

IN THE COURT OF APPEAL OF ZAMBIA APPEAL NO. 52/2023

HOLDEN AT NDOLA

(Criminal Jurisdiction)

BETWEEN:

RONALD KAOMA CHITOTELA



APPELLANT

AND

THE PEOPLE

RESPONDENT

Coram: Mchenga DJP, Muzenga and Chembe, JJA

On: 23rd August 2023 and 15th November 2023

For the Appellant: K. Kombe with L.S. Chirwa, Andrew and Partners and B. Mwelwa, Mwelwa Phiri and Partners

For the Respondent: G. Zimba, Deputy Chief State Advocate, National Prosecution Authority

J U D G M E N T

Mchenga DJP delivered the Judgment of the court.

Legislation referred to:

1. The Anti-Corruption Act, No. 3 of 2012
2. The Forfeiture of Proceeds of Crime Act, No.19 of 2010

INTRODUCTION

[1] This is an appeal from the decision of the High Court, declaring that the settlement agreement (the agreement) between the appellant and the Anti-Corruption Commission (the Commission), was invalid and ineffective.

BACKGROUND

[2] In 2019, the appellant was arrested by the Commission and charged with one count of the offence of Concealing Property, contrary to **Section 71(1) of the Forfeiture of Proceeds of Crime Act** and 8 counts of the offence of Possession of Proceeds of Crime, contrary to **Section 71(1) of the Forfeiture of Proceeds of Crime Act**.

[3] He was taken to court, but before the commencement of the trial, and pursuant to **Section 80 of The Anti-Corruption Act**, he entered into the agreement with the Commission.

[4] The agreement was registered in the Subordinate Court on the 24th of June 2019 and no prosecution took place. One of the conditions of the agreement, was that the appellant had made "a full disclosure".

[5] On 4th May 2022, the Commission arrested the appellant on the charges that the agreement covered.

[6] The Commission publicly announced that they had arrested the appellant because he had failed to meet the terms of the agreement, by not making "a full and true disclosure".

[7] When the appellant was arraigned before the Subordinate Court on the charges that are the subject of this appeal, he objected to the charges on the ground that they were covered by the agreement and he was immune from prosecution.

[8] The trial Magistrate upheld the objection, finding that the agreement was valid as it had not been set aside by any court.

[9] The appellant was then discharged.

[10] The Commission appealed against that decision.

APPEAL BEFORE THE HIGH COURT

[11] Although the Commission argued that the settlement agreement was just an undertaking and it could not oust the jurisdiction of the courts, the appeal was determined in their favour for a different reason.

[12] The High Court noted that under **Section 80(3) of the Anti-Corruption Act**, the Commission can only enter into such an agreement before criminal proceedings have been instituted.

[13] In this case, the agreement was entered into after the appellant had already been arraigned.

[14] The High Court then held that the agreement was of no effect because it was entered into after criminal proceedings had already been instituted against the appellant.

[15] The court then set aside the decision of the Subordinate Court discharging the appellant, and directed that the trial proceeds on the charges on which he had been arraigned.

APPEAL BEFORE THE COURT OF APPEAL AND DECISION OF THE COURT

[16] Examination of the six grounds of appeal to this court, and the arguments in support of and against, indicate that the gravamen of the appeal is, whether the fact that the appellant was taken to court before the agreement was entered into, rendered the agreement a nullity.

[17] **Section 80 (3) of the Anti-Corruption Act**, the law on whose basis the agreement was entered into, provides as follows:

"The Commission may tender an undertaking, in writing, not to institute criminal proceedings against a person who—

- (a) has given a full and true disclosure of all material facts relating to past corrupt conduct and an illegal activity by that person or others; and
- (b) has voluntarily paid, deposited or refunded all property the person acquired through corruption or illegal activity"

[18] The provision is clear and unambiguous, on the Commission having the power to indemnify a person from a prosecution, where that person has made a full and true disclosure of all material facts relating to past corrupt conduct or illegal activity, and that person has voluntarily paid back or refunded, all the property acquired through the corrupt conduct or illegal activity.

[19] The question that then follows, is, was the appellant indemnified from a criminal prosecution before the criminal proceedings were instituted?

[20] The appellant was arrested twice.

[21] The first time he was arrested was in 2019. On or about 4th May 2022, he was arrested for the second time.

[22] As for the agreement, it was signed on or before the 24th of June 2019, when it was registered in court.

[23] The charges that are the subject of this appeal are those laid on the appellant following his arrest on 4th May 2022, which was after he had entered into the agreement.

[24] It follows, that the prosecution which is the subject of this appeal, was instituted after the agreement was signed.

[25] That being the case, the High Court erred when it concluded that the appellant could not rely on the agreement because it was entered into after the prosecution had already been instituted.

[26] Going by their public pronouncement, the Commission's grievance with the appellant is that he did not make a full disclosure, when the agreement was signed.

[27] In our view, such a complaint is attended to by the Commission moving the Subordinate Court, the court before which the agreement was registered pursuant to

Section 80 (4) of the Anti-Corruption Act, to discharge it for the breach of its terms.


[28] **Section 86 of the Anti-Corruption Act**, has provided that in such a case, the Subordinate Court is moved by originating summons.


[29] In effect, we find that the appeal has merit and we allow it.

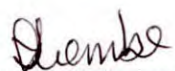
VERDICT

[30] The order of the High Court discharging the agreement signed between the appellant and the Commission, is set aside.

[31] The appellant is still immune from prosecution for the activities covered by the agreement, until such time that the agreement is discharged by a competent court.


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C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT


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K. Muzenga
COURT OF APPEAL JUDGE


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Y. Chembe
COURT OF APPEAL JUDGE