

SCHOOL OF LAW
OBLIG. ESSAY
1994/95

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

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AN EVALUATION OF THE LAW ON STREET VENDING IN ZAMBIA
(CASE STUDY OF LUSAKA)

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(I)

AN EVALUATION OF THE LAW ON STREET VENDING IN ZAMBIA
(CASE STUDY OF LUSAKA)

BY

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AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF
ZAMBIA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR
THE DEGREE OF BACHELOR OF LAWS

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

OCTOBER 1994

(II)

DEDICATION

I dedicate this paper to my late father Mr.
Patrick. L. Ng'anjo, my mother Mrs Rosemary
Ng'anjo, my brothers and sisters, and the rest of
my relatives for their cherished love, faith and
guidance.

(III)

ACKNOWLEDGEMENTS

I would like to thank my supervisor Mr. P. Matibini lecturer school of law University of Zambia, for his invaluable assistance and many useful suggestions that helped mould this work.

Many thanks also go to Mr. Peter Soneka, Assistant Director Administration Lusaka City Council, Mr K. Kamfwa Council Advocate (Licensing) Lusaka City Council, Mr. Zimba, Officer in Charge Lusaka City Council Police and many others who assisted me in the preparation of this paper.

I can not forget the help rendered to me by my fellow student Malero Nyirenda whose urging, prodding and encouragement in many ways and many things have been a source of inspiration I shall always remember.

Lastly, but not the least, my deep gratitude goes to Mr. K.K. Kalala LIDPM, Senior Systems Analyst, SIDO who typed this manuscript for me.

(IV)

ABSTRACT

Over the years, most parts of the country have witnessed the mushrooming of a business known as street vending. There is a general tendency by most people of selling their goods in streets and other open public places both in residential and commercial areas. It is important that whenever people want to carry on business, they should do it in an orderly and acceptable manner, having due regard to the law. Unfortunately, the practice in this Country seem not to be the case. Residents carry out their business as if no law exists to control and ensure lawful trading is conducted. The reason why residents who want to carry out business should do so in an acceptable and orderly manner is that if they do not, very serious public health consequences would result from their trading practices.

This paper addresses itself critically at the law that governs street vending in Zambia. It will attempt to asses whether the law that exists in the country is adequate to deal with the problem of this Magnitude and nature. It must be stressed that the paper examines the problem of street vending and the law that applies to it in the Country as a whole, but special reference will be made to the City of Lusaka.

This is because Lusaka is the capital of Zambia, and that the magnitude of street vending is greater in Lusaka than in any part of the country. The recommendations that will be made at the end of the paper will in my view be relevant for the whole country.

This paper is divided into five Chapters. The first Chapter examines the nature of the problem of street vending. Chapter two examines the legal framework that governs street vending In Zambia. Chapter three looks at the enforcement of the law ~~on~~ Street Vending in practice and other responses to the problem from the central government and the local authorities. Chapter four will focus on the constraints that are encountered in the enforcement of the law on Street vending and Chapter five ^{will} sum up and make recommendations on how the problem of street vending can best be resolved.

METHODOLOGY

A number of sources were referred to in the writing of this paper. These include books, statutes, newspapers, reports, publications both by students and lecturers and personal interviews with the relevant officials and street vendors.

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CHAPTER ONE

1.0 NATURE OF THE PROBLEM OF STREET VENDING

Street vending is a problem which exists in most parts of the country, but the practice is most prevalent in the major towns like Lusaka, Kitwe, Luanshya, Chililabombwe, Chingola and Livingstone to mention but only a few.¹ In Ndola, the trade has at least been controlled, but not eradicated.² It is very difficult to establish exactly when street vending begun, but the trade became very pronounced in the 1980's, and this is when it became a big problem.³ Prior to this time, the trade existed in very isolated cases, and the magnitude had not yet become great.⁴ What then does the term Street vending denote? The word Street Vending is a combination of two words, that is Street and Vending. The word street means a road with houses or other buildings on one side, ⁵ and the word Vending means selling especially land or other property or to offer small articles for sell usually in public places.⁶ The two words combined means selling in streets. But the government leaders, party leaders, and newspapers have been using the term in a much wider context to include people not only selling in streets, but also those selling from other open public places. This is the context in which the term street vending is used in this paper. It is important to note whether or not there is any distinction between

black marketeering and street vending. The word black market is used to describe a situation whereby goods are sold outside the established legal framework.⁷ Going by the definition given above of what constitutes black marketeering, Street vending qualifies to be black marketeering because the vendors sell their goods outside the established legal framework.

Street vending is conducted both in residential and commercial areas, but the greatest concentration of street vendors is in commercial areas.⁸ Those found in residential areas are mostly near Bus stops, outside busy trading places, and other open public places where customers can easily be trapped.⁹ Those found in commercial areas occupy all the corridors of the three major roads of the town centre of Lusaka.¹⁰ Apart from the corridors of these busy roads, vendors occupy other open spaces of the town centre as well. In residential areas, products sold are usually confined to foodstuffs both cooked and uncooked,¹¹ but in commercial areas, a wide range of products are sold like vegetables, fruits, fresh fish, meat, tomatoes, onion, Cosmetics, electrical appliances, clothes, shoes, pots, hardware, drinks, beer, sweets, biscuits, detergents to mention but only a few. Most of the items sold by vendors are the same items sold in shops. The people who sell goods as street vendors

comprise old women, young ladies and young men, but the old women and the young ladies confine themselves to selling foodstuffs, while the young men sell a variety of products.¹² While some vendors display their goods just on the ground, the majority of them have constructed some portable makeshift stands made from planks and covered by plastics.¹³

Over the years, a cross section of people throughout the country have voiced out their concern over the ever increasing number of street vendors in most parts of the nation's cities. The complaints have come from local authorities,¹⁴ government leaders,¹⁵ party leaders,¹⁶ opposition parties,¹⁷ and member of the public.¹⁸ The local authorities and government leaders have on several occasions issued threats and warnings to the vendors so that they leave the streets. A classical instance when a government leader warned vendors is in January 1994, when the incumbent President F.T.J Chiluba issued a very strong warning to the street vendors to clear from nation's corridors which he claimed were now heavily choked by illegal stands.¹⁹

Attempts have been made to physically remove vendors from streets, but it does not take a long time before they return to the streets conducting their business as usual.²⁰ The vendors have resorted to rioting and looting each time attempts are made to remove them

from the streets.²¹ This has resulted in injuries to people and substantial damage to property.

There are serious problems that are associated with street vending and these will now be examined in detail.

1.1 STREET VENDING AND PUBLIC HEALTH

Street Vending possess a great public health hazard.²² This is so because of the manner in which most foodstuffs are sold.²³ Most of the food sold by the vendors is sold in very unhygienic conditions in that the food is just displayed right on the floor exposed to flies and dust particles. The food is not covered, and under such circumstances diseases like cholera easily spread.

1.2 STREET VENDING AND THE ISSUE OF REVENUE

Any person who would like to engage in business must first obtain permission from the licensing authorities who are district councils, and once permission is granted, one is expected to pay a fee annually to the council. Most Street vendors do not pay anything to the council ²⁴. Since there are a lot of Street vendors who do not contribute anything to the council, the council is losing out a lot of potential revenue.

As a result, councils are denied the money which they would have used in carrying out various essential services to residents. To aggravate the situation, some traders who operate legally have refused to renew their licenses because they claim that they cannot compete with Street vendors who do not pay anything to the council 25.

1.3 STREET VENDING AND CLEANLINESS IN THE CAPITAL CITY

It is important that the Capital City should look clean and this desire can be seen on most bill boards all over town urging people to keep the city clean. Further, most dust bins found in town carry messages urging people to keep the city clean. Unfortunately, the capital city now looks unsightly because of Street vending. This is so because the people who buy various items from the Vendors especially food stuffs, throw the ^{litter} ~~litre~~ ^{where} ~~anyhow~~ all over town. To make matters worse, the ~~litre~~ ^{litter} remains uncollected for a long time hence, creating a public health hazard.

1.4 STREET VENDING AND OVERCROWDING IN THE CITY

It has already been pointed out that the vendors have occupied most of the corridors along the busy roads in

the town centre and because of this, free movement of people along these corridors has been compromised. This is especially so when people are going and coming from work. Under such circumstances, it is easy for pick pockets to ^{carry} out their illicit activities because of overcrowdness.

1.5 STREET VENDING AND TRAFFIC HAZARD

Some Street vendors sell their products close to the roadside of busy roads. This creates a danger to traffic both to the vendors and customers who are busy crossing the road trying to buy items from the vendors. In January 1994, two Street vendors lost their lives when they were hit by a vehicle. This happened when they were selling their products just next to the roadside 26.

It has been observed that the Street vending is a major problem which needs to be promptly and adequately addressed by the authorities concerned. If it is not attended to seriously, the problems just cited are bound to continue which is not in the interest of the welfare of the community. The manner in which the authorities have addressed the problem will be looked at in chapter three.

1.6 REASONS GIVEN FOR TRADING IN STREETS

A number of Lusaka Street vendors were interviewed as to the reasons why they carry on their business in Streets, and varying answers were given. What was common to all the answers given is that they ^{are} found in streets because they need money to earn a descent living, and that they have got nowhere else to conduct their business from. But it should be stressed that even if a person wants to earn a living, one should do so in accordance with the laws.

FOOT NOTES

1. Personal interview with Mr M. Mtonga, Local Government Officer Ministry of Housing and Local Government on 13th June, 1994.
2. Ibid
3. Ibid
4. Ibid
5. Longman dictionary of contemporary English, New Edition 1990 at page 1046
6. Ibid P 1168
7. Caleb Fundanga "The Essential Commodities" Black market in Zambia. Staff unpublished paper 1983.
8. This is based on the Physical survey conducted in Lusaka in June
9. Ibid
10. Ibid
11. Ibid
12. Ibid
13. Ibid
14. Reported in Times of Zambia on 18th February 1984
15. Reported in Times of Zambia on 29th October 1993
16. Reported in Times of Zambia on 14th January 1992
17. Reported in Times of Zambia on 9th January 1992

18. Reported in Times of Zambia on 25th February 1987
19. Reported in Times of Zambia on 12th January 1994
20. Reported in Times of Zambia on 1st March 1984
21. Reported in Zambia Daily Mail on 19th November 1993
22. Personal interview with Mr Jaliso, Chief Health Inspector, Lusaka City Council on 10th June 1994
23. Ibid
24. Personal interview with Mr Kamfwa Council Advocate (Licensing on 16th June 1994
25. Ibid
26. Reported in Times of Zambia on 5 march 1994

CHAPTER TWO

2.0 LEGAL FRAMEWORK GOVERNING STREET VENDING IN ZAMBIA

Having examined the problem of Street vending in Chapter one, Chapter two will now look at the law that governs Street vending in Zambia. The major piece of legislation that governs Street vending in Zambia is the Local Government (Street Vending and Nuisances Regulations) No 134 of 1992 hereinafter referred to as Statutory Instrument No 134 of 1992. Prior to the enactment of this statutory instrument, there had never been any act of Parliament, by-law or Statutory Instrument which was enacted to deal specifically with the problem of Street vending, but this does not mean that Street vending was legal because there were some provisions in the Trades Licensing Act, Food and Drugs Act, by-laws under the Markets Act, by-laws under the Public Health Act which could be invoked against Street vendors. These provisions will now be looked at in detail. These enactments will not be looked at in totality, but only provisions which have a bearing on Street Vending will be examined.

2.1 TRADES LICENSING ACT CAP 707

The Trades Licensing Act was enacted in 1930, but by

then it was known as the Businesses Ordinance No. 24 of 1930. The Ordinance was enacted for the purposes of licensing of trades and businesses in the territory.¹ Under this Ordinance, it was an offence for one to carry out business in the territory without a License.² Anybody who contravened the provisions of this Ordinance was liable on conviction to a fine not exceeding fifty pounds and on default of payment to imprisonment with or without hard labour for a period not exceeding six months.³ The Ordinance was amended in 1947, but the provision prohibiting people from carrying on business without a License was not affected by the amendment. The Ordinance was further repealed and replaced by the Trades Licensing Ordinance No. 27 of 1959. Despite the repeal of the Businesses Ordinance of 1930, the new Ordinance still retained a provision prohibiting people from carrying on business without a License.⁴ The 1959 Ordinance was amended in 1968 by the Trades Licensing Act which is the Law currently in force. The purpose of the act was to provide for a mechanism of licensing of certain trades and businesses and to provide for matters incidental to or connected with the foregoing. In order for any one to carry out any trade or business, he should obtain a License, and the trades licensing Act lists the classes of licenses which an individual may apply for.⁵ Under the Act nobody is

permitted to sell goods by way of business unless he is a holder of a license ⁶. Even if one has got a License, he is not allowed to sell goods in contravention of the terms of the license.⁷ Anybody who contravenes the said section is guilty of an offence,⁸ and is liable upon conviction to a fine not exceeding K50,000. ⁹ The authority to issue licenses is vested in the local authorities of the various districts ¹⁰. "Goods" are defined by the Act as any goods, wares or merchandise, but does not include Foodstuffs, livestock, and other agricultural products the growth or produce of Zambia.¹¹"

It is a well known fact that Street vendors carry on their trade without licenses and as such, they contravene section 3 of the Trades Licensing Act which prohibits people from trading without licenses. Going by the definition of the term "goods" as defined by section 2 of the Act, those who sell foodstuffs and agricultural products are by implication free to sell these products without a license because these items are not included in the definition of the term "goods" as defined by section 2 of the Act. This creates a problem because a large number of Street vendors who sell foodstuffs both in residential and Commercial areas are excluded from the application of Section 3 of the Trades Licensing Act.

2.2 MARKETS ACT CAP 473

The markets Act was first passed in 1937 to provide for the management of markets; and to provide for matters incidental thereto or connected therewith. The governor or with the approval of the governor, a local authority were empowered to establish markets,¹² which were placed under the management of the local authorities if it was in the area of the local authority and under the district Officer if the market was in another area.¹³ The governor was empowered to make regulations, and the local authority to make by-laws for the purposes among other things for prohibiting the sale of specified kind of goods within a specified area.¹⁴ Anybody who contravened a by-law or regulation made under the Act was guilty of an offense and was liable on conviction to a fine not exceeding 25 pounds.¹⁵ In pursuance to section 4 of the Ordinance, a number of markets were established, and the local authorities who were in Control of these markets passed by-laws which contained provisions prohibiting the sell of goods outside the market except in licensed premises. ¹⁶ These by-laws were passed in accordance with section 5 of the ordinance. The markets ordinance has not been repealed up to the present moment. What has changed is that instead of being called the Markets Ordinance, it is now called

the Markets Act. The Minister under the Act or local authorities are empowered to establish markets.¹⁷ The Minister is also allowed to make statutory instruments, and the local authorities by-laws for among other things prohibiting the sale of any specified kinds of goods within a specified area except in a market.¹⁸ Any person who contravenes a by-law or regulation made under the Act is guilty of an offence and is liable upon conviction to a fine not exceeding One Hundred Kwacha or to imprisonment for a period not exceeding six months, or both such fine and such imprisonment.

Most of these market by-laws passed by the local authorities are still in force. A typical example is the Lusaka market by-laws ¹⁹ which apply to all markets from time to time established in Lusaka. Regulation 8 of the said by-laws states that

"No person shall, within the market area,
sell or offer for sell or barter any goods
in any public place other than in a market,
except with the permission of the local
authority"

"Market Area" is defined in section 1 as meaning the City of Lusaka. What this means is that nobody is allowed to sell goods without permission of the council in any area except in a market. ²⁰

Apart from the by-laws passed by the local

authorities, the Minister also passed a statutory instrument in accordance with section 5 of the Markets Act. This was the Local Authorities Market Regulation No 215 of 1968. Regulation 5 of the Statutory Instrument as amended by the statutory instrument No. 146 of 1969 states that "No person shall, in any public place within a radius of two miles from the centre of the market, sell any goods except in a market."

The provision does not help much because most street vendors sell their goods outside the radius of two miles or 3.2 Kilometres from the centre of the market. The provision only prohibits selling within the radius of two miles from the centre of the market.

In short the Markets Act empowers the minister to establish markets, and upon the establishment of markets he has authority to make regulations for the good governance of the markets. The local authorities are also empowered to make by-laws under the same section. Pursuant to section 5 of the Markets Act, several local authorities passed by-laws governing the operations of these markets, and among the provisions of these by-laws is a provision which prohibits people from selling outside established markets without the authorities of the council. This provision applies to street vendors.

2.3 FOOD AND DRUGS ACT CAP 553

The food and Drugs Act was enacted in 1972 to protect the public against health hazards and fraud in the sale and use of food, drugs, cosmetics and medical devices, and for matters incidental thereto or connected therewith. Although this act was not passed to deal with the problem of street vending, it has a provision which can be invoked against street vendors selling food stuffs. Under this Act, it is an offense for anyone to sell food under insanitary conditions. The term " Insanitary Conditions" means such conditions or circumstances as might cause contamination of food, a drug or a cosmetic with dirt or filth or might render the same injurious or dangerous to health.²¹ A person found guilty of an offense under the Act for which no special penalty is provided is liable on conviction (a) in the case of the first offence, to a fine not exceeding One hundred Kwacha or to imprisonment for a term not exceeding three months or to both such fine and imprisonment (b) in the case of subsequent offence, to a fine not exceeding two hundred Kwacha or to imprisonment for a term not exceeding Six months or to both such fine and imprisonment.

Most street vendors who sell food stuffs like fish or meat usually do so under insanitary conditions because

the food is usually exposed to flies and dust, and it is just displayed on the ground. Such vendors are liable on conviction under section 7 of the Act.

2.4 PUBLIC HEALTH ACT CAP 535

The Public Health Act was enacted in 1930 to provide for the prevention and suppression of diseases and generally to regulate all matters connected with the public health in Zambia. This Act has been Amended in some respects though not substantially. The act among other things authorises the minister by statutory instrument to make regulations applicable to all infectious diseases as may be specified therein regarding inter alia the measures to be taken for preventing the spread of diseases. 22

Using the powers accorded to him by the said section, the Minister passed the Public Health (Infectious Diseases) Regulations by government notice No 143 of 1931. Regulation 50 of the said regulations stated that "No person shall expose for sale any food to be eaten in the state in which it is to be sold, except with due care for the prevention of flies or other vermin having access to it."

It is a matter of public knowledge that most street vendors selling foodstuffs do not take due care to prevent flies landing on the food, and as such, they

contravene the said regulations.

2.5 LOCAL GOVERNMENT ACT NO 22 OF 1991

The Local Government Act No 22 of 1991 evolved through stages which will be looked at briefly in so far as they have a bearing on street vending.

In 1927, the Municipal Corporations Ordinance was passed to provide for the constitution and government of Municipalities. The Ordinance only applied to Municipalities. Section 6 of the Ordinance established a council within every municipality. The council was given power to make, alter, and revoke by-laws and regulations for such things as was desirable for the maintenance of health, safety and well being of the inhabitants.²³ The council was also empowered to impose a penalty for any breach of the by-laws.²⁴ Any person who was guilty of any offense against the Ordinance or by-law was liable on conviction for a penalty expressly provided by the Ordinance or by-law and if no penalty was provided then to a penalty not exceeding ten pounds. In other words every municipal council had authority to make by-laws for the good governance of its area. For instance the Livingstone municipal council by-laws were passed in 1933. Regulation 158 of the by-laws prohibited people from selling any goods in the

streets without the authority of the council. A number of municipal councils had such a provision in their by-laws.

Then in 1929, the Townships ordinance was enacted which was intended to regulate activities in townships. Under section 3 of the Ordinance, the governor was authorised by notice to declare any area or place to be a township, he had power to appoint a board of management as the local authority for the township.

Section 20 conferred authority on the governor to make, alter and revoke regulations for any such thing as was necessary or desirable for the maintenance of health, safety and well being of the inhabitants. Section 29 provided penalties for those who contravened the Ordinance and regulations. Using powers under section 20, the governor passed the Township Regulations in 1933 to apply to all townships. Regulation 5 prohibited the sell of goods in any street without the permission of the local authority.

In 1932, the Mine township Ordinance was enacted. Mine townships were ordinary townships vested in mining corporations. The governor had power to declare any place a mine township,²⁵ and thereafter to appoint a board of management as a local authority for any mine township. Section 20(1) empowered the board to

make, alter and revoke by-laws for such things as was necessary or desirable for the maintenance of health, safety and well being of the inhabitants. Section 21 provided penalties for contravention of the by-laws or the Ordinance. The mine township boards exercised the powers conferred on them by enacting by-laws for the governance of the areas. For instance Nkana mine township by-laws were passed in 1935. Regulation 11 prohibited people from selling in streets without the permission of the local authority. Other mine townships passed by-laws which had a similar provision.

In 1965, the Local Government Act was enacted to provide for the establishment of authorities for the purposes of local government and to define certain of their functions. The minister was empowered under the act to establish by statutory instrument a municipal council for every municipality, a township council for every township and a rural council for every rural area.²⁶ A municipal council established under a Municipal Corporation Ordinance was deemed to have been established under the 1965 Act, and similarly, every Board of Management which was established under the Township Ordinance was deemed to have been established under the 1965 Act. Section 81 empowered councils to make by-laws for the good rule and governance of its area, while section 110 provided for

the continuation of the by-laws which were passed under the Townships Ordinance and Municipal Corporations Ordinance. What this means is that all provisions in the by-laws which prohibited the selling of goods in streets without permission from the local authorities were continued. In 1980 the Local Government Administration Act was enacted. Although this Act provided a different system of local administration, the power given to local authorities to enact by-laws was retained. Section 92 repealed the Local Government Act, Township Act, The Municipal Corporations Act and the Mine Township Act.

Notwithstanding the repeal of the said Acts, the regulations, by-laws, rules or orders which were made or deemed to have been made under any of the said Acts, were in so far as they were not inconsistent with the 1980 Act, deemed to have been made under the 1980 Act.

Finally the Local Government Act No. 22 of 1991 was passed in 1991. This Act repealed the 1980 Act. Section 76(1) of the Act confers on the councils power to make by-laws for the good rule and government of its area. The functions of the council are listed in the second schedule. 27 which include inter alia maintenance of public roads, streets, avenues, lanes and matters concerning health. A by-law made by the council under the Act may prescribe penalties for any

contravention of such by-laws of a fine not exceeding ten thousand Kwacha or imprisonment for a period of six months, or both such fine and such imprisonment. Section 84(1) empowers the minister by statutory instrument to make regulations to the same extent to which a council is empowered by or under this Act to make by-laws.

It was in pursuance to section 84(1) of the Local Government Act that the Local Government (Street Vending and Nuisances) Regulations No. 54 of 1992, and subsequently No. 134 of 1992 were enacted.

2.5.1 THE LOCAL GOVERNMENT (STREET VENDING AND NUISANCES) REGULATIONS NOS 54 AND 134 1992

The Local Government (Street Vending and Nuisances) Regulation No 54 of 1992 was the first piece of enactment to address the problem of Street Vending specifically. In 1991 just when the Movement for Multi-Party Democracy came into power, the then Minister for Local Government and Housing Honourable Michael Sata issued a ministerial statement in parliament concerning the problem of street vending in the country. In his statement he stated that the problem of street vending had been perpetuated by the United National Independence Party government because they had tried to control the problem haphazardly. He

went on to say that the laws that govern street vending had always been in existence, but that the United National Independence party government made them ineffective by non enforcement. Honourable Sata further stated that the hour had come to revert to the rule of law. According to him the councils were now going to enforce the laws and regulations that governs street vending as opposed to the harassment of those who fail to comply with the existing legal provisions.²⁸ Then on 16th March 1992, the minister signed a statutory instrument No 54 of 1992. Regulation 2 provided that " Any person guilty of an offence under these regulations shall be liable upon conviction to a penalty set out in the schedule."

Under item 9 of the schedule, anybody selling local produce in any street or public place without permission of the council was liable upon conviction to a fine of K500 if he was selling food and K700 if it was any other item. By implication, it means that only those selling local produce fall under this provision.

On 5th October 1992 the minister signed another statutory instrument i.e the Local Government (Street Vending and Nuisances) Regulations No. 134 1992. Regulation 4 of the statutory instrument revoked statutory instrument No 54 1992. One of the

differences between the latter and the former is that in the latter regulations persons selling food are now fined K50 instead of K500, and K250 for any other produce or item instead of K700. Another major difference is that in the latter regulations, there is a regulation expressly stating the procedure to be followed if one is found guilty of an offence. Regulation 3(1) states that where any person is summoned under the regulations to appear before a subordinate court or is arrested or informed by the police office that proceedings will be instituted against him in respect of any offence committed under the regulations, but who does not wish to appear in court, he may before appearing in court to answer the charge against him sign and deliver to the prescribed officer an admission of guilty form set out in the second schedule. Regulation 3(3) defines a prescribed officer as any police officer of or above the rank of Sub-Inspector. Regulation 3(2) states that where any person admits in accordance with sub-regulation (1) that he is guilty of the offence charged the procedure set out in section 221 of the criminal procedure code shall apply.

As observed from the foregoing, the law that governs street vending has always been in existence. Section 3(1) of the Trades Licensing Act makes it an offence for one to sell goods by way of business without a

license. Section 5 of the Markets Act empowers the local authorities to make by-laws for the good governance of the markets. In pursuance to this section, most local authorities have enacted market by-laws which have got a provision which prohibits people from selling goods in streets, without the permission of the local authorities. Section 7 of the Food and Drugs Act makes it an offence for one to sell food under insanitary conditions. Most vendors sell their food stuffs under insanitary conditions. Regulation 50 of the Public Health (Infectious Diseases) Regulations makes it an offence to sell food without due care, and most vendors do not take due care when selling the food in streets.

Lastly it is an offence for one to sell goods in streets without permission from the local authorities under the Local Government (Street Vending and Nuisances) Regulation No 134 of 1992. Regulation 2 of the statutory instrument states that any person found guilty under the regulations is liable upon conviction to a fine of K50 for foodstuffs, and K250 for any other item.

Having the law is one thing, and enforcing it is another thing, thus Chapter three will examine how the law has been enforced.

FOOTNOTES

- 1 S 1 Businesses Ordinance No 24 1930
- 2 S 3 (1) Ibid
- 3 S 4 (1) Ibid
- 4 S 3 Trades Licensing Ordinance 1959
- 5 S 5 (1) Trades Licensing Act as amended by S 6
of Act No. 32 1993
- 6 S 3 (1) (a) Ibid
- 7 S 3 (1) (b) Ibid
- 8 S 3 (2) Ibid
- 9 S 29 Trades Licensing Act as amended by Act No 32
1993
- 10 S 9 Trades Licensing Act as amended by S7 of Act
No 32 1993
- 11 S 2 Ibid
- 12 S 2 Markets Ordinance 1937
- 13 S 3 Ibid
- 14 S 4 Ibid
- 15 S 4 (5) Ibid
- 16 For instance Lusaka Market by-laws government
notice 81 1938
- 17 S 3 Markets Act
- 18 S 5 Ibid
- 19 It was passed in 1963 when it revoked the Lusaka
Markets by-laws of 1938
- 20 This does not include individuals carrying out

business with permission under the Trades
Licensing Act.

- 21 S 7 Food and Drugs Act Cap 553
- 22 S 28 Public Health Act Cap 535
- 23 S 2 Municipal Corporations Ordinance 1927
- 24 S 57 Ibid
- 25 S 3 Mine Township Ordinance
- 26 S 7 Local Government Act cap 480
- 27 S 61 Local Government Act 1991
- 28 Parliamentary debates of the first session of the
Seventh National assembly 22nd November - 24th
December 1991.

CHAPTER THREE

3.0 ENFORCEMENT OF THE LAW ON STREET VENDING AND RESPONSES TO THE PROBLEM

The legal position on Street Vending has been outlined in detail in chapter two and it is now of paramount importance to see how the law has been enforced in practise and how authorities have generally responded to the problem.

3.1 PHYSICAL FORCE AS A MEANS OF FIGHTING STREET VENDING

The use of force has been one of the methods which have been used over the years to fight Street vending. It was widely used in the Second Republic both in the 70's ¹ and 80's ², and it has also been used in the third republic ³.

During the Second Republic, regular police officers and paramilitary police officers, and at times council police officers used to conduct operations in streets aimed at fighting Street vending. The operations used to be done in a very brutal and inhuman manner because the police could pounce on the vendors without any warning, and those who were caught were badly beaten and kicked ⁴ using riffle butts before they were thrown

into trucks. At times, the operations were conducted with the help of mounted police officers 5. They were certain instances when the vendors were made to march in a single file with their hands above their heads on their way to the police station 6. The goods belonging to the vendors were confiscated and taken to the police station. These operations used to be conducted upon orders from the Local authorities 7, but sometimes, the police used to carry out the operations even without the authority of the Local authorities 8. Even in the third republic, the operations have on several times been conducted 9, but at the moment, there has been a halt to this exercise.

In the Second Republic, whenever these operations were conducted, there was little or no resistance from the Street vendors, but in the third republic, each time the police officers have attempted to remove the vendors from the streets, riots and looting have occurred 10 which has resulted in substantial loss and damages of property.

The vendors arrested used to be charged under regulations 5 and 8 of the markets by-laws for trading illegally 11. This was before the enactment of the Local Government (Street Vending and Nuisances) regulations. The above provisions of the markets by-laws have already been dealt with in chapter two. But the vendors were not physically taken to court,

instead they were made to sign an admission of guilt form 12 in accordance with S 221(1) of the criminal procedure code which gives a person charged with a minor offence an option of either appearing in court or signing the admission of guilt form. Once the forms were signed by the vendors, they were then taken to the magistrate who later went through the charge and signed. This means that Street vendors were being convicted in their absence. The confiscated goods were also taken to the magistrate who could either order that they be destroyed or sold in accordance with S 355(2) of the Criminal procedure code.

It should be pointed out that this method which has been used as a way of fighting Street vending has completely failed because ever since the operations have been conducted over the years, the vendors return to the streets within days or at times within hours after they have forcefully been removed.

3.2 CURRENT PRACTICE BY THE LUSAKA CITY COUNCIL

At the moment the Lusaka City Council despatch its police officers in the streets mainly in the Commercial areas on a daily basis to levy the vendors K500 each per day 13. When the exercise begun some time in January 1994, the council used to raise

substantial amount of money a day, but currently the money collected a day has reduced because most vendors refuse to pay the levy ¹⁴. What some vendor do at times is that once they know that the council officers are about to come to collect the levy, they disappear leaving the goods with their friends, and nothing happens to those who refuse to pay the levy ¹⁵. Even this current practice by the Council have not helped to fight the problem of Street vending.

3.3 FUTURE PLANS BY THE LUSAKA CITY COUNCIL

The Lusaka City Council is currently constructing a market site near Lusaka's Soweto market ¹⁶ in the light industrial area. Once the market Site is completed, it will accommodate most of the vendors in the commercial area, and already, most vendors have applied to the council to be operating from the market once it is complete ¹⁷. The market site is due to be completed before the end of 1994 ¹⁸ . Apart from this, the council with the help of the Israeli government plans to construct another modern market in the Lusaka's light industrial area ¹⁹. It is not certain when the project will take off, but arrangements are already underway ²⁰. At the moment the council has got no plans of building more markets in the residential

areas 21.

It is surprising that the council has no immediate plans of building markets in residential areas because most residential areas have got only one market each which were built a long time when the population was still small. To make matters worse, most of these markets have got no space left for building of more stands 22. Once the market Site near Soweto is completed, that is when the council plans to use force to remove the Vendors from the streets 23.

3.4 RESPONSE TO THE PROBLEM OF STREET VENDING FROM THE CENTRAL GOVERNMENT

In the second republic, the government leaders i.e ministers including the President responded to the problem of Street vending mainly by issuing warnings to the vendors to stop their illegal activities. Apart from merely warning the vendors, the former President Dr K.D. Kaunda appointed a nine - member research team in February 1988 to look into the plight of women Street vendors and also to suggest ways on how the problem of Street vending could be solved 24. The team was headed by Dr Saasa from the Institute of African Studies, a department of the University of Zambia. The term stated its work on 24th March of the same year touring the whole country and ended in mid

June 1990. The team later handed it's report to the President. It was stated in the report that the women Street vendors were in the street because of the economic hardships and that they did not have a place where to conduct their business ²⁵. The team recommended to the government that the women Street vendors should not be done away with, but instead they should be controlled ²⁶. It is not certain whether the government acted on the recommendations, but it appears it did not because even after this, vendors were still being chased from streets.

In the third republic, the Ministers including the President have responded exactly how their fellow leaders did in the second republic i.e they have continued to issue warnings to vendors to leave the streets. A typical example is in 1993 when then Minister of Local Government and Housing Dr Rodger Chongwe stated that the government had declared total war on Street vendors who he described as dangerous to lives and a threat to the ruling Movement for Multi - party Democracy ²⁷.

Apart from the usual trend of warning vendors, the President F.T.J Chiluba together with Lusaka Mayor Mr J. Chilambwe and 10 based Lusaka Street vendors left for Ndola on 15th March 1994 to find out how Ndola has contained the illegal trade. ²⁸, but since then, nothing concrete has happened. Then on 15th

July 1994, the President addressed a Press Conference at the airport on his return from Israel, and among other things, he stated that the government plans to build modern markets through out the country as a measure of fighting Street vending. In September 1994, the President addressed a rally at Lusaka's Soweto market at which he assured the vendors that the government would build more markets.

He also appealed to the vendors selling meat and fresh fish to stop the practice. Despite the measures taken to fight Street vending as outlined above, the problem has not been contained.

It should further be stressed that the warnings to vendors by government leaders has got no legal effect because there are no provisions in any of the laws of Zambia which requires them to interfere in the enforcement of the law on Street vending.

FOOT NOTES

1. Reported in Zambia Daily Mail on 31st October 1975
2. Reported in Times of Zambia on 17th January 1980
3. Reported in Times of Zambia on 14th January 1994
4. Reported in Times of Zambia on 1st January 1981
5. Reported in Times of Zambia on 17th February 1980
6. Reported in Times of Zambia on 15th September 1980
7. Personal interview with Mr Zimba Officer in Charge
Council Police on 16th June 1994
8. Ibid
9. Reported in Times of Zambia on 19th March 1993
10. Ibid
11. Personal interview with Inspector Tembo Central
Police on 12th August 1994
12. Ibid
13. Personal interview with Mr Zimba Officer in Charge
Council Police on 16th June 1994
14. Ibid
15. Ibid
16. Personal interview with Mr Peter Soneka Assistant
Director for Administration Lusaka City Council on
19th September 1994.
17. Ibid
18. Ibid
19. Ibid
20. Ibid
21. Ibid

22. Based on survey conducted in Lusaka's Bauleni market, Chilenje market, Kabwata market, and Luburma market.
23. Personal interview with Mr Peter Soneka 19th September 1994
24. Report on women in the informal sector (case study of women Traders and Street Vendors P 11
25. Ibid PP 81,82
26. Ibid P 82
27. Reported on 13th June 1993 Zambia Daily Mail
28. Reported in Zambia Daily Mail on 16th March 1994

CHAPTER FOUR

4.0 CONSTRAINTS ENCOUNTERED IN THE FIGHT AGAINST STREET VENDING

In an attempt to fight the problem of Street vending, the local authorities and the Zambia Police have encountered a number of problems which will now be examined in the present chapter.

4.1 POLITICAL INTERFERENCE

In the past years and at present, there has been too much interference in the fight against Street vending by the politicians ranging from members of parliament, cabinet ministers to the President. It was very common in the second republic to see political leaders ordering the local authorities not to remove the vendors from the streets, and this trend has also resurfaced even in the third republic. It is quite surprising because the same politicians were also in the forefront warning vendors to vacate from the streets. It is a clear indication that the reason why the politicians were ordering the local authorities not to interfere with the vendors was that they wanted to win the hearts of the electorates, hence,

furthering their stay in power.

A classical instance when a politician interfered with the work of the local authorities was when Honourable M.C. Sata member of parliament then Minister of Local Government and Housing declared that he would sternly deal with anyone victimising Street Vendors ¹. He further directed the council officials and his Deputy Minister to leave Street vendors alone and spend their energy on other priorities. In another instance, the copperbelt Province Deputy Minister Honourable Kangwa Nsuluka member of parliament allowed the vendors to trade freely in streets and went further to state that no body should intervene in the activities of Street vendors ². The current President Mr F.T.J Chiluba in early 1993 strongly reprimanded local authorities, police high command and Lusaka Civil leaders for what he called "instigating" riots which had occurred when there was an attempt to remove vendors from the streets ³. Mr F.T.J. Chiluba stated that for the first time he was siding with the Vendors. He went on to say that it was unfortunate that some leaders had lost respect for the ordinary people and were behaving like "Kings" by descending on innocent Vendors engaged in a struggles for survival.

The statement by the President was received with joy

by the vendors who stated that they were now happy that the President had allowed them to trade freely in Streets 4. As a result of this, Street vendors are now popularly referred to as belonging to the "Office of the President."

4.2 MAN POWER CONSTRAINTS

The magnitude of vendors especially in the Capital has become large, and experience has shown that each time vendors are chased from the streets, they return in a matter of hours. As a result of this, there is need to have a number of police officers and council officers to constantly keep an eye on vendors, but the present police force and council police are few in number 5, and at the same time, they need to attend to other duties. As a result, it is impossible to keep a constant watch on the thousands of Street vendors in the City.

4.3 RESISTANCE FROM STREET VENDORS

Another factor that has hindered the fight against street vending is that there has been resistance from the vendors each time there has been an attempt to remove them from streets. The vendors have now resorted to rioting and looting which has resulted in

loss of property and damage to property. 6 The vendors have also warned that they will hit back at the police officers if there is an attempt to remove them from streets.7 Because of the fear of riotous behaviour, the local authorities together with the police have tended to put a halt to the exercise at the moment.8

4.4 FINANCIAL CONSTRAINTS

The Lusaka City Council is facing a financial crisis, and because of this, they have no immediate plans of building more markets in the residential areas throughout Lusaka.

4.5 CONCLUSION

As observed, the local authorities have tried their best to fight the problem of street vending, but in so doing, they have faced a number of problems such as lack of financial resources, Shortage of manpower, resistance from vendors, and interference by politicians.

FOOTNOTES

1. Reported in Times of Zambia on 16th December 1991
2. Reported in Times of Zambia on 26th June 1993
3. Reported in Times of Zambia on 19th March 1993
4. Reported in Times of Zambia on 21st March 1993
5. Personal interview with Mr. Zimba Officer in
Charge Lusaka City Council Police on 16th June
1994
6. Reported in Zambia Daily Mail on 19th March 1993
7. Reported in Zambia Daily Mail on 26th June 1993
8. Personal interview with Mr Zimba OP
9. Personal interview with Mr Soneka Lusaka City
Council 19th September 1994.

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS

This chapter will sum up what has been discussed in the preceding chapters, and will then proceed to make recommendations on how best the problem of street vending can be resolved.

5.1 CONCLUSIONS

It has been abundantly observed in the preceding chapters that the laws that govern Street vending have been in existence for a long time now. Prior to the enactment of the Street vending and nuisances regulations in 1992, for instance, there were provisions in a number of statutes, by-laws and statutory instruments which could be invoked against Street vendors. One can cite the Trades Licensing Act, Food and Drugs Act, Market by-Laws, Public Health Act, and by-laws enacted by the councils which can be used to contain Street vending.

Notwithstanding the enactment of the Street vending and nuisances regulations, the foregoing laws are still in force to date.

Despite the existence of these laws, Street vending has continued to grow unabated. The law enforcement authorities viz, the local authorities in conjunction

with the Zambia Police have for a very long time made several abortive attempts to enforce the laws on Street Vending. The efforts of the Central Government has been limited to making appeals to the vendors to vacate the Streets. In their attempt to enforce the law, the authorities have encountered quite a number of impediments. For instance, there is inadequate manpower to control the multitude of vendors in Streets. There is also a critical shortage of funds to build more markets for traders, and most important of all, there has been a great deal of interference in the enforcement of laws by the politicians. In the second republic it was not uncommon to see cabinet ministers and the president ordering the local authorities to stop harassing the Street vendors. In the third republic, the situation is not different. We have observed that on some occasions, the cabinet ministers and the president have reprimanded the local authorities for making attempts to remove vendors from the streets. These statements by the leaders tend to encourage the Street vendors on the one hand, and frustrates the efforts of the local authorities on the other hand. The net result is the continued mushrooming of the business of Street vending.

It is of vital importance for the problem to be given sufficient and urgent attention because as observed in the preceding chapters, the Capital City for instance

is in a deplorable condition as a result of activities of Street vendors, the local authorities are losing potential revenue because most vendors do not pay anything to the councils, the corridors have become so crowded that the free movement of people has been hindered, and most important of all, the business possess a great public health hazard because most of the foodstuffs are sold in extremely unhygienic conditions.

The fact that the enforcement authorities have made several attempts to enforce the law but without any success is an indication that a different approach has to be employed in resolving the problem.

5.2 RECOMMENDATIONS

In order for the problem of Street vending to be solved, there is need to look at the major cause of the problem and put in place measures that can solve the problem with finality.

5.2.1 PROVISION OF MORE TRADING PLACES

As indicated in chapter three, most residential areas in Lusaka have got only one market place or none at all, and most of these markets have no room for expansion. Despite the availability of a few markets, the Lusaka City Council maintains that most of these

markets have been abandoned by the marketeers in preference for Streets 1. This is so because the marketeers allege that there is more business in streets than in markets 2. What the local authorities should do is that in addition to a few existing markets, they should build more markets for the traders. Since the council complains that it is in a financial crisis, what it should do is merely to set aside vacant land so that residents are able to build trading stands on their own.

Once this is done, there should be a campaign aimed at educating vendors so that they shift to the areas set aside for them.

Those traders who have abandoned their market stands should also be encouraged to go back to their stands in the market.

5.2.2. STRINGENT MEASURES FOR STREET VENDORS

Once the above measures are put in place, the law enforcement authorities should then take stringent measures against those vendors who refuse to move to new ~~cities~~ ^{sites} set aside for them. Experience has shown that each time vendors are removed from streets, they return within hours. This could be due to the fact

that each time the enforcement authorities conduct raids to evict Street vendors, it takes months before they conduct more raids. As a result of this, vendors are able carry out their business with minimum interference from the law enforcement authorities. So what the authorities should do is that they should patrol the streets consistently to ensure that nobody is contravening the law. Those arrested should be charged as before, and the fines payable should be increased. If there is constant patrol of the areas where vendors operate from, and if the fines payable are increased, in my view, this might help to control the problem of Street vending.

5.2.3 NON - POLITICAL INTERFERENCE IN THE ENFORCEMENT OF THE LAW

In order for the foregoing measures to succeed, it is important that the Politicians should desist from interfering with the operations of the enforcement authorities. Politicians should realise that the problem of Street Vending is so serious that they should let the law take its course. If the Politicians continue to interfere with the enforcement of the laws as the case has been in the past, then the problem of Street vending is not likely to be resolved in the immediate future.

FOOT NOTES

1. Personal interview with Mr Peter Soneka
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2. Ibid

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- Local Government Act No. 22 of 1991
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