

APPEAL NO. 93/2001

**IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(CRIMINAL JURISDICTION)**

SHAKE KALUBA

Appellant

V

THE PEOPLE

Respondent

**CORAM: Ngulube, C.J., Chirwa and Chibesakunda
JJs on 2nd April and 21st May 2002**

For the Appellant: In Person

**For the People: Mr. M. Mukelabai, Director of Public
Prosecution**

JUDGMENT

Chirwa, JS, delivered judgment of the Court: -

The appellant, **SHAKE KALUBA**, was convicted in the subordinate court on one count of Corrupt Practices Contrary to Sections 25 (1) and 35 of the Corrupt Practices, Act No. 14 of 1980 as amended by Act No. 29 of 1987. The particulars alleged that the appellant, on dates unknown but between 1st July 1995 and 24th August 1995 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia being a public officer, namely a Police officer

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in the Zambia Police Force of the Ministry of Home Affairs, corruptly solicited for K20,000-00 cash gratification, from FANWELL MULENGA as an inducement or reward for himself to close a case where the said FANWELL MULENGA was alleged to have run over an unnamed child, a matter or transaction which concerned the Zambia Police Force, a public body. After due trial, the appellant was found guilty of the offence and sentenced to a fine of K350,000-00 in default 8 months I.H.L. He was further sentenced to 2 years I.H.L. suspended for three years with effect from the date of arrest, namely 19th July 1996. His appeal against conviction to the High Court was unsuccessful but sentence was disturbed in that the fine of K350,000-00 was quashed leaving the 2 years I.H.L. suspended for three years. He appealed to us against the conviction and sentence.

The evidence accepted by the learned trial magistrate was that the appellant was employed in the Zambia Police Service and stationed at Ng'ombe Police Post here in Lusaka. The driver from whom the appellant is alleged to have solicited the gratification was working for Minestone and on 27th July 1995 he drove his motor vehicle past Ng'ombe Police Post when he was stopped by a Police Officer, who turned out to be the appellant. In inquiries office, Fanwell Mulenga was asked if he was aware that he run over a child within Ng'ombe compound, he denied any knowledge. He was told to report the following day at 1700 hours. Fanwell reported the following day as directed and found the appellant who told him that if he paid K20,000-00 the case would be over but he told the appellant that he did not have the money. Fanwell was told to go home. On 14th August 1995 Fanwell received a call out through his transport officer requiring him to report at Ng'ombe Police Post, which he did at 1700 hours and found the appellant who demanded the K20,000-00, but Fanwell told him that he had no money unless he got a loan from his work place. On 17th August 1995 he

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got a loan from his employers of K10,000-00 and went to the Anti-Corruption Commission and showed them the money he got and the officer at the Commission recorded the serial number and he and Anti-Corruption officers went to Ng'ombe at Chasora Inn where he left K10,000-00 with a boy at the grocery and went to the Police Post where he met the appellant and told him that he left part of the money at the grocery. The two went to the grocery where he was given the K10,000-00 and promised to bring the balance. As the appellant was going out Anti-Corruption Officers apprehended him and the K10,000-00 whose serial number was taken previously was found on him. The appellant was taken to Anti-Corruption Commission offices. The accident that Fanwell is alleged to have been involved occurred on 30th June 1995 involving a child of Maureen Ng'ombe who after the accident never saw the driver of the motor vehicle that hit her child. In her evidence she denied asking for compensation from the driver through anyone. She never knew the appellant before but that he visited her home asking her to support his story that she wanted compensation for the injuries to her child. The appellant was eventually arrested for the subject offence.

In his defence at trial, the appellant told the court that he was approached by the mother of the child involved in the accident who wanted compensation for the child which was for treatment and transport. Later he saw Fanwell at the Police Post and asked him for the money so that he pays the mother of the child. He admitted getting the money from Fanwell.

In his appeal before us the appellant filed detailed arguments on one ground of appeal in which he spent his time criticizing the appellate High Court Judge for upholding the conviction. We are not going to dwell on his criticism of the appellate Judge. We will consider the evidence and the judgment at trial. We have gone through the evidence and the judgment. From the evidence we

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cannot fault the learned trial magistrate's findings of the facts of how the appellant got involved with Fanwell and the matter of the child allegedly involved in the accident. It is clear that there might have been an accident in Ng'ombe compound but that did not involve Fanwell and the mother of the child denied that it was Fanwell who was involved. The appellant in his evidence did admit to have been involved in trying to secure compensation on behalf of the mother of the injured child. He also admitted receiving the money from Fanwell which money had earlier been recorded by Anti-Corruption Commission Officers. If the money was for compensation, the initiative should have come from mother of the injured boy but she denied making any move. Instead she testified that the appellant approached her and tried to coach her to admit in court that she wanted compensation. Taking the evidence of Fanwell, the mother of the injured child and the officers from the Anti-Corruption Commission and also the appellant's own evidence at trial, it was overwhelming against the appellant. The trial learned Magistrate cannot be faulted. The appeal against conviction is dismissed.

Coming to sentence, the appellant was lucky in that the sentence of the learned trial magistrate was interfered with by the appellate judge and what remained does not come to us with any sense of shock. The suspended sentence of 2 years stands.

M M S W NGULUBE
CHIEF JUSTICE

D K CHIRWA
SUPREME COURT JUDGE

L P CHIBESAKUNDA
SUPREME COURT JUDGE

