C.J., had this to say:

> "The object of requiring a detainee to be furnished with a statement specifying in detail the grounds upon which he is detained is to enable him to make adequate representations to the independent and impartial tribunal which the same section of the Constitution requires to be set up for the review of his case. The statement is not required to contain the evidence which has come to the knowledge of the Governor and which it may be against the public interest to disclose. But it must, in detailing the grounds for detention, furnish sufficient information to enable the detainee to know what is being alleged against him and to bring his mind to bear upon it. A ground which is vague, roving or exploratory is insufficient to enable a detainee to bring his own mind to bear upon any acts or words of his which may possibly have attracted the attention of the authorities and from which the Government has drawn conclusions adverse to him which satisfy the Governor that it is necessary to exercise control over him. With such a ground an innocent person would not know where to begin with the representation of his case to the tribunal."

Clearly, how much detail must be given and what constitutes vagueness will depend upon the circumstances of each case. The Supreme Court of India aptly put it in this way in *Naresh Chandra v State of West Bengal* (4) at p. 1341:

> "Vagueness is a relative term. Its meaning must vary with the facts and circumstances of each case. What may be said to be vague in one case may not be so in another and it could not be asserted as a general rule that a ground is necessarily vague if the only answer of the detained person can be to deny it. If the statement of facts is capable of being clearly understood and is sufficiently definite to enable the detained person to make his representation, it cannot be said that it is vague."

Mr Kasonde has argued on behalf of the respondent that there is nothing vague in the grounds as furnished to the appellants in that Adamson Mushala's activities in Zambia are a notorious fact and that by reference to the appellants being associated with Mushala the appellants knew or ought to have known what it was that was being alleged against them so that their minds could be

brought to bear upon it to enable them to make meaningful representations to the detaining authority. On the other hand, however, Mr Kategaya's argument is that the words "associated" and "concerned" are synonymous and that since the word "concerned" has judicially been held to be vague it follows that the word "associated" must similarly be held to be vague. In support of his argument he has referred us to *Herbert* (3) where Lewis, C.J., said:

> "In the second ground in the statement in this case the crucial word is 'concerned'. There could hardly be a less informative word.

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> It may be a notorious fact that a rebellion has occurred but how or where had the detainee exhibited his concern or implicated himself? It is the detainee against whom action has been taken, it is his acts and words which have been the subject of investigation by the executive, and he is entitled to be told sufficient to enable him to explain them or to refute the conclusion before the tribunal, if he is able to do so."

There, a detention order had been made and the grounds of detention were:

> "That you Dr William V. Herbert, on several occasions during the year 1967, both within and outside of the state, encouraged certain residents in the state and other persons to use unlawful, felonious and murderous means to overthrow the lawful government of Her Majesty in the state, and that you were concerned in armed rebellion against the said lawful government, thereby endangering the peace, public safety and public order of the state."

It seems to me that Lewis, C.J., was justified in expressing himself that the word "concerned" was not an informative one and that while it may be a notorious fact that a rebellion had occurred there was nothing in the grounds to show how or where the detainee had "exhibited his concern or implicated himself". A line must be drawn between *Herbert* (3) and the present cases because here Adamson Mushala was named as the person with whom the appellants had associated. Mushala's activities in Zambia were at all material times, and still are, a notorious fact concerning which the appellants knew or ought to have known. The grounds went further and stated that Mushala was "a wanted person who had been terrorising members of the public". It is indeed common knowledge that as a result of his activities there has been loss of human life. All this is a notorious fact in this land. As Doyle, C.J., put it in *Kapwepwe and Kaenga* (1) at 30 p. 254:

> "Where facts are notorious or the detainee must himself know them, it cannot be said that a failure to refer in the ground to these facts causes the ground to fail to be in detail."

It is my considered view that the word "associated" and, particularly in the context in which it is used in the cases now before us, is sufficiently informative. I am, therefore, not persuaded by Mr Kategaya's argument that that word is synonymous with the word "concerned".

I would agree with the view expressed by Baron, D.C.J.., in *Kapwepwe and Kaenga* (1) at p. 260 where he said:

> ". . . 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."

In this case it is untenable to argue that the grounds of detention were vague. I am satisfied that the appellants were supplied with sufficient information to enable them to know what was alleged against them

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so as to bring they mind to bear on it thereby placing them in a position to make a meaningful

representation to the detaining authority. I would dismiss the appeal based on this ground.

With regard to the second ground of appeal, it is Mr Kategaya's contention that the grounds upon which all of the appellants were detained are tantamount to criminal charges for criminal courts to deal with and that, although he is aware that the detaining authority is not obliged to prefer criminal charges, such charges ought to have been laid against the appellants in preference to detention. As *Kapwepwe and Kaenga* (1) is directly against him on this point, it is his submission that the decision in that case be reconsidered with a view to over-ruling it. He is unable to cite to us any authority to back up this submission. On the other hand, Mr Kasonde argues that it is up to the detaining authority to choose whether to detain or to prosecute and that in certain cases the detaining authority may prefer to detain rather than to lay criminal charges simply on the ground that it may not have sufficient evidence on which to prosecute the case and to prove it beyond a reasonable doubt. He contends tat the question is simply one for the subjective satisfaction of the detaining authority. He relies on *Kapwepwe and Kaenga* (1) for his submission, and cites from it the following passage appearing in the judgment of Baron, 20 D.C.J., at p. 260:

> "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. 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 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 someone 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."

I think that the foregoing extract represents an accurate legal position on the question whether the detaining authority may detain

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rather than lay a criminal charge. It is perhaps necessary to emphasise here that, male fides apart, the detaining authority has a discretion either to institute criminal proceedings or to detain. In my view *Kapwepwe and Kaenga* (1) on the issue now under consideration is good law and as such no need arises for it to be reconsidered. I am fully satisfied that the submission that the detaining authority ought to have laid criminal charges against the appellants in preference to detention cannot be sustained. I would dismiss the appeals based on this ground.

Judgment

BARON, D.C.J.: These are seven separate appeals which on the application of Mr. Kategaya, who appeared on behalf of all seven appellants, were heard together, the two major grounds of appeal being common to all seven cases and the seven appellants all having been detained on identical grounds. Certain of the appellants, who at that stage were not represented, advanced also one or two other grounds of appeal, but Mr 15 Kategaya informed the Court that the appellants in question did not wish to pursue those grounds particularly since, if successful, they could at best lead to the cases being sent back to the High Court for hearing by different judges.

The appellants were detained under reg. 33 (1) of the Preservation of Public Security Regulations (to which I will refer as the Regulations) and each was subsequently served with a statement setting out the following grounds of his detention:

"THAT between November 1972 and January 1973 you and several other persons did undergo military training by Portuguese and South African soldiers in Angola and South West Africa respectively with the intention that after such training you would return to Zambia to engage in acts of sabotage and to over throw by unlawful means the Government by law established.
AND FURTHER that you have been associated with ADAMSON B MUSHALA, a wanted person who has been terrorising members of the public.
THESE acts are prejudicial to public security and it is feared that if left at liberty you and your associates will indulge in further acts prejudicial to public security to secure and preserve which it is considered necessary and expedient to control you by detention."

Mr Kategaya advanced two grounds of appeal: first, that the ground of detention were vague and did not comply with the provisions of Art. 27 (1) (a) of the Constitution; and second, that the grounds, if true, were allegations of criminal offences and that the appellants should therefore have been charged in court.

Mr Kategaya relied on *Kapwepwe and Kaenga v Attorney-General* (1) in which what is now Art. 27 of the Constitution was considered. This Article provides that a person restricted or detained under the authority of any such law an is referred to in Art. 24 or Art. 26 shall:

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

On the question of what was sufficient to comply with the requirement of "specifying in detail", it was held (per Doyle, C.J.) that "the ground must be given with sufficient particularity in the circumstances of the case to enable an adequate representation to be made", and (by me) that "the detainee must be furnished with sufficient information to enable him to know what is alleged against him and to make a meaningful representation".

Mr Kategaya submitted that the grounds were vague in two respects: first, that the allegation that the detainee "and several other persons" had undergone military training, without those persons being named, prevented the appellants from making meaningful representations to the detaining authority. In my view this argument is quite untenable. Even in relation to a criminal charge it has never been suggested that the charge is defective if it alleges that the accused on a stated date "with persons unknown did break and enter . . ."; it cannot therefore be argued that 520 a detainee who is told that the grounds for his detention are that he is believed to have undergone military training, in named places and between stated dates, with other persons does not know what its being alleged against him and is unable to make adequate or meaningful representations. I quote from what I said in *Kapwepwe and Kaenga* (1) at p. 202, where 25 I was illustrating the application of the test as to what amount of detail, and detail of what, would be sufficient in any given case to comply with Art. 27:

"But, if the grounds were -

' . . . a belief that during the months of January and February, 30 1972, you addressed meetingsin Lusaka at which you advocated the use of violence against persons of different political or tribal affiliations . . .'

this would enable the detainee to make representations on the basis of alibi or mistaken identity and also on the 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', when the detaining authority would no doubt initiate the most urgent inquiries as to the truth of these statements which, if true, must mean that a mistake had been made.Or the detainee might say 'It is true that I addressed meetings in Lusaka during the months in question, but I deny that I advocated 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. I particularly adopt and stress the words of Kania, C.J., already quoted

above -

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> 'It is however improper to contend that a ground is necessarily vague if the only answer of the detained person could be to deny it'.
>
> No doubt when the matter comes before the tribunal, the evidence on the basis of which the detaining authority reached its conclusion will be presented, and at that stage the detainee will have more particularised information to which to offer specific replies than is contained in the statement of grounds; but it must be stressed that the grounds are reasons, not detailed statements of the facts or the evidence, and the grounds cannot be said to be insufficiently detailed simply because they do not recite the words the detainee is alleged to have used."

Equally in this case, the grounds cannot be said to be insufficiently detailed simply because they do not set out the names of the individuals (assuming in the appellants' favour that the detaining authority was in possession of this information) with whom the appellants were believed to have undergone military training.

The second respect in which Mr Kategaya submits that the grounds of detention are vague turn on the words "And further that you have been associated with Adamson B. Mushala, a wanted person who has been terrorising members of the public"; he submits that this ground does not specify the acts or words on the part of the appellants, or the place or the period, which point to the circumstances of association between the appellants and Mushala. He cites *Mhango v Attorney-General* (5) a decision in the High Court, where Cullinan, J., said at p. 302:

> ". . . the grounds refer to a conspiracy of 'certain other persons' and to 'your associates', that is, a conspiracy unlimited in persons; no date, no period not even the particular year is specified; no place is mentioned; the type of crime in which it is alleged the applicant engaged covers a wide range: more important, no reference is made to the commission of any particular crime."

Mr Kategaya cites also *Mutale v Attorney-General* (6), where Bweupe, J., said at p. 144:

> ". . . the applicant is alleged to have 'conspired with other persons . . . to commit crimes and that you organised and managed the commission of serious crimes . . .' I have no doubt that when the detaining authorities referred to 'crimes' they meant 'crimes' in the Penal Code. Under this Code we have numerous crimes ranging from misdemeanours, felonies to treasonable acts. The applicant was left to wonder asto whether he conspired with others to commit and organised and managed the commission of, say, treason, stock theft, murder, aggravated robbery, kidnapping, rape, theft of motor vehicle, currency smuggling, espionage, to name but a few. This was not the intention of Parliament that the detainee should be left in the dark. Parliament placed a duty upon the detaining authority to give sufficient information which should enable the detainee to know what is being alleged and to bring his mind to bear on it. This duty is mandatory. It is my

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> considered view that the grounds as given would not assist the applicant to direct his mind to them . . ."

In both these cases the learned judges came to the conclusion, on a reading of the grounds of detention, that they did not meet the test laid down in *Kapwepwe and Kaenga* (1); thus, Cullinan, J., said in *Mhango* (5): "I consider that the applicant, to use the words of Lewis, C.J., (in *Herbert v Phillips and Sealey* (3)) 'would not know where to begin with the representation of his case' to the detaining authority", and Bweupe, J., in the passage already quoted concluded that ". . . the grounds as given would not assist the applicant" to make meaningful representations. The question for us is whether the grounds of detention in the present case meet the test in *Kapwepwe and Kaenga* (1). If the grounds were on all fours or even similar to those cases, notwithstanding

that they are not binding on us, would of course be given due consideration and their reasoning examined to see whether that reasoning commended itself to the members of this court; but in fact I regard the present grounds as significantly different. The appellants are not alleged, as in *Mhango* (5), to have engaged in a conspiracy unlimited as to persons, without a date or a period or a place being specified, or any particular type of crime; the appellants are alleged to have associated with a notorious man (I will return to this question of notoriety), and the ground clearly implies that the association with this man was during a time when he was a wanted person who was terrorising members of the public. For similar reasons the facts in *Mutale* (6) were quite different. The appellants cannot argue that they were left to wonder what kind of activity they were believed to have been engaged in.

Finally on this ground, Mr Kategaya relied on *Herbert v Phillips and Sealey* (3) cited with approval in *Kapwepwe and Kaenga* (1). Lewis, C.J., commenting on the stated ground of detention "that you were concerned in armed rebellion against the said lawful Government, thereby endangering the peace, public safety and public order of the State" said this:

> ". . . the crucial word is 'concerned'. There could hardly be a less informative word. It may be a notorious fact that a rebellion has occurred but how or where had the detainee exhibited his concern or implicated himself? It is the detainee against whom action has been taken, it is his acts and words which have been the subject of investigation by the executive, and he is entitled to be told sufficient to enable him to explain them or to refute the conclusion before the tribunal, if he is able to do so."

Mr Kategaya submits that, just as the word "concerned" was regarded by Lewis, C.J., as singularly uninformative, so the word "associated" should be regarded as similarly uninformative. I would be prepared to agree that if the word "associated" had been used in connection generally with armed rebellion the effect would have been similar; in other words, I think Mr Kategaya would have an argument if the appellants had been alleged to have "associated with armed rebellion" against the lawful Government. But the allegation here is quite positive and informative; each appellant is alleged to have associated with a notorious wanted man

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who was terrorising members of the public. Such association can be valid ground of detention; in *Kapwepwe and Kaenga* (1) I said at p. 260:

> "(The powers of detention) 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."

I am satisfied that the information given to the appellants enabled them to know what was alleged against them and to make representations on the basis of alibi or mistaken identity as well as on the merits.

I turn now to the question of notoriety. The authority here is once again *Kapwepwe and Kaenga* (1). Doyle, C.J., at p. 254 said:

> "Where facts are notorious or the detainee must himself know them, it cannot be said that a failure to refer in the ground to these facts causes the ground to fail to be in detail. It may well be that in some cases it is necessary that the grounds should, as Magnus, J., said (in *Chipango v Attorney-General* (7)) be as particularised as they would have to be in an ordinary pleading. I do not accept that this is a rule which applies generally. The matter must be looked at from the point of view of the detainee himself. Provided the ground is given with sufficient particularity to him in the circumstances of the case to enable an adequate representation to be made by him there is in my view compliance with the requirement to give in detail."

In the same case at p. 263 I said:

> "In approaching the statement of grounds, one cannot look for language as precise as that which one requires in legislation. This is not to say, of course, that the detaining authority can use obscure language which the detainee might find ambiguous or indefinite; but if the test postulated above, namely that a detainee must be given sufficient information 'to enable him to know what is alleged against him . . .' is to be properly applied, the statement of grounds must be looked at from the point overview of the recipient.Thus it is that a court is entitled to have regard to matters which are notorious in the country."

The name of Adamson Mushala is, and was at the time, notorious in Zambia. It was well known that he was alleged to have received military training in a foreign country hostile to the Government of Zambia, that he was alleged to have been actively engaged in the recruiting and training of others with the object of overthrowing the Government of Zambia by force, that the security forces of Zambia had been unable to apprehend him, and that he had over a long period been terrorising the public. Whether or not these allegations were true is not the issue; the issue is whether by alleging an association with Adamson Mushala the detaining authority had sufficiently directed the minds of the appellants to the real

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nature of the allegations being made against them. I entertain not the slightest doubt that the appellants must have known precisely what was being alleged.

Mr Kategaya's second ground of appeal is that the allegations against the appellants were of criminal offences, and that the appellants should therefore have been charged in court. Mr Kategaya was aware that *Kapwepwe and Kaenga* (1), in which precisely the same argument was advanced, was directly against him but he submitted that that case should be reconsidered.

It is of course competent for this court to reverse a previous decision of its own. Before it will do so, however, we must be satisfied not only that the previous decision was wrong but also - and this is particularly so where the decision has been repeatedly followed over a period of years - that there are very good reasons for not continuing to follow it: (see for instance *Knuller v DPP* (8), *United Bus Co. of Zambia Ltd v Shanzi* (9) and *Davis Jokie Kasote v The People* (10)).

The relevant dicta in *Kapwepwe and Kaenga* (1) are these: Doyle, C.J., at p. 250 said:

> "The grounds for a detention order and for a criminal prosecution are entirely different. The first may be mainly precautionary and based on suspicion. The second must be proved beyond reasonable doubt. It is commonplace for a person to be acquitted in circumstances which show that there is very strong suspicion that he committed the crime but the reasonable doubt remains. It may well be, in a particular criminal case, that a man is shown so clearly to be innocent, that the use of that charge against him for the purpose of a detention order would be held to be unreasonable. That however cannot be a general rule and it is certainly not per se a proof of unreasonableness that the detaining authority has chosen to detain in preference to laying a criminal charge."

And at p. 260 I said:

> "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. 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 someone 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."

Mr Kategaya submits that the powers of detention were not meant to be used to detain a person for an indefinite period at the pleasure of the detaining authority without the person being brought to trial. He submits that if it were proper to use the powers for these purposes this would be a serious inroad into fundamental human rights as entrenched in the Constitution and contrary to the democratic tradition of Zambia. He confessed however that he had no authority for his proportion.

It cannot be argued that the power of detention given by reg. 33 (1) is *ultra vires* the Constitution. It is not therefore open to this court to comment on the desirability of those powers being on the statue book. The function of the courts is to apply the law according to its terms while ensuring that the very wide powers that exist to combat subversion and to safeguard public security are used strictly for the purposes for which the legislature intended them and no other. The courts will interfere if the powers are abused (see for instance *Mulwanda v The People* (11) and *Joyce Banda v The Attorney-General* (12)), but not if they are used, as in the cases now before us, to combat subversion and to safeguard public security.

I have no doubt whatever that the powers in question permit the detention of a person for an indefinite period without that person being brought to trial. This does not mean that the person will in fact be detained indefinitely; there are detailed provisions for the review of the case of a detained person by the tribunal established under reg. 33 (7). Mr Kategaya asks us to say that the period during which a person has been detained should be taken into account in considering whether the original detention was lawful. I have great difficulty in following this argument. If the original detention was lawful, as in my view it was since I do not regard the grounds as vague, subsequent changed circumstances will not render it unlawful ab initio. And furthermore it is specifically the function of the tribunal to which I have referred to make recommendations to the detaining authority on the basis of any changed circumstances; it would not be competent for this court to entertain any argument based on changed circumstances, or in other words that it was no longer necessary for the detention to continue.

In my view, there is no reason to think that anything Doyle, C.J., or I said in the passages cited above from *Kapwepwe and Kaenga* (1) was wrong. I agree that these appeals must be dismissed.

Judgment

BRUCE-LYLE, J.S.: I have had the opportunity to read the judgments of the Chief Justice and the Deputy Chief Justice, and I also agree that the appeals be dismissed for the reason stated in those judgments.

Appeals dismissed
