

(P. 525)

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

SCZ.JUDGMENT No. 22 of 2008
SCZ/8/270/2005
Appeal No. 39/2006

BETWEEN:

GEORGE LIPIMILE

1ST APPELLANT

ZAMBIA COMPETITION COMMISSION

2ND APPELLANT

AND

MPULUNGU HARBOUR MANAGEMENT
LIMITED

RESPONDENT

Coram: Chibesakunda, Mushabati JJs and Kabalata AJS on 2nd August, 6th
September, 2006 and 23rd July, 2008

For the Appellants: Mr. L.M. Mukande, L.M. Mukande and Company and Mr.
M. Chipanzhya, Legal Counsel, ZCM

For the Respondent: Mr. E. Silwamba, SC, Eric Silwamba and Company and
Mr. M. Mundashi, Mulenga Mundashi and Company.

JUDGMENT

Kabalata , AJS., delivered the judgment of the court.

Legislation referred to:

(1) Penal Code S 116 Cap. 87 Laws of Zambia

Criminal Procedure Code, Cap. 88, S. 65, Laws of Zambia

Cases referred to:

(1) Sebastian Saizi Zulu vs. The People (1990-1992) ZR 62

(2) Miyanda vs. High Court (1984) ZR 62

(3) Zambia National Holdings Limited and United National Independence Party vs. The Attorney-General (1993-94) ZR 115

(4) The People vs. Roxburgh (1972) ZR 31

(5) Jennison vs. Barker (1972) 1 All. E.R. 997

(6) Elias Kundiona vs. The People (1993-94) ZR 59

(7) Arthur Nelson Njovu and Dr. Jacob Mwanza vs. Alshuma Building Materials Company Limited and Jayesh Sha SCZ judgment No. 12 of 2002

This is an appeal against a ruling of a High Court judge who held that the High Court of Judicature for Zambia enjoys extra-territorial jurisdiction to try a
Zambian citizen resident in Zambia for an act of contempt of court allegedly
Committed in a foreign jurisdiction, namely, France. The facts, which were
Common cause, are that this matter initially came up for defence on 1st
September, 2005. On application by the appellants advocates, the matter was
adjourned to 14th September, 2005 to enable them obtain further instructions on
the e-mail contained in the Notice of intention to produce documents filed by the
Respondents' Advocates on 1st September, 2005. When the matter came up on

14th September, 2005 the Appellants' Advocates raised a preliminary point of law

as to:

(P.527)

‘whether the High Court of Judicature for Zambia enjoys extra-territorial jurisdiction to try a Zambian citizen resident in Zambia for an act in contempt of court allegedly committed in a foreign jurisdiction, namely, Paris, France.’

After listening and considering the submissions by Counsel on either side, the learned trial judge answered the preliminary issue raised in the affirmative.

The learned trial judge pointed out that whether contempt proceedings are based on section 116 (1) of the Penal code or Order 52 of Rules of the Supreme Court, The end result is the same. He further stated that in both situations, punishment is either imprisonment or a fine if the alleged contemptuous conduct is proved. According to the learned trial judge, it was immaterial that the contempt proceedings before him were commenced under Order 52 of the Rules of the Supreme court and not Section 116(1) of the Penal code. He found solace in our decision in **Sebastian Saizi Zulu vs. The People**¹ where we said at page 66 that:

“It is clear therefore, that in reality the learned trial

(P.528)

judge derived his power from Order 52 which.....empowers the High Court and Supreme Court to punish for contempt of court. The courts' powers under Order 52 are wider than those provided for under section 116(1)(a) and 2 of the Penal Code in the sense that there is no limitation on the court to dispose of contempt on the same day that it arises”

Dissatisfied with the learned trial judge's decision, the appellant now appeals to

this court and has advanced four grounds of appeal namely:

1. That the Learned trial judge erred in law when he held that the High Court of judicature for Zambia enjoys extra-territorial jurisdiction to try a
Zambian
citizen for an act in contempt of court allegedly committed in a foreign jurisdiction.

That the Learned trial judge erred in law when he imported the provisions of section 7 of the Penal

(P.529)

2. Code (Amendment) Act, 1970 into the cause herein, which was otherwise a civil matter.

3. That the learned trial judge misdirected himself in law when he held that there is no distinction between criminal and civil contempt of court.

That the learned trial judge misdirected himself in law when he held that it was immaterial that the

contempt proceedings herein were commenced under Order 52 of the Rules of the Supreme Court and not section 116(1) of the Penal Code when in fact there're was neither an application nor an order for the combination of the aforesaid order 52 and section 116(1).

The parties filed written heads of argument augmented by oral submissions based on the four grounds of appeal.

(P.530)

The gist of the written heads of argument on ground one is that the High Court of Judicature for Zambia does not enjoy extra – territorial jurisdiction and that it therefore lacks the power to try an act in contempt of court alleged to have been committed in foreign land namely Paris, France. It was submitted that the jurisdiction of the High Court of Judicature for Zambia only extends to and over the state territory of Zambia i.e. the land within the boundaries of Zambia,

including Islands and no more. Cases like **Miyanda vs. High Court²** ; **Zambia National Holdings Limited and United National Independence Party vs. The Attorney General³** and **The People vs. Roxburgh⁴** were cited in support of the arguments in ground one. It was further submitted that a perusal of the Constitution of Zambia Cap. 1 of the Laws of Zambia or the High Court Act, Cap 27 of the Laws of Zambia will show that there are no provisions in the Laws which constitute the High Court of Judicature for Zambia which clothe it with extra – territorial jurisdiction.

The summary of the written heads argument in ground two is that the learned trial judge erred in law when he imported the provisions of section 7 of the Penal Code (Amendment) Act, 1970 into the cause herein, which was otherwise a civil

(P.531)

matter. It was submitted that the matter at hand was a civil one on the commercial list of the High Court and the first appellant had not been charged with any offence under the Penal Code and therefore it was wrong for the court

below to refer to the provisions of section 7 of the Penal Code (Amendment) Act or at all.

It was further submitted that although the offence of contempt of court exists in the Penal Code, there is an elaborated procedure to support it set out in the

Criminal Procedure Code among which is the requirement for the Director of Public Prosecutions to issue a fiat before the commencement of a prosecution. There has been no such fiat issued in the present case.

It was further submitted that the application for leave to apply for committal proceedings for contempt of court was pursuant to the provisions of Order 52 of the Rules of the Supreme Court.

The gist of the written heads of argument on ground 3 is that the learned trial judge misdirected himself in law when he held that there is no distinction between criminal and civil contempt of court. It was submitted that in as much as

(P532)

the punishment for both criminal contempt and civil contempt might be the same, the two types of contempt are clearly distinguishable. Halsbury's Laws of

England 4th Edition, Volume 9 paragraph 2 was cited in support of this argument.

The case of **Jennison vs. Baker**⁵ was also cited in support of this argument.

The summary of the written heads of argument in ground 4 is that the contempt proceedings were commenced pursuant to the provisions of Order 52 of the Rules of the Supreme court and not section 116 (1) of the Penal Code. It was further submitted that in casu, there was neither an application for an order of court to combine or merge the provisions of Order 52 of the Rules of the Supreme Court and the provisions of Section 116(1) of the Penal Code, Cap 87 of Laws of Zambia nor was such an order granted at all.

It was further submitted that although the case of **Sebastian Saizi Zulu vs. The People¹** recognizes the power of the court to order a combination of Order 52 of the Rules of the Supreme Court and Section 116(1) of the Penal code this can only be on an application by a party and not by the court on its own motion.

(P.533)

The summary of the written response to ground one is that the first Appellant was charged with contempt of court contrary to section 116(1) of the Penal Code Cap. 87 of the Laws of Zambia and that at subsection 3 it is provided that the provisions of Section 116 of the Penal Code Cap. 87 of the Laws of Zambia are to be deemed to be in addition to and not in derogation from the power of a court to punish for contempt of court. It was further submitted that the committal proceedings are also invoked pursuant to the provisions of Order 52 of the Rules of the Supreme Court and the decision by this court in the case of **Sebastian**

Saizi Zulu vs. The People¹.

It was further submitted that the charge against the accused follows the grant of leave granted to the Plaintiff by the High Court on 9th March 2005 for an order of committal against George Lipimile on the ground that he had disregarded the order of injunction dated 10th February 2005 which restrained the Defendants

“Whether individually, severally or through their agents whosoever from interfering in the Plaintiff’s operations and presenting a paper at a conference for the organization for Economic Co-operation and

(P.534)

Development on the Plaintiff’s operations scheduled for 17th February 2005 until final determination of this matter or further order of this court.”

We have carefully considered the ruling of the learned trial judge in the court below and the submissions of Counsel on the 4 grounds of Appeal. This Appeal, as we see it, succeeds or fails depending on what view we take of the arguments and submissions on ground one. We also do not propose to consider the case of **Roxburgh⁴** which is a High Court decision and is not binding. We wish to observe that this is a very unique situation. A Defendant is served with a court order issued by a court of competent jurisdiction in Zambia and he decides that it is competent to disobey it as long as he crosses the Zambian border and that he is only obliged to obey it in Zambian jurisdiction. This, in our view, is the import of this appeal.

We wish to state and remind the Appellant that the Zambian legislature has addressed this issue in section 6 of the Penal Code Cap. 87 of the Laws of Zambia. This section reads as follows: section 6;

(P.535)

“6(1) Subject to subsection (3), a citizen of Zambia who does any act outside Zambia which, if wholly done within Zambia, would be an offence against this Code, may be tried and

punished under this Code in the same manner as if such act had been wholly done within Zambia

(2)When an act which, if wholly done within Zambia, would be an offence against this Code, is done partly within and partly outside

Zambia, any person who within does any part of such act may be tried and punished under this Code as if such act had been wholly done within Zambia.

Nothing in subsection (1) shall render any person liable to be tried and punished under the Code in respect of any act done outside Zambia which, if wholly done within Zambia, would be an offence against this Code if such person has been convicted and punished outside Zambia in respect of the same act, but, save as aforesaid, any such conviction, for the purposes of any law including this Code, be deemed to be a conviction for the said offence against this Code.

(P.536)

Further more section 65 of the Criminal Procedure Code Cap. 87 of the Laws of Zambia provides as follows:

“65. Every court has authority to cause to be brought before it any person who is within the local limits of its jurisdiction, and is charged with an offence committed within Zambia, or which, according to law, may be dealt with as if it has been committed ***within Zambia, and to deal with the accused person according to its jurisdiction.***”

It is common cause that contempt is a criminal offence under section 116 of the Penal Code. The contemnor in this case is a Zambian citizen and as such Zambia

Courts have jurisdiction for criminal acts committed by Zambians anywhere in the world. We wish to affirm what we said in ***Sebastian Saizi Zulu vs. the People***¹, ***Elias Kundiona vs. The People***⁶, ***Authur Nelson Njovu and Dr. Jacob Mwansa vs.***

Alshma Building Materials Company Limited and Jayesh Shah⁷ that contempt proceedings can be combined under section 116 of the Penal Code and Order 52 of the Rules of the Supreme Court. This is what we said in the Zulu Case:-

“It is clear therefore, that in reality the learned trial judge derived his power from order 52 which empowers the High court and Supreme Court to punish for contempt of Court. The court’s powers under Order 52 are wider than those provided for under Section 116 (1) of the Penal Code in the sense that there is no limitation on the court to dispose of contempt of court on the same day that it arises.”

We note that this has been conceded by the Appellant except that their view is that there must be an application by a party and not by the court on its own

(P.538)

motion. We do not appreciate that argument as it is not only misleading and flies in the teeth of what we said in the Zulu case.

In our considered view therefore, the learned trial judge was on firm ground in finding that his court had extra territorial jurisdiction over the contemnor. On our part we cannot agree more by stating that it would be a disaster for the administration of justice in this country if this appeal was allowed. Having decided in the manner that we have done, it would be otiose to consider grounds 2,3 and 4.

We therefore find that this appeal lacks merit and it is hereby dismissed with costs to the Respondents.

L.P. Chibesakunda
SUPREME COURT JUDGE

C.S. Mushabati
SUPREME COURT JUDGE

T.A. Kabalata
ACTING SUPREME COURT JUDGE