

IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT NDOLA
(Criminal Jurisdiction)

Appeal No. 93/2023

BETWEEN:

STANLEY BWALYA MWANSA

APPELLANT

AND

THE PEOPLE

RESPONDENT



CORAM: Mchenga DJP, Muzenga and Chembe, JJA
On 13th, 14th August 2024 and 19th August 2024

For the Appellant : Mrs. M. Mulanda-Banda, Legal Aid counsel, Legal Aid Board

For the Respondent: Mr. V. Choongo, State Advocate, National Prosecution
Authority

J U D G M E N T

MUZENGA JA, delivered the Judgment of the Court.

Cases referred to:

- 1. Barton Nkhoma & 3 Others v The People, CAZ Appeal No. 64 – 67/2021**

Legislation referred to:

1. **The Penal Code, Chapter 87 of the Laws of Zambia.**
2. **The State Security Act, Chapter 111 of the Laws of Zambia.**

1.0 INTRODUCTION

- 1.1 The appellant was convicted of the offence of unauthorised possession of a Defence Force uniform contrary to **Section 6(1) of the State Security Act.**
- 1.2 The particulars of offence alleged that the appellant on the 1st day of April 2022, at Kabwe in the Kabwe District of the Central Province of the Republic of Zambia, had in his possession 1 cap and a shirt, belonging to Zambia Air Force (ZAF) without lawful authority.
- 1.3 He was committed to the High Court for sentence where Limbani, J, imposed a sentence of 15 years imprisonment with hard labour with effect from the 20th April 2022.

2.0 PROSECUTION EVIDENCE

- 2.1 The prosecution case was that on 1st April 2022, a suspect by the name of Thandeo Simpamba Morris, led police officers in Kabwe to the apprehension of the appellant. Upon searching the appellant's house in Kabwe's Zambia Railways Compound, the police recovered a cap

and a top, which were suspected to be Zambia Air Force (ZAF) uniforms. PW4, a Lieutenant Colonel in ZAF confirmed to the court that the items were indeed ZAF uniforms.

- 2.2 The trial court found the appellant with a case to answer and placed him on his defence.

3.0 DEFENCE

- 3.1 In his defence, the appellant denied having been found with the cap and the top. He stated that the police got a pair of shoes, one long-sleeved shirt, two bottles of perfume and his watch. He told the trial court that three days after the search at his house, the arresting officer brought the cap and top, which were military uniforms to him, stating that they were his but he did not know where the arresting officer had gotten them from.

4.0 DECISION OF THE COURT BELOW

- 4.1 The trial court accepted the prosecution evidence to the effect that the cap and top were found in the appellant's house and that they were military uniforms. The trial court also found that he had no lawful authority to possess them.
- 4.2 As a consequence, the trial court convicted the appellant.

5.0 GROUNDS OF APPEAL

5.1 Unhappy with the decision of the lower court, the appellant appeals to this court on the following ground:

“The trial court erred in law and in fact when the court convicted the appellant of the offence of unauthorized possession of defence force uniform when the ingredients of the offence were not sufficiently proved.”

6.0 APPELLANT’S ARGUMENTS

6.1 In support of the appeal, learned counsel submitted that the relevant law in this appeal is **Section 6 (1)(a) of the State Security Act** and that it is the duty of the prosecution to prove that the appellant had in his possession a defence force uniform and that he had it in his possession for the purpose of using it in a manner so as to assist or participate in the commission of an offence.

6.2 It was learned counsel’s contention that there was no evidence that the appellant, having been found in possession of defence force uniform, he used or intended to use it in the commission of an offence. Counsel argued that as a result, the offence was not proved.

6.3 When asked by the Court as to whether the evidence had not proved a lesser offence under **Section 182 of the Penal Code**, learned

counsel argued that a conviction under **Section 182 of the Penal Code** is not tenable as the appellant was not found wearing the uniform and the purpose for which the uniform was possessed was not established. We were urged to allow the appeal and acquit the appellant.

7.0 RESPONDENT'S ARGUMENTS

7.1 Learned counsel for the respondent conceded that the conviction is not sound. Counsel, however, took the view that we should instead find the appellant guilty of the offence under **Section 182 of the Penal Code**.

8.0 THE HEARING

8.1 At the hearing of the appeal learned counsel made oral arguments which we have noted above.

9.0 DECISION OF THE COURT

9.1 We have carefully considered the record of appeal and the arguments by the parties.

9.2 There is no dispute that the appellant was found in possession of ZAF uniform without authority. The question is whether the possession of the uniform, in the circumstances of this case, constitutes an offence

under **Section 6(1)(a) of the State Security Act**. This Section provides that:

“6. (1) Any person who, for the purpose of gaining or assisting any other person to gain admission to a protected place or for any other purpose prejudicial to the safety or interests of the Republic:

(a) without lawful authority, uses, wears, has in his possession, imports or manufactures any uniform of the Defence Force or of the Police Force or any other official uniform of the Republic, or any uniform or dress so closely resembling the same as to be likely to deceive, or falsely represents himself to be a person who is or has been entitled to wear or use any such uniform;”(emphasis ours)

9.3 The marginal note to this Section reads “unauthorised use of uniforms, passes, etc”. Clearly, this provision is meant to proscribe unauthorized use of military uniforms. It is therefore not enough that one had in his possession a military uniform. It must also be proved that the purpose of having the uniform was for gaining or assisting any other person to gain admission to a protected place or for any other purpose prejudicial to the safety or interests of the Republic.

9.4 In the case of **Barton Nkhoma & 3 Others v The People**¹ we stated at J11 that:

“For a charge under Section 6(1)(a) of the State Security Act to stand, it is not enough to merely show that a person was found with military uniforms. The evidence must also prove that such a person was in possession of uniforms, because he intended to gain or assist another person to gain admission to a protected place.

The charge is also proved if it is proved that such a person was in possession of the uniform for a purpose that was prejudicial to the safety or interests of the country.”

- 9.5 The appellant herein was simply found in possession of the ZAF uniform. He never wore it, neither did the state establish that he possessed the same for purposes of gaining or assisting any other person to gain admission to a protected place or for any other purpose prejudicial to the safety or interests of the Republic. We agree with both learned counsel that a conviction of the appellant under **Section 6(1)(a) of the State Security Act** cannot stand.
- 9.6 Learned counsel for the respondent argued that we should instead find the appellant guilty of the offence of possession under **Section 182 of the Penal Code**. This Section too, requires a person to wear a uniform without authority, or wear a uniform for purposes of committing an offence, whether a felony or not. It only prohibits

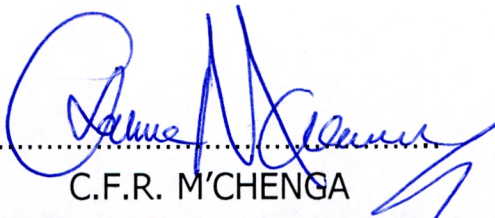
possession of the uniform for purposes of selling, not any other form of possession, and this, was not the case with the appellant.

9.7 We therefore agree with learned counsel for the appellant that **Section 182 of the Penal Code** is equally inapplicable.

9.8 It is our view that had the learned trial court properly directed itself on the law under **Section 6(1)(a) of the State Security Act**, it would have not convicted the appellant. We allow the appeal and quash the conviction.

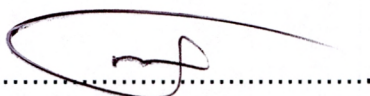
10.0 CONCLUSION

10.1 Having allowed the appeal, we quash the appellant's conviction, set aside the sentence of 15 years imprisonment, acquit the appellant and set him at liberty forthwith.



C.F.R. M'CHENGA

DEPUTY JUDGE PRESIDENT



K. MUZENGA

COURT OF APPEAL JUDGE



Y. CHEMBE

COURT OF APPEAL JUDGE