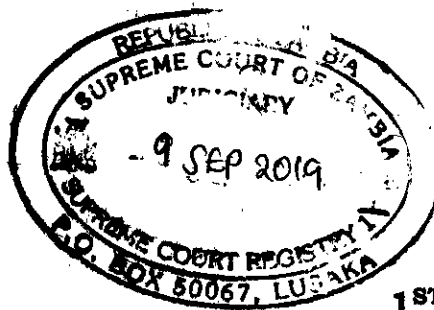


IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 37/2019
HOLDEN AT NDOLA
(Criminal Jurisdiction)



BETWEEN:

ANTONIO VENTRIGLIA
MANUELA SEBASTIAN VENTRIGLIA

1ST APPELLANT
2ND APPELLANT

And

THE PEOPLE

RESPONDENT

Coram: Hamaundu, Kabuka and Chinyama, JJS

On 3rd September, 2019 and 9th September, 2019

For the Appellants : Mr C. M. Sianondo, Messrs Malambo &
 Company

For the State : Mr P Mutale, Deputy Chief State Advocate

JUDGMENT

HAMAUNDU, JS, delivered the Judgment of the Court

Cases referred to:

1. **Zambia National Holdings & Another V The Attorney General**
 (1993/1994) ZR 115
2. **Garthwaite V Garthwaite** [1964] 2 All ER 233
3. **Miyanda V High Court** (1984) ZR 62

Legislation referred to:

1. **Subordinate Courts Act, Chapter 28 of the Laws of Zambia**
2. **Forfeiture of Proceeds of Crime Act, No.19 of 2010**
3. **Criminal Procedure Code, Chapter 88 of the Laws of Zambia**
4. **The Penal Code, Chapter 87 of the Laws of Zambia**

This appeal raises the issue of jurisdiction of the Subordinate Courts.

The history of this appeal is this:

The **Forfeiture of Proceeds of Crime Act** was enacted in 2010. Its purpose was to provide for the confiscation of proceeds of crime, generally. Under that **Act**, there are several types of orders that a court can make. The **Act** defines the court as "*a High Court or a Subordinate Court*".

On 18th August, 2013, a police officer named Chileshe Mukuka David swore an affidavit that he was seized of investigations into the report of theft by the two appellants of a sum of K2 billion (unrebased), or K2 million in today's currency, belonging to the company in which they were directors, known as Zambezi Portland Cement Limited. He swore that the said monies were traced to an account held jointly by the appellants. He said that, if the said money was not preserved, his efforts to conclusively investigate the report would be prejudiced. Consequently, he sought an order detaining and preserving the said sum of money. The affidavit was sworn to support an application that was to be made under **Section 121** of the **Criminal Procedure Code**, which

empowers a Subordinate Court to detain and preserve any article which has been seized and brought before it, until the conclusion of the case; or the investigation. Instead, a public prosecutor here in Ndola went before the Subordinate Court of the first class, presided over by the Chief Resident Magistrate, and obtained, *ex parte*, on 20th August, 2013, an order restraining the two appellants from dealing with the said money. The order further restrained the appellants from dealing with two other real property located here in Ndola. The order was said to have been obtained under **Section 41(3)** of the **Forfeiture of Proceeds of Crime Act**, through an application for a restraining order under the same **Act**. Notice of the said application was, however, only issued two days later, on the 22nd August, 2013.

The appellants applied to set aside the restraining order. Upon hearing that application, *inter partes*, the learned Chief Resident Magistrate held that the two real property were erroneously included in the restraining order. On the sum of K2 million, the Chief Resident Magistrate said that it did not fall under the definition of "*tainted property*" as defined in the **Forfeiture of Proceeds of Crime Act** because it was not a by-product of crime;

but was a manifestation of the offence of theft. On those grounds, he discharged the restraining order.

The public prosecutor appealed to the High Court, purportedly under the criminal jurisdiction of both the Subordinate Court and the High Court.

The High Court, presided over by *Mulanda, J*, agreed with the Subordinate Court that the real property could not be the subject of the restraining order. However, *Mulanda, J*, disagreed with the magistrate's view that the K2 million was not tainted property. The judge was of the view that the said sum of money came within the definition. Consequently, she restored the restraining order in that respect only.

The appellants appealed to this court.

We noted from the outset that this appeal turns on the question of jurisdiction, *ab initio*: namely, did the Subordinate Court have jurisdiction to entertain this particular application? At the hearing, we asked counsel from either side to address us on the question. Mr Sianondo, Counsel for the appellants, submitted that, since the proceedings for such an application are civil proceedings, the Subordinate Court had no jurisdiction to entertain this

particular application because the sum involved, that is the K2 million, was way above the limit imposed on the Subordinate Court in civil actions. His colleague, Mr Mutale, for the State, conceded that argument and said that the public prosecutor erroneously commenced the application in the Subordinate Court, instead of the High Court.

At this stage we again associate ourselves, as we did in the case of **Zambia National Holdings & Another V The Attorney General⁽¹⁾**, with the speech of Diplock L.J in **Garthwaite V Garthwaite⁽²⁾**. He said:

"In its narrow and strict sense, the 'jurisdiction' of a validly constituted court connotes the limits which are imposed on its power to hear and determine issues between persons seeking to avail themselves of its process by reference (i) to the subject matter of the issue, or (ii) to the persons between them and the issues joined, or (iii) to the kind of relief sought, or any combination of these factors".

In the same case of **Zambia National Holdings & Another V The Attorney-General⁽¹⁾** we also cited a passage from our judgment in **Miyanda V The High Court⁽³⁾**. In that case, we said this:

"The term "jurisdiction" should first be understood. In one sense, it is the authority which a court has to decide matters that are litigated before it; in another sense, it is the authority

which a court has to take cognizance of matters presented in a formal way for its decision. The limits of authority of each of the courts in Zambia are stated in the appropriate legislation. Such limits may relate to the kind and nature of actions and matters of which the particular court has cognizance or to the area over which the jurisdiction extends, or both".

The jurisdiction or authority of Subordinate Courts is primarily prescribed in the statute that constitutes the said courts: the **Subordinate Courts Act. Section 4** of that **Act** provides:

"Each Subordinate Court shall have the jurisdiction and powers provided by this Act and any other written law for the time being in force and shall ordinarily exercise such jurisdiction only within the limits of the District for which each such court is constituted."

As regards practice and procedure, **Section 12** of the same **Act** reads as follows:

"The jurisdiction vested in Subordinate Courts shall be exercised (so far as regards practice and procedure) in the manner provided by this Act and the Criminal Procedure Code, or by such rules and orders of court as may be made pursuant to this Act and the Criminal Procedure Code, and, in default thereof, in substantial conformity with the law and practice for the time being observed in England in the county courts and courts of summary jurisdiction".

When exercising their criminal jurisdiction, the Subordinate Courts are guided by the provisions of the **Criminal Procedure Code** and the **Penal Code**. In this regard, the Subordinate Courts have a substantial amount of powers. Thus when a Subordinate Court is exercising its criminal jurisdiction, the limit of authority is only prescribed in terms of the nature of offences it can hear; and the punishment that it can impose. For example, it can issue search warrants and warrants of arrest; it can issue orders for detention of articles for the purpose of preservation, such as the one which the police officer who swore the affidavit sought to obtain under **Section 121** of the **Criminal Procedure Code**. In **Section 24** of the **Penal Code**, forfeiture is one of the punishments that are available to be imposed by the subordinate court.

So had the Subordinate Court in this case been seized with a criminal trial in which the K2 million was the subject matter, we do not think that the issue of the Court's jurisdiction to make the type of order herein would have even arisen. But when the Subordinate Court is seized of a civil action or proceedings, the limits of its jurisdiction reduce drastically. In this case, the limit is set out in **Section 20** of the **Subordinate Courts Act**.

It is agreed by both sides that the proceedings under which the order in issue was obtained are considered by the **Forfeiture of Proceeds of Crime Act** as civil proceedings. This is in keeping with **Section 33** of the **Act**. That means that the application that was taken to the Subordinate Court was a civil one; so that the public prosecutor should have been cognizant of the limit of authority of Subordinate Courts in civil proceedings. **Section 20** of the **Subordinate Courts Act** reads as follows:

“20(1) In civil causes and matters a Subordinate Court of the first class shall, subject to this Act and in addition to any jurisdiction which it may have under any other written law, within the territorial limits of its jurisdiction, have jurisdiction —

(a) In all personal suits, whether arising from contract, or from tort or from both, where the value of the property, debt or damage claimed, whether as balance of accounts or otherwise is——”

The section goes on to set out the limits in kwacha for the various ranks of magistrates that fall under the first class. In the case of the Magistrate who heard this application, the limit at the time of the application was K30,000, in today's currency. **Act No.4 of 2018** now puts the limit for that level of magistrate at K100,000.

The section further gives jurisdiction to the Subordinate Court to; enforce by attachment any of its orders; to make orders relating to maintenance and matrimonial causes; and to hear and determine actions for the recovery of land. In the case of this last jurisdiction, there are limits with regard to the value of the land or the rent payable. The jurisdiction we are concerned with in this matter is the first one, regarding personal suits. The limit of the jurisdiction is two-fold:

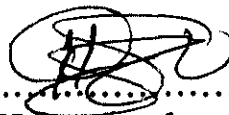
- (i) First, the action must be a personal suit;
- (ii) Secondly, the value of the property, debt or damage claimed must not exceed the sum of money prescribed.

In this case, the application could not be said to have been of a personal nature. However, bearing in mind that Section 33 of the **Forfeiture of Proceeds of Crime Act** has effectively extended the jurisdiction of the Subordinate Court to include such applications, even though they are not of a personal nature, there is still the limit on the value of the subject matter. In this case what was in issue was a sum of K2 million, in today's currency. The limit of the court that heard the application was K30,000. Clearly, the sum involved was beyond the jurisdiction of the Subordinate Court, as correctly

pointed out by counsel for both parties. Since the **Forfeiture of Proceeds of Crime Act** defines court as either the High Court or Subordinate Court, the public prosecutor should have realized that this particular application was beyond the jurisdiction of the subordinate court; so that he should have made the application before the High Court.

Therefore, to the extent that the Subordinate Court had no jurisdiction to hear this particular application, the proceedings before it were a nullity. Again, to the extent that the proceedings before the High Court were an appeal from those of the Subordinate Court, the latter proceedings, too, were a nullity. The net result is that the restraining order ought to be quashed.

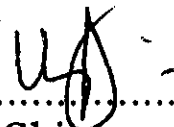
For the foregoing reasons, this appeal is allowed. The restraining order that was restored by the High Court is hereby quashed.



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E. M. Hamaundu
SUPREME COURT JUDGE



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J. K. Kabuka
SUPREME COURT JUDGE



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J. Chinyama
SUPREME COURT JUDGE