IN THE COURT OF APPEAL OF ZAMBIA **CAZ Appeal No. 201/2020**
HOLDEN AT NDOLA **CAZ/08/154/2020**
(Civil Jurisdiction)

REPUBLIC OF ZAMBIA
COURT OF APPEAL
03 OCT 2022
REGISTRY 1
P.O. BOX 50067, LUSAKA.

BETWEEN:

ISAAC RONALD KAPAMBWE	**APPELLANT**
AND	
KELVIN KANDELA	**1ST RESPONDENT**
OSCAR MOONO	**2ND RESPONDENT**
YOLANTA HIMOONGA	**3RD RESPONDENT**
THE ATTORNEY GENERAL	**4TH RESPONDENT**

CORAM : Chashi, Chishimba and Siavwapa JJA

On 23rd August, 2022 and 6th October, 2022

For the Appellant : Mr. Munansangu of Messrs. Munansangu & Co.

For the Respondents : Mr. N. Mwiya, Asst. Senior. State Advocate of Attorney General's Chambers

---

J U D G M E N T

Chishimba JA, delivered the Judgement of the Court.

CASES REFERRED TO:

1) Richman Chulu v Monarch (Z) Limited (1983) ZR 33
2) Daniel Chizoka Mbandangoma v The Attorney-General (1979) Z.R. 45
3) Attorney General & Others v Phiri SCZ Appeal No. 161 of 2014
4) Bird v Jones (1845) 7 QB 742
5) Hicks v Faulkner (1881) QBD 167
6) Ginski v McIver (1962) ALL ER 696
7) Khalid Mohamed v Attorney General (1982) ZR 49

8) Konkola Copper Mines Plc & Vedanta Holdings v Milingo Lungu CAZ Appeal No. 128 of 2021
9) Kenmuir v Hattingh (1974) Z.R. 162
10) The People v Austin Chisangu Liato SCZ Appeal No. 291/2014
11) R v John Rondo (2001) 126 A Crim. R. 562
12) Roman Wilheim Buchman v Attorney General (1993 - 1994) ZR 131

LEGISLATION CITED:

1) The Constitution of Zambia (Amendment) Act, Chapter 1 of the Laws of Zambia
2) The Criminal Procedure Code, Chapter 88 of the Laws of Zambia

WORKS CITED:

1. Salmond and Heuston on the Law of Torts, 20th edition

1.0 INTRODUCTION

1.1 This appeal is against the judgment delivered by Hon. Mr. Justice C. Zulu dated 30th April, 2020, in which he dismissed the appellant's claims for damages for wrongful arrest, loss of business and malicious statement.

1.2 The appellant in the court below had issued an amended writ of summons endorsed with the following claims:

1) *Damages for wrongful arrest;*
2) *Damages for loss of business incurred by the plaintiff (appellant) due to the detention and subsequent court attendance amount to USD 28, 045, 000.00;*
3) *Damages suffered as a result of the 1st and 2nd defendants' (respondents) malicious statement that the plaintiff had died;*

2.0 EVIDENCE IN THE COURT BELOW

2.1 The appellant, a majority shareholder in a company called Lwishishe Investment Limited, stated that he had entered into a business arrangement with one Brian Chisenga. Under the arrangement, the appellant provided financing to the tune of K400, 000.00 to enable Chisenga supply a consignment of cell phones from India to Zambia via South Africa.

2.2 According to the appellant, the consignment was brought into Zambia by Chisenga on a truck and trailer belonging to an entity namely *Cargo 2 Congo*. The said consignment arrived in Lusaka on 9th February, 2015. The appellant had arranged for the truck to park at Nyimba Investment Limited warehouse for security purposes. Owing to lack of space at the warehouse, Chisenga sourced and secured another warehouse to offload the goods. The appellant permited Chisenga to detach the trailer to go and offload using a different horse. According to the appellant the *Cargo 2 Congo* truck horse was kept as security for the sum of money financed by him. The said Chisenga detached and collected the trailer minus the horse. Thereafter, Chisenga was not seen or heard of again.

2.3 On 14th February, 2015, the appellant was apprehended by police officers (the 1st, 2nd and 3rd respondents) for the offence of theft of motor vehicle involving the truck and trailer. He was detained in custody until 17th February, 2015 when he was released on bond and advised to appear in court on 20th February, 2015. Though the appellant went to Lusaka Magistrates Courts, his case was never called.

2.4 As a result of his detention, the appellant averred that he lost out on three contracts for the supply of maize to Markoe Trading of South Africa, D. M. Bonds of Zimbabwe and Zim Sourcing worth $14.5 million, $12.6 million and $945, 000 respectively. The contracts had a combined value of $28, 045, 000.00. He alleged that the respondents were liable for this loss. He further claimed that most of the relevant documents relating to his claims were lost when bailiffs seized his property in a matter between *Mwange & Others v Lwishishe Investment Company Limited Comp./415/2015.*

2.5 He further stated that while he was in detention, police officers in custody of his cell phone, answered a call from Markoe Trading. The said officers informed the personnel that the appellant was dead and his body was lying in the University

Teaching Hospital mortuary. The appellant learnt of the above when he called the company following his release. Markoe Trading later sent him an email cancelling the contract between the parties because he was not a trustworthy person.

2.6 In cross-examination, the appellant denied selling the truck in issue to Mohameed Saed, stating that the horse (truck) was collected from Nyimba Investment Limited premises by the 1st and 2nd defendants.

2.7 In their joint defence settled by the 4th respondent, the respondents denied any liability. DW1, Mohammed Saed Essa the Transport and Logistics Manager for Nyimba Investment Limited testified that the appellant was an employee and worked as a personal driver. On 9th February, 2015, the appellant informed him that he had some friends selling a truck and trailer. Upon expressing interest, the truck and trailer labelled *Cargo 2 Congo*, was brought for physical inspection.

2.8 The truck and its trailer laden with goods covered under a tarpaulin, was brought to his premises in Makeni by the appellant, in the company of his friend Phiri and a third person. Essa agreed to purchase the foreign registered truck and trailer for US$ 70,000 once it was cleared by customs in Zambia. To

enable the sellers clear the vehicle, Mohammed Essa paid a down payment of $35,000.00. The appellant signed for the receipt of money, and that a copy of the said receipt was given to the police.

2.9 The appellant requested that the trailer be released for offloading purposes and another horse came to tow it. Essa expected the truck to be returned the next day, but to no avail. Instead, police led by the 1st respondent came and informed him that the truck was stolen. He denied being told by Mr. Gulam Patel that the truck was in the yard for offloading purposes.

2.10 DW2, Inspector Kandela stated in the court below that he was working under the Anti-Motor Vehicle Theft Team. On 12th February, 2015, his office received a report of theft of a truck and goods in transit. The truck and trailer belonged to *Cargo 2 Congo*, a South African based company. The report was made to the police by Kebby Cheelo, an employee.

2.11 In his investigations, he discovered that the truck was sold to Mohammed Essa who in turn led him to the appellant. Inspector Kandela apprehended and detained the appellant on 14th February, 2015. As the appellant was in a drunken state at the time, he could not record a statement from him that day

until the next day. The appellant was interviewed under warn and caution, and led the police to two places which yielded no results. The police did not recover the trailer laden with lime because the appellant was uncooperative.

2.12 Inspector Kandela further denied taking custody of the appellant's cell phone and informing any caller that the appellant had died. He stated that the phone was kept by the custody officer.

2.13 In cross-examination, DW2 testified that the appellant was never taken to court because the matter is still under investigation on account of Chisenga and the others who are on the run and the property has not been recovered.

3.0 DECISION OF THE COURT BELOW

3.1 The learned trial Judge considered the evidence on record and found that DW2 instituted investigations into a complaint of theft of motor vehicle involving a *Cargo 2 Congo* truck and trailer. The investigations led him to DW1 who confirmed having bought the truck/trailer from the appellant. As a result, the appellant was apprehended on 14th February, 2015 and detained for the offence of theft motor vehicle.

3.2 The learned Judge considered the case of **Richman Chulu v Monarch (Z) Limited** [1] on what amounts to false imprisonment. He also considered **Article 13(1)(e) of the Constitution of Zambia (Amendment) Act Chapter 1 of the Laws of Zambia** and **section 26 of the Criminal Procedure Code Chapter 88 of the Laws of Zambia** which empowers a police officer to arrest any person whom he suspects upon reasonable grounds of having committed a cognizable offence without a warrant of arrest.

3.3 The court below was of the view that there was reasonable suspicion and probable cause to justify the arrest and detention of the appellant, as there was evidence that the truck and trailer belonging to *Cargo 2 Congo* was stolen. The evidence of DW1 showed that it was the appellant and his accomplices that brought the truck and its trailer to him to purchase at the sum of $70,000.00 for which $35,000.00 was paid upfront to facilitate customs clearance.

3.4 The learned Judge held DW1 to be a credible witness and found no truth in the story by the appellant regarding his connection to Chisenga. The court found that the truck and trailer was taken to Nyimba Investments Limited not for safekeeping, but

to be fraudulently sold to the appellant's former employers. The goods on the trailer were not cell phones but in fact, lime.

3.5 Therefore, the arrest and detention of the appellant was not actuated by malice but was based on reasonable and probable cause based on the confirmation made by DW1. Consequently, the claim for wrongful arrest and false imprisonment was untenable. In any event, the court found, based on DW2's evidence, that the case is still open.

3.6 With respect to the claims for loss of business from the alleged cancelled contracts, the court below was of the view that the contracts were not personally contracted by the appellant, but by his company, Lwishishe Investment Limited, a separate entity at law with the right to sue and be sued in its own name.

3.7 The court could not grant the colossal sum of $28,045,000 claimed on mere speculation that it was tainted with dishonesty. Consequently, the court below dismissed the claims for lack of merit.

4.0 GROUNDS OF APPEAL

4.1 Aggrieved with the decision of the court, the appellant has advanced three grounds of appeal couched as follows:

1) ***The learned High Court Judge erred in law and fact when he held that the appellant's arrest and detention was anchored on reasonable and probable cause;***
2) ***The learned High Court Judge erred in law and in fact when he departed from the normal requirement of the law of evidence without any finding of fact to warrant the same, thereby dismissing the appellant's claims; and***
3) ***The learned High Court Judge erred in law and in fact when he departed from the normal requirement of the law of contract on issue of agency thereby ignoring the appellant's relationship with Lwishishe Investment Limited.***

5.0 APPELLANT'S ARGUMENTS

5.1 The appellant filed heads of argument dated 22nd October, 2020. In ground one, the appellant submits that there was no reasonable and probable cause for the arrest and detention of the appellant, and that the detention was contrary to **section 33 of the CPC**. This is because the appellant was detained for four days without being released on bond within 24 hours of his being taken into custody.

5.2 In support of this, we were referred to the High Court decision of **Daniel Chizoka Mbandangoma v The Attorney-General** [2] where the court stated as follows:

> ***"... Under s. 33 of the, Criminal Procedure Code the release on bond of a person arrested without a warrant is mandatory if it does not appear practicable to bring the person concerned***

before an appropriate competent court within 24 hours of his being taken into custody' unless the offence is one of a serious nature. Where a person is retained in custody he must be brought before such court as soon as practicable. ...”

5.3 **Section 33(1) of the CPC** was also cited which provides as follows:

33 (1) When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station to which such person shall be brought may, in any case, and shall, if it does not appear practicable to bring such person before an appropriate competent court within twenty-four hours after he was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person, on his executing a bond, with or without sureties, for a reasonable amount, to appear before a competent court at a time and place to be named in the bond: but, where any person is retained in custody, he shall be brought before a competent court as soon as practicable. Notwithstanding anything contained in this section, an officer in charge of a police station may release a person arrested on suspicion on a charge of committing any offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.”

5.4 The appellant referred us to the case of **Attorney General & Others v Phiri** [3] for the definition of false imprisonment that:

“False imprisonment consists in unlawfully and either intentionally or recklessly restraining another person’s freedom of movement from a particular place. The restraint must be total for a time, however short. There is no false

imprisonment if a person's arrest is justifiable or if there is reasonable and probable cause for restraint."

5.5 With respect to ground two, it was submitted on behalf of the appellant that the court below departed from the normal requirements of the law without any finding of fact thereby dismissing the appellant's claims. It was argued that the court below did not take note that the appellant was charged with the offence of fraudulent dealing and stealing of goods in transit, which was contrary to what was stated in the police bond, that he was arrested and charged with theft of motor vehicle. Based on this inconsistency, the defendants were untruthful in their testimony.

5.6 In support of this, the appellant placed reliance on the learned authors of **Salmond and Heuston on the Law of Torts, 20th edition** at page 392 who state as follows:

"... false statement respecting any person or property with the result that other persons deceived thereby are induced to act in a manner which causes loss to him."

5.7 It was further contended that the appellant neither intended to commit the alleged crime nor was he reckless in his conduct as to bring about the elements that constitute the crime for which he was charged. From the evidence of the respondents, the

matter was under investigation, and therefore, the appellant could not be brought before court. Therefore, it was unlawful for the 1st and 2nd respondents to arrest the appellant and keep him in custody. The only way the respondents can escape liability for false imprisonment or wrongful arrest is if the State secured a conviction or entered a *nolle prosequi*.

5.8 The case of **Richman Chulu v Monarch (Z) Limited** [1], a High Court decision, was called in aid for the definition of false imprisonment where it was held that:

> ***"False imprisonment only arises where there is evidence that the arrest which led to the detention was unlawful, since there was no reasonable and probable cause."***

5.9 It was further argued on behalf of the appellant that the court below departed from the normal requirement of evidence without finding out and proving whether the truck and trailer was indeed stolen or not. That no evidence of theft was adduced by the respondents of any theft.

5.10 Lastly, with respect to ground three, the appellant submits that the evidence was led showing that he was a director and shareholder in Lwishishe Investment Limited. Through his bundle of documents, the appellant showed the extent of losses

he incurred as a result of his wrongful arrest and false imprisonment.

5.11 The appellant expected profits from the contracts which were primarily cancelled as a result of his absence thereby rendering him incapable of performing them. The appellant prayed that the appeal be allowed with costs.

6.0 RESPONDENT'S ARGUMENTS

6.1 The learned Assistant Senior State Advocate filed heads of argument dated 14th January, 2021 in which grounds one and two were argued together. It was submitted that the gist of the argument raised in grounds one and two is that the appellant's arrest and detention by the police was unlawful.

6.2 We were referred to **sections 33(1) and 26 (a) of the Criminal Procedure Code.** In particular, section 26(a) provides that:

> ***Any police officer may, without an order from a magistrate and without a warrant, arrest-***
>
> ***(a) any person whom he suspects, upon reasonable grounds, of having committed a cognizable offence;***

Article 13(1)(e) of the Constitution of Zambia Chapter 1 of the Laws of Zambia was also cited which reads as follows:

> ***13(1) A person shall not be deprived of his personal liberty except as may be authorised by law in any of the following cases:***

(e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained-

(a) for the purpose of bringing him before a court in execution of an order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained under paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

6.3 It was contended on behalf of the respondents that there was reasonable cause to arrest and charge the appellant with the offence of theft of motor vehicle and goods in transit. This is because on 12th February, 2015, a report of a stolen truck and trailer laden with lime, the property of Cargo to Congo was made to the police. Investigations were instituted by the police which led to the arrest and detention of the appellant, after DW1

confirmed having bought the stolen truck and trailer from the appellant at $70, 000.00 having paid $35, 000.00.

6.4 The police officers acted diligently and within the ambit of the law in subsequently releasing the appellant on police bond after he provided sureties.

6.5 The case of **Bird v Jones** [4] was cited for the definition of false imprisonment as being:

> ***"a restraint on the liberty of the person without lawful cause, either by confinement in prison stock house etc against his will."***

6.6 The case of **Attorney General & Others v Phiri** [3] was also called in aid where the court held that:

> ***"There is no false imprisonment if a person's arrest is justifiable or if there is reasonable and probable cause for restraint."***

With regard to reasonable and probable cause, the respondents cited the cases of **Hicks v Faulkner** [5] and **Ginski v McIver** [6] that there existed a state of circumstances, which assuming to be true, would reasonably lead any ordinary, prudent and cautious man, to the conclusion that the person charged was probably guilty of the crime imputed.

6.7 Therefore, the respondents acted in good faith and in accordance with the law when they detained the appellant. That the learned judge in the court below observed the law of evidence as he considered the evidence adduced and the submissions made by the parties in his judgment. Therefore, the arrest and detention of the appellant was anchored on reasonable and probable cause.

6.8 With respect to ground three, the respondent submits that a company is a separate entity at law, with capacity to sue and be sued in its own name. The contracts alleged to have been lost were not personally contracted by the appellant but Lwishishe Investment Limited.

6.9 In placing reliance on the case of **Khalid Mohamed v Attorney General** [7], it was contended that the lower court was on firm ground in holding that the colossal claim of $28, 045, 000.00 cannot be granted on account of mere speculation tainted with dishonesty.

6.10 In conclusion, we were urged to hold that the appellant had profoundly failed to establish the claims sought and to uphold the lower court's decision as well as dismiss the appeal with costs to the respondents.

7.0 ORAL ARGUMENTS

7.1 At the hearing of the appeal, learned counsel for the appellant, Mr. Munansangu entirely relied on the heads of argument.

7.2 Counsel for the respondents, the learned Assistant Senior State Advocate, Mr. Mwiya, addressed us on the issue of damages for wrongful arrest and invited us to consider the elements of false imprisonment being the actual arrest of the appellant without any lawful justification. He submitted that while it was not in dispute that the appellant was arrested, the issue was whether the arrest was lawfully done. He argued that in view of the available evidence, the police had reasonable and probable cause to arrest the appellant.

7.3 With respect to the claim for damages for loss of business due to detention, he stated that the claim is based on the fact that due to the detention, the company the appellant is a shareholder in, lost business. Mr. Mwiya contended that at law, a company is a separate person capable of suing and being sued regardless of the appellant being a member or shareholder as per our decision in **Konkola Copper Mines Plc & Vedanta Holdings v Milingo Lungu** [8].

7.4 We engaged the learned Counsel as to why the appellant was not taken to court within 24 hours after being detained as required by **section 33 of the CPC** but instead kept for four days. In response, the learned Assistant Senior State Advocate referred us to **section 33 of the CPC** and the case of **Daniel Chizoka Mbandangoma v The Attorney General [2],** and argued that in that case, the appellant had been detained for four days and not taken to court within 24 hours. The Supreme Court held that the detention was justified.

7.5 In this case, counsel contended that the appellant had been detained for three days before being charged and released on bond on the fourth day. He stated that during the extra three days, the matter was still being investigated. He maintained that there was reasonable and probable cause to warrant the detention and that the elements of unlawful detention were not satisfied. Counsel urged us to dismiss the appeal.

8.0 DECISION OF THIS COURT

8.1 We have considered the appeal, the authorities cited and the arguments advanced by the Learned Counsel. In determing the appeal, we shall begin by addressing ground two in which the

appellant contends that the trial court dismissed his claims without making any findings of fact to warrant such dismissal.

8.2 It is not in dispute that the appellant was apprehended and detained by the police for four days before he was released on bond. The evidence of DW1 and DW2 shows that the basis for this detention was the unlawful sale to DW1 and alleged theft of a truck and trailer belonging to *Cargo 2 Congo* and the lime. The truck was recovered while the trailer and the lime cargo remains missing to date.

8.3 The appellant denies this and testified in the court below that the trailer was loaded with cell phones and was taken by the fraudster, Brian Chisenga who remains at large.

8.4 The appellant and the respondents both gave their own version of account, supporting their claims. The court below was faced with two competing versions of evidence by the parties. The appellant's evidence being that he in fact financed the movement of the cell phones from South Africa to Zambia, which were transported in the truck and trailer sourced by his business partners. He did not produce evidence that the cargo was in fact cell phones. The appellant also did not adduce

evidence to show that he had in fact arranged with Nyimba Investments Limited to receive the truck for safety.

8.5 On the other hand, DW1 testified that he purchased from the appellant and his accomplices the truck and trailer. Further, that he paid a deposit of $35,000.00 towards the purchase price of $70,000.00 to the appellant as part payment for the truck and trailer. DW1 told the court that the document evidencing the part payment was given to DW2 during investigations. There was evidence to the effect that Kebby Cheelo, an employee of *Cargo 2 Congo*, reported the theft of the truck and its cargo to the police.

8.6 It is not in issue that a trailer belonging to *Cargo 2 Congo* loaded with cargo went missing from the premises of Nyimba Investment Limited in Makeni, and has not been recovered. Confronted with these gaps and facts, the court below resolved the matter on credibility holding DW1 to be a truthful and reliable witness as opposed to the appellant.

8.7 Where the findings of a trial court are based on the credibility of one witness against another, as an appellate court, we are guided by the decision of the Supreme Court in **Kenmuir v Hattingh** [8] where it was held that:

(ii) ***An appeal from a decision of a judge sitting alone is by way of rehearing on the record and the appellate court can make the necessary findings of facts if the findings were conclusions based on facts which were common cause or on items of real evidence, when the appellate court is in as good a position as the trial court.***

(iii) ***Where questions of credibility are involved an appellate court which has not had the advantage of seeing and hearing the witness will not interfere with the findings of fact made by the trial judge unless it is clearly shown that he has fallen into error.***

8.8 Having perused the record and the judgment of the trial court, we are satisfied that the learned trial judge did not fall into error in his evaluation of the evidence on record when he resorted to the credibility of the witnesses to resolve the matter before him in the absence of real evidence. For this reason, ground two lacks merit and is dismissed.

8.9 We now move to ground one in which the appellant contends that his detention for more than 24 hours without being released on bond was contrary to **section 33 of the CPC** and amounts to false imprisonment.

8.10 Having accepted the findings of the trial court based on credibility, we find that there was reasonable cause/grounds based on the suspicion that the appellant and Chisenga may

have stolen the truck and trailer belonging to *Cargo 2 Congo* together with its cargo of lime. It was for this reason that DW2 and the other officers apprehended him on suspicion of theft of motor vehicle and goods in transit.

8.11 **Section 26(a) of the Criminal Procedure Code** provides for the arrest of persons by the police on reasonable grounds. It reads as follows:

> ***26. Any police officer may, without an order from a magistrate and without a warrant, arrest-***
> ***(a) any person whom he suspects, upon reasonable grounds, of having committed a cognizable offence;***

8.12 In considering what amounts to reasonable suspicion, the Supreme Court, in the case of **The People v Austin Chisangu Liato** [9] referred to the decision of the New South Wales Court of Criminal Appeal in **R v John Rondo** [10] where it was held that:

> ***"... reasonable suspicion involves less than a belief but more than a mere possibility. There must be some factual basis for the suspicion; reasonable suspicion is not arbitrary."***

8.13 In this case, we find that there were reasonable grounds upon which DW2 and the other officers arrested and detained the appellant on suspicion of having stolen a motor vehicle together

with its goods. The reasonable grounds upon which they acted had a factual basis arising from the complaint made by Kebby Cheelo who reported the alleged theft of the truck and trailer with its cargo of lime, and DW1 who confirmed having purchased the truck and paid a deposit sum to the appellant.

8.14 DW2 further testified in the court below that the matter is under active investigation as Chisenga is still at large with the trailer and its cargo of lime. From the above, we agree with the trial court that the arrest and detention of the appellant was not actuated by malice. We therefore cannot fault the Judge for holding as above.

8.15 The important issue to be determined is the failure by the police to bring the appellant before a competent court within 24 hours as required by the law. It is not in dispute that the appellant was detained and released after four days of detention. Further, that the case has not been taken to court on account of Brian Chisenga who remains at large. The appellant and the respondents placed heavy reliance on the High Court case of **Daniel Chizoka Mbandangoma**(supra) as the authority on the issue of detention of the appellant for more than twenty four hours.

8.16 We have thoroughly read the above cited case. The facts were that the plaintiff was detained on the 24th December 1973 and released shortly thereafter on police bond (same day). However, he was required to report to the police and at court on four subsequent occasions until informed that further proceedings were being discontinued. The court held that it is improper for the police to detain persons pending further investigations without bringing them before court as soon as practicable and that it is equally improper to require persons released on bond to present themselves at the police station for the same purpose.

8.17 The distinguishing factor in the cited case to the facts before us, being that though the plaintiff was released within 24 hours, he was required to present himself at the police station for further investigations. Therefore the facts are not on all fours as argued by the parties. However the case dealt with the issue of arrest of person on reasonable suspicion and what it entails. Namely that the arresting officer at the time of arrest had or should have reasonable suspicion that the person had committed the offence charged with. The cited case also dealt with **Section 33(1) of the CPC** which provides as follows:

33 (1) When any person has been taken into custody without a warrant for an offence other than an offence punishable with death, the officer in charge of the police station to which such person shall be brought may, in any case, and shall, if it does not appear practicable to bring such person before an appropriate competent court within twenty-four hours after he was so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person, on his executing a bond, with or without sureties, for a reasonable amount, to appear before a competent court at a time and place to be named in the bond: but, where any person is retained in custody, he shall be brought before a competent court as soon as practicable. Notwithstanding anything contained in this section, an officer in charge of a police station may release a person arrested on suspicion on a charge of committing any offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge." (emphasis added)

8.18 While we cannot fault the learned trial Judge for finding that the arrest and detention of the appellant was anchored on reasonable and probable cause.

8.19 We however, find the failure to bring the appellant before a competent court for three days after he was detained, to be in breach of the provisions of **section 33(1) of the CPC**. **Section 33(1) of the CPC** requires that a person detained in custody be brought before an appropriate competent court within 24 hours of his being detained. In this case the appellant was only

brought to court after 72 hours or three days. Further, no reasonable explanation was tendered for this delay, as to whether it was impracticable to bring the appellant before an appropriate competent court. Under **section 33 of the CPC,** the release on bond of a person arrested without warranty is mandatory where it does not appear practicable to bring the person concerned before an appropriate competent court, unless the offence is one of a serious nature.

8.20 In this case, the respondent argued that under **section 33**, the police was in order to detain the appellant for more than 24 hours. In our view, the offence is not one of a serious nature to warrant the person being kept in custody beyond the mandatory 24 hours. The respondents were wrong to detain the appellant in custody on the basis of alleged pending further investigations.

8.21 We hold that it was improper for the police to detain the appellant pending further investigations without bringing him before a court as soon as was practicable within 24 hours. If there was not enough evidence to prefer a charge, the appellant ought to have been released on bond.

8.22 Therefore, we find merit in the ground relating to the detention of the appellant for more than 24 hours without being brought before a competent court. We award the appellant general damages for the three days he was detained without being brought before court as soon as practicable. The basis being that there were no aggravating factors to award aggravated damages or exemplary or punitive damages in the circumstances of this case.

8.23 In ground three, the appellant argues that as Managing Director and majority shareholder of Lwishishe Investments Limited, he was an agent of the company and could therefore claim on its behalf. In effect, the appellant faults the trial court for not considering him an agent of the company.

8.24 We have no hesitation in holding that we find no merit in this argument for two reasons. The first being that the issue of the appellant being an agent was never canvassed in the court below and so cannot be raised on appeal. We refer to the case of **Roman Wilheim Buchman v Attorney General** [11] in which it was held that:

> ***"A matter that is not raised in the court below cannot be raised before a higher court as a ground of appeal."***

8.25 Further, Lwishishe Investments Limited, being a company, is a separate legal person at law with capacity to sue and be sued without the need for the appellant to act on its behalf. Therefore, we find no merit in ground three.

9.0 **CONCLUSION**

9.1 We reiterate as follows, that the arrest and detention was anchored on reasonable and probable cause, namely on suspicion of the appellant having stolen the truck and trailer belonging to Cargo 2 Cargo. Further, that the appellant has failed to prove the claims for damages for loss of business allegedly incurred due to the detention and subsequent court attendance in the alleged sum of US$ 28,045,000. In addition, we hold that the court below was on firm ground in dismissing the claim for damages resulting from the malicious statement allegedly made by the respondent that the appellant had died, there being no evidence having been adduced.

9.2 The only ground to succeed is the detention of the appellant by the respondent for a period of more than 24 hours without being taken before a competent court or released on bond. We award general damages to the appellant for the three extra days he was detained without being taken to court or released on bond.

The said damages shall be assessed by the Deputy Registrar.

Costs to the appellant to be taxed in default of agreement.

.....

J. Chashi
COURT OF APPEAL JUDGE

.....

F. M. Chishimba
COURT OF APPEAL JUDGE

.....

M. J. Siavwapa
COURT OF APPEAL JUDGE