

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

IVES BANDA

Appellant

and

THE PEOPLE

Respondent

CORAM: Chaila, Chirwa and Muzyamba JJ.S.

18th October, 1994

For the appellant : In person

For the Respondent : Mr. M. Mukelebal, Senior State Advocate

J U D G M E N T

Chaila, J.S. delivered the judgment of the court.

On 18th October, 1994 when this case was heard, we announced the verdict of the court. The appeal was allowed and conviction quashed and sentence was set aside. We indicated that we would give reasons later. We now give reasons for our decision.

The appellant together with his friend were charged in the Subordinate Court with an offence contrary to Sections 25 (1) and 35 of the Corrupt Practice Act No. 14 of 1980 as amended by Act No. 29 of 1987. The particulars were that the appellant and his friend on the 6th day of April, 1988 at Lusaka, jointly and whilst acting together corruptly solicited and received K1,000.00 cash as gratification from Mr. J. Kasapato as an inducement or reward for having guarded a motor vehicle for the said Kasapato.

The facts of the case were that on the 6th day of October, 1988 PW5 John Kasapato around 17 hours approached Emmasdale Police Station and sought assistance to guard his truck which had over-turned along Katima Mulilo Road. The truck was carrying second hand clothes. At Emmasdale Police Station, he was referred to Lusaka Central Police Station

where, when he approached the police officer in charge, told him that the police were unable to assist in the matter because of being under staffed. He later approached the appellant and his friend who agreed to assist on condition that he paid a sum of K1,000.00 to which PW5 agreed. We must point out that the question of being paid K1,000.00 came from the evidence of PW5 who was definitely an accomplice in the matter. The appellant and his friend went to guard the truck and they guarded the truck the whole night until the following morning when they knocked off. In the afternoon the appellant and his colleague were approached by the police. They were searched and some money was found on the appellant. Prior to that PW5 had met the police officers at Central Police and had told them that he had some money which he wanted to pay casual workers. The notes in K50 notes were marked and serial numbers were taken. These were the notes which were found on the appellant. The appellant's colleague was acquitted. The appellant was convicted and sentenced to 12 months imprisonment suspended for 12 months. He appealed against both conviction and sentence.

The appellant filed five grounds and has rested upon these written grounds.

The learned Senior State Advocate informed the court that in view of the wording of the section under which the appellant was charged, he was of opinion that an offence had not been committed and therefore decided not to support the appeal. We agree this is the right course taken by the learned Senior State Advocate. The learned trial magistrate in his findings found that two officers had been detailed to guard the vehicle after they had been approached by PW5. The section under which they were charged provides:-

- 25 (1) "Any public officer who by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any thing with which any public body is or may be concerned, shall be guilty of an offence.

35. "Any person who is guilty of an offence under this Part shall be liable -
- (a) upon conviction to imprisonment for a term not exceeding twelve years; and
 - (b) upon a second or subsequent such conviction, to imprisonment for a term of not less than five years but not exceeding twelve years."

It will be observed that from the wording of the section a mere payment of money to somebody is not an offence per se. The evidence in this case showed that the appellant was detailed with his colleague to guard the truck at the request of PW5. After they had completed the assignment PW5 decided to show appreciation to the appellant and his colleague by paying them something. PW5 told the police that he had some money which he wanted to pay casual workers. The job done by two appellants was enormous and according to the appellant he got the money not as a reward but as a sign of appreciation for the job they did. Having taken into account the stand taken by the learned Senior State Advocate, the grounds of appeal and relevant legal provisions, we are satisfied that the appellant did not receive the money corruptly. The money was given to him by PW5 to show appreciation for the job the appellant and his colleague had done in guarding the truck. We further feel that the sum of K1,000.00 cannot be regarded as immodest when one takes into account the value of the

truck and the goods involved. For the foregoing reasons the appeal was allowed conviction quashed and sentence set aside.

M.S. Chaila
SUPREME COURT JUDGE

D.K. Chirwa
SUPREME COURT JUDGE

W.M. Muzyamba
SUPREME COURT JUDGE