NKAKA CHISANGA PUTA v THE ATTORNEY-GENERAL (1983) Z.R. 114 (S.C.)

SUPREME COURT
SILUNGWE,C.J., NGULUBE, D.C.J., AND MUWO, J.S. 27TH AND 28TH APRIL AND 22ND DECEMBER, 1983
(S.C.Z. JUDGMENT NO.25 OF 1983)
APPEAL NO.16 OF 1982

Flynote
Constitutional law - Detention order - Writing of - Requirement for.
Constitutional law - Detention - Unlawful place - Detention in - Effect of.
Constitutional law - Detention - Future apprehension - Expression of.
Constitutional law - Detention - Grounds - Vagueness - Absence of specific date, place and activities - Effect of.
Constitutional law - Emergency laws - subjective nature of imposition thereof.

Headnote
The appellant appealed against a High Court rejection of his petition praying for a declaration that his detention was unlawful, and for an award of damages for wrongful arrest and unlawful detention. He contended among other things, that the detention order had to be in writing and he should have been detained in lawful place. He further claimed that the grounds for detention were non-existent, or in the alternative, vague, and urged the court to look into the validity of the declaration of semi-emergency under Art. 30.

Held:
(i) There is no statutory requirement or obligation on the part of the police to serve a written detention order on a person being detained under reg. 33 (6) of the Preservation of Public Security Regulations.
(ii) Lilayi prison falls within reg. 33 (5) as a lawful place of detention, although failure to lodge the appellant in the prison section renders the detention false imprisonment, entitling him to damages only.
(iii) Where a future apprehension is stated, either in the order or in the grounds and, subject to any question which might arise under clause 26 of the Constitution as to the reasonableness of the measures taken, past activities can furnish good grounds for detention.
(iv) Grounds are not necessarily vague merely because of the absence of specific date, place or particular activity in question, if they are in fact sufficient to enable the detainee to know what is alleged against him, bring his mind to bear upon it and enable him to make meaningful representations to the detaining authority.

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(v) It is not open to the courts to debate whether it is reasonable for there to be in existence a declaration of state of emergency this being matter purely for the President, to decide and

subject only to Parliament.

Cases cited:
(1) Sharma v The Attorney-General (1978) Z.R. 163.
(2) Eleftheriadis v The Attorney-General (1975) Z.R. 69.
(3) Shamwana v The People (1981) Z.R. 261.
(4) Re Kapwepwe and Kaenga (1972) Z.R. 248.

Legislation referred to:
Preservation of Public Security Act, Cap. 106.
Preservation of Public Security Regulations. Cap. 106, regs. 33(1), (5), (6).
Prisons Act, Cap. 134, s. 55.
Preservation of Public Security Ordinance No. 5 of 1960 ss. 3, 4 (2), 5, 6.
Preservation of Public Security Ordinance (Amendment) (No. 2) Order, 1964.
Interpretation Act, Cap. 2, s. 20(7).
Constitution of Zambia, Cap. 1 Art. 30(2), (a).

For the appellant: L.P. Mwanawasa, Mwanawasa and Co.
For the respondent: C.C. Manyema Solicitor - General and A.G. Kinariwala, Senior State Advocate.

Judgment
SILUNGWE, C.J.: Delivered the judgment of the Court.

The appellant was arrested and detained by the police on July, 2 1981, and, on the 15th of that month, he was served with a Presidential Detention Order made under regulation 33(1) of the Preservation of Public Security Regulations, Cap. 106 of the Laws of Zambia, the grounds for his detention being furnished to him on July, 28.

On September 8, 1981, the appellant filed a petition at the High Court in Ndola praying for a declaration that his detention was unlawful and for an award of damages for wrongful arrest and unlawful detention. The only prayer that was granted was for inhuman treatment (that is, physical and mental ill-treatment) and he was given damages for this. All other prayers were rejected. It is against that rejection that the appellant is now before us for redress.

Mr Mwanawasa has on behalf of the appellant raised four grounds of appeal. The first ground is that the learned trial judge was wrong in law in holding that the police detention order under regulation 33(6) of the Preservation of Public Security- Regulations (hereinafter referred to as the regulation) need not be in writing and as such the appellant would not be entitled to damages for wrongful detention.

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It is common cause that on July 2, 1981, the appellant was arrested without a warrant and detained by the police until July 9, when he was served with police detention order. Mr. Mwanawasa submits that the detention for the period July 2 to 9 was unlawful as no written detention order had been served on the appellant and none had been issued. In considering this argument, the learned

trial judge referred to *Sharma v The Attorney-General*, (1), where Baron,D.C.J., had said:

> "It is convenient to deal at this point with the document revoking the police order. The point is perhaps academic, but I venture to doubt whether there is any necessity for written order directing the detention of the person concerned.... "

and was satisfied that, under regulation 33 (6) of the regulations, there is no requirement for a written police detention order and that the appellant's detention for the period aforesaid was, accordingly, lawful.

Mr Mwanawasa's contention is that, regulation 33(1) and (6) of the Regulations must be read together with section 55 of the Prisons Act, Cap. 134 of the Laws of Zambia, from which it is clear that for a person to be detained in a prison, there must be authority in writing lodged with the prison, together with the person intended to be detained. In response to this, Mr Manyema, the learned Solicitor - General, argues on behalf of the respondent that, as regulation 33 (6) provides for an arrest without a warrant, there was no need for a written authority to be issued by the police to the appellant, but that, for the purpose of being lodged in a prison, a document of authorisation must be given by the police to the prison authorities as no arrested person can be admitted into a prison without the production of such a document. We can see force in Mr Manyama's argument.

There is a distinct difference between sub-regulations (1) and (6) of regulation 33. Sub-regulation (1) (leaving out parts of it which are here not of immediate interest) provides that:

> "33. (1) Whenever the President is satisfied that for the purpose of preserving public security it is necessary to exercise control over any person, the President may make an order against such person, directing that such person be detained and therefore such a person shall be arrested . . . and detained."

On the other hand, sub-regulation (6) stipulates that:

> "33. (6) any police officer of above the rank of Assistant Inspector may, without warrant, arrest any person in respect of whom he has reason to believe that there are grounds which will justify his detention under his regulation, and may order that such person be detained for a period not exceeding twenty-eight days pending a decision whether a detention order should be made against him . . . "

Evidently, sub-regulation (1) does not provide that an arrest made there under shall be without a warrant. It follows that an arrest under this sub-regulation can only be made on the authority of a Presidential detention order. This then is, in a way, equivalent to an arrest with a warrant under the provisions of the Criminal Procedure Code.

Moreover, regulation 3 of the Regulations defines a "detention order" as meaning "an order made under the provisions of sub-regulation (1) of regulation 33".

The Presidential detention order thus provides authority, not only for the arrest of a person to be detained, but also for the lodgement into a prison of such person for the purpose of his detention.

However, insofar as sub-regulation (6) is concerned, provision is made thereunder to arrest a person without a warrant. When it comes to the lodgement, into a prison, of an arrested person for the purpose of his detention, the prison authorities will, as a matter of course, demand from the police, production of some evidence of authority, in terms of section 55 of the Prisons Act. This section reads that:

> "55. (1) No person shall be admitted into a prison unless under the authority of and accompanied by-
> . . . (d) An order in writing signed by a police officer of or above the rank of Sergeant."

There is thus no statutory requirement or obligation on the part of the police to serve a written (police) detention order on the person being detained under sub-regulation (6) of regulation 33. We are here satisfied that the learned trial judge did not misdirect himself.

Mr Mwanawasa has raised a collateral issue, namely, that during the period July 2 to 9, 1981, the appellant's detention was unlawful because, instead of being detained in an authorised place, he remained in police custody at Lilayi and other police stations.

Sub-regulation (6) of regulation 33 stipulates that a detention made thereunder shall be subject to the provisions of sub-regulation (5) of this Regulation. By sub-regulation (5):

> "33. (5) Any person detained in pursuance of this regulation shall be deemed to be in lawful custody and shall be detained in such place within or without the prescribed area as may be authorised by the President and in accordance with such instructions as the President may issue in that behalf."

By Gazette Notice No. 1376 of 1973, the President, in exercise of the powers contained in regulation 33 (5) of the regulations, authorised all places declared to be prisons under the prisons Act, to be places of detention for the purpose of regulation 33 of the said Regulations.

Although, by Gazette Notice No. 1460, of 1980 the Lilayi Police Training School was declared to be a prison under the Prisons Act, it is clear that the appellant was not kept in the prison section of the Police Training School. Consequently, the appellant's detention for the period July 2 to 9, is hereby deemed to have been unlawful and, therefore, amounts to false imprisonment. Although this does not in the least invalidate the Presidential detention order, it nevertheless entitles the

appellant to damages. The assessment of these damages will be referred to the learned trial judge who is as yet to consider the assessment of the damages that he himself awarded to the appellant for inhuman treatment.

For the sake of convenience, we propose to consider grounds three, four and two, in that order.

It is alleged in the third ground that the learned trial judge "misdirected himself on the question of the court's competence to consider the reasonable justification of the appellant's detention in terms of the provisions of the Preservation of Public Security Act and of the Constitution of Zambia." In argument, this ground boils down to a double-pronged contention, namely. that the detention is outside the ambit of the law and that the grounds are non-existent.

As to the first part of the contention, Mr Mwanawasa submits that, although the concluding paragraph of the grounds for the appellant's detention alleges a future apprehension, the respondent led no evidence to that effect and that, above all, the grounds themselves allege past activities. In making this submission, Mr Mwanawasa relies on a decision of this court in the case of *Eleftheriadis v The Attorney-General* (2),

The grounds upon which the appellant is detained are these:

> "(1) That on a date unknown, but during the month of April, 1981, while at GEOFREY HAAMAUNDU'S office, situated at Chuundu House, Lusaka you were informed by him namely, GEOFREY HAAMAUNDU that there were ex-residents of Zambia abroad who were willing to give financial help to Messrs, EDWARD SHAMWANA and VALENTINE MUSAKANYA but that they were unable to transfer their money to Zambia. Subsequently, you were informed by GEOFREY HAAMAUNDU that he (GEOFREY HAAMAUNDU) was looking for somebody in Zambia who had lot of Kwacha and who would be willing to exchange it with the USA Dollars abroad. Mr GEOFFREY HAA MAUNDU further informed you that the money intended for use to rescue Messrs EDWARD SHAMWANA and VALENTINE MUSAKANYA who were involved in the abortive coup attempt of October, 1980.
>
> (2) That subsequently on or about the 22nd May, 1981, you informed WILLEM JOHANNES PRETORIUS of Chingola about the aforesaid proposal namely, exchange of USA Dollars with Kwacha, as you were aware that WILLEM JOHANNES PRETORIUS was looking for Foreign Currency, and that soon after informing him, you instructed him namely WILLEM JOHANNES PRETORIUS to travel to Lusaka to meet GEOFREY HAAMAUNDU through a third man namely GEORGE KAPOTWE, with a view that GEOFREY HAAMAUNDU and WILLEM JOHANNES PRETORIUS may discuss the exchange rate of the USA Dollars and the Zambian Kwacha. You further informed the

> said PRETORIUS that the money was intended for use to rescue the detainees involved in the abortive coup attempt of October, 1980.
> (3) That you failed to report the above activities to the Police or any other Government Security Forces.
> Your aforesaid activities are prejudicial to Public Security, and there is a genuine apprehension that if left at large, you will continue to persist, in these activities and therefore, for the Preservation of Public Security, it has been found necessary to detain you."

In reply to Mr Mwanawasa's submission, the learned Solicitor General, also basing his submission on *Eleftheriadis*, (2), argues that past activities may induce an apprehension of future activities. He draws attention to lines 10 to 15 at page 71, where Doyle, C.J. said:.

> "I am equally satisfied that past activities can furnish good grounds for detention under the regulation provided and I stress this, that these activities have induced an apprehension in the mind of the detaining authority of future actions prejudicial to the public security.
> On the material before us can the court say that such apprehension existed? That can only be ascertained from that material."

Eleftheriadis, (2), was a case that alleged conspiracy in the procurement of import licences by corrupt means. The grounds upon which *Eleftheriadis* (2) had been detained were in the following terms:

> "that between the 1st day of December, 1973, and the 31st of January, 1974, you conspired with persons within Zambia to corruptly procure import licences of the Republic of Zambia enabling Kingstons (Zambia) Limited to import goods without valid import licences, which act was prejudicial to the security of the Republic of Zambia."

The grounds did not state any apprehension of future misconduct Doyle,C.J., said at page 71, lines 29 to 31:

> "I do not consider that any inference of a future apprehension can be obtained from the grounds. Neither does the order specifically refer to fixture apprehension."

And later on the same page, in line 46 and continuing at page 72, lines 1 to 6, he continued:

> "Had a, future apprehension been stated either in the order or in the grounds, I do not consider that, subject to any question which might arise under Article 26 of the Constitution as to the reasonableness of the measure taken, any court would of could have questioned the order. In the circumstances of this case I am not, however, prepared on the probabilities to make an inference than such apprehension existed."

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The case under consideration cannot, by any stretch of imagination, be said to be on all fours with *Eleftheriads* (2). Here, there is an allegation as to a future apprehension and, although there is no specific evidence as such in support of the allegation, it can reasonably be inferred from the grounds that when consideration was being given to the appellant's detention there was genuine fear that the appellant may, if left at large, continue to persist in his attempt to secure the rescue of persons referred to in the first ground.

We would echo the words of Doyle,C.J. in *Eleftheriadis* (2) that, where a future apprehension is stated, either in the order or in the grounds, and, subject to any question any might arise under clauses 26 of the Constitution as to the reasonableness of the measures taken, past activities can

furnish good grounds for detention. The first part of Mr Mwanawasa, contention is therefore unsuccessful.

In the second part of the contention, it is said that the grounds for the appellant's detention are non-existent, in the sense that they are not true. The whole attack is directed at the second ground for detention wherein it is stated that, on or about May 22, 1981, the appellant informed Pretorius about a proposal to exchange the dollar for the kwacha. It is not in dispute that Pretorius was outside Zambia on May 22, having left in the evening of the previous day, that is May 21, Mwanawasa contends that there is incontrovertible evidence to the effect that the date May 22, was extracted from details of an entry made by the appellant in his diary which records an appointment with Mrs Pretorius, the implication being that the date found its way in the second ground for detention because it had been extracted from the appellant's diary.

This part of the argument is immaterial since the appellant's contact, for the alleged purpose of arranging for a rescue operation, is said to have been Mr Pretorius, not Mrs Pretorius, and the entry in the appellant's diary specifically referred to Mrs Pretorius.

The issue really is whether the second ground can be said to be non-existent, that is, untrue or vague just because it contains the expression " on or about the 22nd May 1981." We agree with the learned Solicitor - General that the, use of that; expression denotes caution as the detaining authority recognised that the actual date might be different.

Recently in the case of the *Attorney-General v Valentine Shula Musakanya* (3) where it was stated in the first ground of the respondent's detention "That on a date unknown but between 1st day of red 1980 and 6th day of October,1980," this court held that that expression did not make the ground vague, and re-stated, at page 3, the test applicable to such cases, namely, "whether a detainee has been furnished with sufficient information to enable him to know what is alleged against him so that he can bring his mind to bear upon it and so enable him to make a meaningful representation to the detaining authority or the Detainees' Tribunal."

We further held, at page 4, "that grounds are not necessarily vague merely because of the absence of a specific date."

In the light of what we have said above, we have no difficulty in rejecting the contention that the ground is non-existent, untrue or vague, just because of the expression "on or about the 22nd May, 1931." In any event, the first ground, which states " on a date unknown, but during the month of April, 198l" has not been challenged. And so, even if we were for the sake of argument to hold that the second ground was non-existent, for whatever reason, this would not vitiate the validity of the grounds as whole.

In the fourth ground, it is said that the learned trial judge misdirect himself in his consideration of the adequacy of the grounds and the ability of the appellant to make meaningful representations. The point be made here is that the grounds for detention are vague.

It is said that the learned judge failed to appreciated that, in relation to the first ground for detention, there are two incidents alleged, namely, the incident that occurred on a date in April and the other one which took place subsequently. It is submitted that the subsequent incident lacks in detail in that the ground does not state when or where the appellant is alleged to have been informed by Mr Haamaundu about the proposal to exchange the Kwacha for the dollar, or when or where he was informed that the money was for the rescue plot.

We regard this argument to be of academic value only because, even if one part of the first ground for detention were to be found to be vague, the other part, being uncontroverted, would nevertheless hold out against the appellant. As the Solicitor - General points out, this is a ground that should be read as whole. As such, the ground cannot as conceivably be said to be vague.

As to the second ground for detention, it is argued that vagueness or otherwise does not lie in the fact. that date and purpose of the money are mentioned; the ground is vague because it does not state the place where the discussion between the appellant and Pretorius took place or how it was conducted, that is, whether it was by telephone or at meeting, as the appellant resided in Ndola while Pretorius lived in Chingola at the material time.

It is common ground that the approximate date is given, the month is also given, the person with whom the appellant is appellant to have had a discussion is named and the subject-matter of the discussion is named namely, proposal to convert US dollars into the local currency so that the Kwacha could then be used for the purpose of rescuing "detainees involved in the abortive coup attempt of October 1980."

On the basis of the foregoing information, is it arguable that the second ground for detention is vague, merely because it does not state the place where the discussion between the appellant and Pretorius took place, or whether the discussion was by telephone or at a meeting. We do not think so. In our opinion the information set out in the ground adequately meets the test referred to above in *Musakanya's* case (21).

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In the third and final part of the fourth ground of appeal it is contended that the last paragraph in the statement of the grounds for detention, which alleges that grounds 1 to 3 are prejudicial to public security and that there is a genuine apprehension that if left at large, the appellant will continue to persist in these activities, is vague, since it does not specify which particular activities the appellant is likely to pursue.

This ground is, in our view, misconceived because, although the last paragraph forms part of the overall grounds for detention, it does not per se constitute a ground; it is merely complementary to the said grounds. In any case, the expressions in the paragraph of "a genuine apprehension that if left at large, the appellant will continue in these activities", point to the material contained in the first and second ground for detention, the gist of it being that, if left at large, the appellant may persevere in his attempts to stage a rescue operation for the benefit of at least two of the persons detained in connection with the abortive coup attempt of October, 1980. We are unable to see any vagueness in the last paragraph aforesaid.

We now return to the second ground of appeal in respect of which it is submitted that the learned trial judge was wrong in law, in holding that there are existing powers of detention under the provisions of the Preservation of Public Security Act and the Regulations made thereunder.

The issue raised here is akin, though not entirely parallel, to that which arose in *Shamwana v The People* (4), where this court held that there was deemed to be in force in this land a declaration made under clause (1) paragraph (b) of Article 30 of the Constitution, then section 29 (1) (b), to the effect that:

> "20. (1) (b) a situation exists which, if it is allowed to continue, may lead to a state of public emergency."

It is opportune to give a brief outline of the history of the Preservation of Public Security Ordinance and the Regulations made thereunder, from 1960 to 1964.

On February 20, 1960, the Preservation of Public Security Ordinance No. of 1960 (hereinafter referred to as the Ordinance), was enacted. Under it, section 4 (2) empowered the Governor to make regulations so an, to provide for: (a) the detention of persons; and (b) the requiring of persons to do work and render services.

By Government *Gazette* Notice No. 121 of 1960, Proclamation No. 2 of that year was promulgated, thereby bringing into operation the provisions of subsection (2) of section 4 of the Ordinance.

By Government Notice No. 234 of 1961, the Governor, in exercise of the powers conferred upon him by sections 3, 4, 5 and 6 of the Ordinance made the Preservation of Public Security Regulations. Under these Regulations, regulation 11, 12 and 13 made provision for the detention of persons and regulation 21 provided for the directing of labour. Regulations 45 11, 12, 13 and 21 were later revoked by Government Notice No. 280 of 1961.

On July 27, 1964, the Governor, by Government Notice No. 375 of 1964, and, in exercise of the powers conferred upon him by sections 3, 5 and 6 of the Ordinance, made the principal Regulations which revoked and replaced those made under Government Notice No. 234 of 1961.
By Government Notice No 376 of 1964, the Governor issued Proclamation No 5 of 1964, on July 28, and thereby brought into operation the provisions of section 4 (2) of the Ordinance.

On the same day (that is July 28), the Governor, by Government Notice No. 377 of 1964, and, in exercise of the powers conferred upon him by section 4, 5 and 6 of the Ordinance, promulgated the Preservation of Public Security (Amendment) Regulations, 1964, regulations 1 and 2 of which read as follows:

> "1. These Regulations may be cited as the Preservation of Public Security (Amendment) Regulations, 1964, shall be read as one with the Preservation of Public Security Regulations, 1964, hereinafter referred to as the principal Regulations, and shall come into operation

upon the date hereof.

2. Regulation 3 of the principal Regulations is hereby amended by the insertion in the appropriate place of the following definition:

> 'detention order' means an order made under the provisions of sub-regulation (1) of regulation 31A of these Regulations ;'

By regulation 3, the principal Regulations are amended by the insertion of a new regulation, that is, regulation 31A which, inter alia, makes extensive provisions for the detention of persons.

By Statutory Instrument No. 85 of 1964, the President, in exercise of the extraordinary powers conferred upon him by section 4(3) of the Zambia Independence Order, 1964, made the Preservation of Public Security Ordinance (Amendment) No. 2) Order, 1964. Under that Order, section 4 of the Ordinance was repealed, its detention provisions being brought under section 3 of the Ordinance.

Section 3 of the Ordinance has now become section 3 under the Preservation of Public Security Act, Cap. 106; and regulation 31A of the Preservation of Public Security (Amendment) Regulations, 1964, has since become regulation 33 of the Preservation of Public Security Regulations made under Cap. 106.

In presenting the final ground of appeal, Mr Mwanawasa has sub-divided it into four parts, all of which bring into question whether powers of detention do exist under the Preservation of Public Security Act and the Regulations made under it.

The first sub-division of the ground contains the argument that the Regulation contained in Government Notice No. 377 of 1964, which purported to introduce regulation 31A and so make it part of the principal Regulations made a day previous thereto, under Government Notice No. 375 of 1964, are of no effect. The reason advanced in support of the argument is that, as the amending Regulations purportedly became part

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of the principal Regulations made under sections of the Ordinance (that is sections 3, 5 and 6) which did not authorise the making of Regulations to introduce the detention of persons (under section 4 of the Ordinance), the question is not simply whether the Governor had power to make Regulations under section 4 of the Ordinance, but whether the power had been properly exercised under the Ordinance. It is submitted that the Governor's power had been improperly exercised and throb the purported amendment was a nullity.

The contention, by the learned Solicitor - General is that, it is unnecessary to call aid the provisions of section 20 (7) of the Interpretation Act, Cap. 2, because the amendment Regulations were properly made under a correct section, namely, section 4 of the Ordinance, and that, as such, those Regulations are valid their own right, notwithstanding the fact that they were made to read as one with the principal Regulations which had been made on the previous day. It was immaterial that the principal Regulations had been made under sections 3, 5 and 6 of the Ordinance because, when read together, both sets of the Regulations referred to sections 3, 4, 5 and 6. The issue, in our view, is

one of vires and there can be no question but that the Governor had lawfully promulgated the Regulations called in question.

In any event, even if the amendment were to be held as invalid, which it is not, section 20 (7) of the Interpretation Act would have a curative effect.

For the reasons given, we are satisfied that the new Regulations made under Government Notice No. 377, were validly made and, therefore, intra vires.

The submission, in relation to the second sub-division of the ground is to the effect that at the time of the amendment Regulations, there was not in force a proclamation under section 4 of the Ordinance. This submission is unacceptable because there was in fact in existence at the time, Proclamation No. 5 of 1964, published under Government Notice No. 376 of 1964 on the same date (July, 28) as the Amendment Regulations were, but took precedence over the latter. If is flats Proclamation that revoked the earlier one published in Government Notice No. 121 of 1960.

The third sub-division of the ground concerns an allegation that the extension of the Principal Regulations that is, Government Notice No. 375 of 1904) as amended by Government Notice No. 377 of 1964, to "all the Provinces" (vide Statutory Instrument No. 359 of 1965) in relation to detention orders, was ultra vires.

This sub-division of the ground was withdrawn, in the light of the provisions of Statutory Instrument No. 85 of 1964, Mwanawasa conceding that the said extension had been validly made.

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Finally, it is argued, in regard to the fourth sub-division, that the continuation of the declaration and, therefore, of the Regulations, is unlawful and an abuse of power, since the reasons upon which the Proclamation was made no longer exist. It is further submitted that the court should be competent to hold that continuation of the Proclamation illegal, even if such continuation could be justified by some other reasons which have appeared in the meantime.

This argument overlooks the fact that, although Proclamation 5, published under Government Notice No. 376 of 1964, was based on the Lumpa uprising, the declaration has been extended from time to time by the President and Parliament, for fresh reasons. We wish to reiterate what we said in *Re: Kapwepwe and Kaenga,* (5), at page 263, namely, that -

> "It is not open to the courts to debate whether it is reasonable for there to be existence a declaration under section 29 (now Article 30 of the Constitution)."

This is matter purely for the president in power to decide, subject only to the powers of Parliament under Article 30 (2). For instance, this is illustrated by the provisions of Article 30 (5) which reeds that :

> "(5) Whenever an election to the office of President results in a change in the holder of that office any declaration made under this Article and in force immediately before the day on

which the President assumes once shall cease to have effect on the expiration of seven days commencing with that day".

For the foregoing reasons the second ground of appeal is also unsuccessful.

Apart from the subsidiary ground as to false imprisonment, the appeal has failed on all major grounds and, to that extent, it is dismissed.

As this case raises some points of law of public interest, there will be no order as to costs here and in the court below.

Appeal dismissed
