

**IN THE SUPREME COURT OF ZAMBIA APPEAL NO.004/2015
HOLDEN AT LUSAKA
(Civil Jurisdiction)**

BETWEEN:

DANIEL MWALE

APPELLANT

AND

NJOLOMOLE MTONGA

1ST RESPONDENT

*(Sued as Administrator of the estate of the late
Gabriel Siwonamutenje Kapuma Mtonga)*

THE ATTORNEY-GENERAL

2ND RESPONDENT

AND IN THE MATTER OF

LIYOKA LIYOKA (Alleged Contemnor)

**Coram: Mwanamwambwa Deputy Chief Justice, Phiri,
Muyovwe, Hamaundu, Malila, Kaoma, Musonda, Kabuka
and Mutuna, JJS**

On 17th July, 2018, 22nd August, 2018 and 15th March, 2019.

**For the alleged Contemnor: Mr. K. Mwale of MWACK
Associates and Mrs. N.N. Mbao – Nkusuwila Nachalwe
Advocates**

J U D G M E N T

Kaoma, JS delivered the judgment of the court

The summons to the alleged contemnor to appear before the Supreme Court to show cause why he should not be cited for contempt of court, arose from a letter that was written by Daniel Mwale (the contemnor in the other related matter), to the Honourable Deputy Chief Justice, in which he accused the Supreme Court (to borrow the words of Malila, JS in the contempt proceedings involving Daniel Mwale), "to be a conspirator in the perversion of justice". The letter has been reproduced in full in that matter. The words relevant to this particular case read as follows:

".... This highly questionable judgment whose bench was presided over by the Deputy Chief Justice, Mr. Mwanamwambwa is not only an assault on our constitution but a recipe for lawlessness. This is why Mr. Liyoka Liyoka can today serve my tenants with a notice which reads in part, 'This serves to inform you that subdivision No. 20/378a is now the property of I, Mr. Liyoka Liyoka as the legal title holder.' ... In a related development, rumor has it that he is related to the Deputy Chief Justice and that he has been given title to my property No. 20/378a. Please admonish that wayward young man that the illegal title generated by Ms. Agatha Banda and her corrupt team will not work....."

We considered the contents of the letter (including the above words) to be insulting to the Supreme Court and as having the effect of scandalizing and undermining the administration of justice.

Consequently, we issued summons under the inherent jurisdiction of the court and under Order 52/1/23 of the White Book (1999 Edition) directed at Daniel Mwale on one hand and the alleged contemnor on the other hand, for them to attend before us and show cause why they should not be cited for contempt of court. The particulars of the alleged contempt as framed in the summons directed to the alleged contemnor, Liyoka Liyoka read as follows:

“....Liyoka Liyoka on a date unknown, did contemptuously allege and brag, in relation to Appeal No. 004/2015 between DANIEL MWALE AND NJOLOMOLE MTONGA/ATTORNEY GENERAL, that you have been given title to property No. 20/378a, Lusaka, because you are related to the Honourable Mr. Justice M.S. Mwanamwambwa, Deputy Chief Justice of the Republic of Zambia, as stated in a letter dated 26th October, 2017 written by one Daniel Mwale to the Honourable Deputy Chief Justice, thereby imputing bias in your favour, in judgment of 19th August 2015, in Appeal No. 004/2015”

When the alleged contemnor appeared before us on 18th July, 2018 he pleaded not guilty. The matter was adjourned to allow Mrs. Mbao, counsel who was seized with the conduct of his matter to attend court.

On 22nd August, 2018 the alleged contemnor appeared with counsel. Upon being asked to show cause, he denied that he is related to the Deputy Chief Justice or that he bragged to

Daniel Mwale that he was favoured by the Deputy Chief Justice in the matter relating to the property in issue or that he was a party to those proceedings or that he had a conversation with Daniel Mwale in relation to that matter.

On 18th September, 2018 Daniel Mwale wrote a letter to the Deputy Chief Justice apologising unreservedly for his contemptuous words. He withdrew the contemptuous material and regretted having authored the letter. The withdrawal of the contemptuous material by Daniel Mwale leaves nothing against the alleged contemnor, especially that Daniel Mwale based his allegation against the alleged contemnor on rumour, which has not been substantiated.

In these circumstances, we find no basis on which to cite the alleged contemnor for contempt of court.



M.S. MWANAMWAMBWA
DEPUTY CHIEF JUSTICE



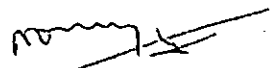
G.S. PHIRI
SUPREME COURT JUDGE



E.C. MUYOVWE
SUPREME COURT JUDGE



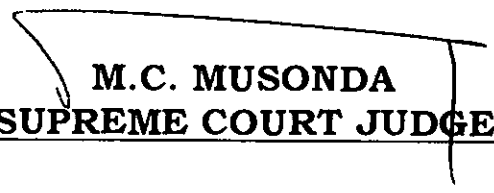
E.M. HAMAUNDU
SUPREME COURT JUDGE



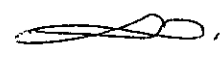
M. MALILA
SUPREME COURT JUDGE



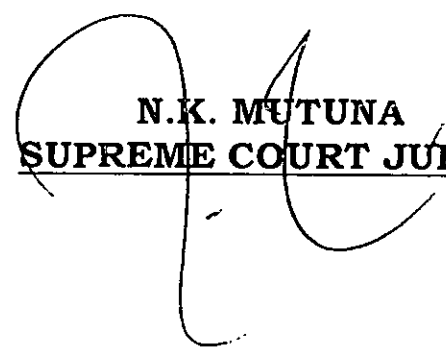
R.M.C. KAOMA
SUPREME COURT JUDGE



M.C. MUSONDA
SUPREME COURT JUDGE



J.K. KABUKA
SUPREME COURT JUDGE



N.K. MUTUNA
SUPREME COURT JUDGE