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**THE ADMISSIBILITY OF
ILLEGALLY OBTAINED EVIDENCE
IN ZAMBIA**

***A COMPARATIVE STUDY OF THE AMERICAN ,
ENGLISH , AND ZAMBIAN LEGAL SYSTEMS.***

BY

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SCHOOL OF LAW

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SYSTEMS

BY

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DEDICATION

To my mother Ms Maud Nanchengwa, to whom all my happiness, love and encouragement is the foundation of what is to become of me. Behind this work lies your spirit as my inspiration for ever.

ACKNOWLEDGEMENTS

My conscience would not be satisfied without acknowledging the humble guidance I received from Mr Patrick Matibini in preparing this work. Further acknowledgement goes to Celine Noir for pushing me to concentrate on my work when I felt lazy - To all my friends who gave me advice and criticised where I went wrong. Thank you very much.

Terence Chibula.

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CHAPTER ONE

INTRODUCTION

In order for one to appreciate the subject matter of this essay, it is desirable to give an explanation of what illegally obtained evidence is and a brief introduction as to the ways in which such evidence is usually obtained.

Illegally obtained evidence is that evidence which is obtained from an accused by a person in authority using means that would be held out by any reasonable person to be repugnant to natural justice¹. It is important to note that by a person in authority, we mean such persons as the police or any superior person to the accused in a given institution. There are basically two main ways in which such evidence is usually obtained. It is mostly obtained through confessions and searches. We shall discuss each one of them in details.

1. Confessions

By definition, a confession is a statement by the accused in which he admits committing an offence, or admits some fact that goes to show he committed an offence². There are three rules to bear in mind when considering the admissibility of a confession. If a confession is "involuntary", it is strictly inadmissible as a matter of law, if it infringes rules, a code of procedure

drafted by the judges to guide the police while they question suspects, it may be excluded in the discretion of the court. The last rule is that if admission or and otherwise admissible confession would operate against the accused unfairly again it may be excluded in the discretion of the court. It is inevitable at this point to look at these components separately;

a. The involuntariness rule

A confession is inadmissible against the accused unless it is obtained without any sort of inducement, ie unless it is "voluntary", in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority or by oppression³. This statement means that the accused should not be intimidated or put in a state of fear when he is being interrogated by a person in authority. This rule's duty is to guide police officers in relation to the taking of statements providing for the administration of a caution at different stages of an interrogation. Non-conformity with the rule may render answers and statements liable to be excluded from evidence in subsequent criminal proceeding and hence results to the guilty being freed.

b. The Judges rules.

The second rule that would render a confession inadmissible is if it iniringes the judge's rules⁴. These rules are designed to ensure that only answers and statements which are voluntary are

admitted in evidence against their makers and to provide guidance to police officers in the performance of their duties. As a result of these rules, the accused is rendered protection so far as is reasonably possible against the danger of an unjust conviction. The accused has a right not to have involuntary confessions given in evidence against him and as an offshoot of that right, he ought to be protected by an exclusionary discretion against the use in evidence against him of statements obtained in circumstances in which he might have been unaware of, or bullied out of, his right of silence. This protection is mainly exercised by the judges. Although such a protection may exist, it is a fact that it would have come at a point where the possibility of it being exercised is impossible. That is to say, it is reality that by the time the case reaches the court, damage would have been done and of course the guarantee that the judges will rule for the accused is on a balance of probability.

c. Unfairness.

Where the admissibility of illegally obtained evidence would be unfair to the accused, the judge, again has a discretion not to admit such evidence. The term unfairness here perhaps means that the accused was not questioned in the right manner and conviction against him would be a miscarriage of justice.

2. SEARCH

This is another way in which illegally obtained evidence can be obtained. As a general rule, evidence illegally obtained by way of a search is admissible in Zambia. Again, the judge will only admit such evidence which is relevant to the issue. If it is relevant, it is admissible and the court is not concerned with how the evidence was obtained. But it is important at this point to consider the issue of "planting evidence". Since the court will admit illegal evidence no matter how that evidence was obtained as long as it is relevant to the issue at hand, it would be unfair to the accused in situations where evidence was planted so as to pin the accused to the crime. Admissibility of such evidence raises a question whether society benefits because the manner in which such evidence is admitted infringes the constitutional rights of the individuals who make up the society, under the law of the land i.e. the constitution of Zambia, it amounts to contravening one's rights under article 19(1) to search his person or property without his consent. The article states that;

19 "Except with his own consent, no person shall be subject to the search of his person or his property or the entry by others on his premises."6

This constitutional rule however does not apply where there is a properly issued search warrant by any competent magistrate or judge.

It is important to understand what effects the admission of

illegally obtained evidence has on members of society and the response of the society to the admission of such evidence. We shall look at the problem of admitting such evidence. We have already seen that illegally obtained evidence can be obtained through confessions and illegal seizure and searches. In reference to confessions, Clark⁷ has observed that:

"The technique of eliciting confessions inevitably leads to unfairness and abuse of other rights. The person accused is helpless in the power of the state and that power unrestrained corrupts justice."

Courts seem to be aware of the danger of admitting such evidence. In Zendo and others versus the Queen⁸ for example Justice Charles said that the basis upon which evidence of an incriminating nature is excluded is:

"....because of the danger which induced confessions or admissions present to the innocent and the due administration of justice."⁹

Professor Wigmore went on to point out the danger as saying:

"The real objection is that any system of administration which permits the prosecution to trust habitually to compulsory self-suffer morally thereby. The inclination develops to rely mainly upon such evidence and to be satisfied with an extract answers begets a forgetfulness of the just limitations of that power. The simple and peaceful process of questioning breeds readiness to report ~~to~~ bullying and physical force and torture, if there is a right to the expected answer, that is to a confession of guilt. Thus the legitimate use grows into the unjust abuse, ultimately the innocent are jeopardised by the encroachment of a bad system."¹⁰

Two interest^s always arise and needs to be reconciled, ie the interest of the citizen to be protected from illegal or irregular invasions of his rights and liberties by the authorities and the

interests of the state to secure that evidence bearing upon the commission of a crime and necessary to enable justice to be done shall be withheld from courts on formal or technical ground.

There is a general rule that all evidence which is relevant admissible and that ^{what?} it was obtained illegally is immaterial. is
^

This is the English rule as applied in the decision of Kuruma S/O Kanui v The Queen (1955 11) which stated that:

"Evidence illegally obtained is admissible so long as it is relevant to the matter in issue"

The social objectives of such a rule is based on the assumption that since ^{the} objectives of any society is the prevention of crime and the safeguarding of its citizens, it is argued that this objective can best be achieved where the law gives the police relatively free rein to apprehend criminals and collect the evidence necessary to convict ¹² at all costs ^{ON} matter how the evidence was obtained it is admissible as long as it is relevant to the issue.

The admission of illegally obtained evidence has also ~~by~~ affects ~~on~~ members of the society whose safety and interests it is supposed to safeguard. This is clear when one considers what consequences such admission can have on particular groups of people in society, for instance, on the uneducated and powerless. The worst effect of illegally obtained evidence can be felt in the position of the uneducated, the powerless and the

underprivileged is considered. In this context the rule in the case of Ernesto Miranda and State of Arizona¹³ demonstrated its validity. In this case the United States Supreme Court held that the defendant's confession was inadmissible on the ground that he was not apprised of his right to counsel nor was his privilege against self-incrimination protected in any manner. The court laid down the procedural rights which a suspect is entitled to before and during interrogation. In giving judgement in this case, Chief Justice Warren pointed out that:¹⁴

"The prosecution may not use statements, whether exculpatory or inculpatory stemming from custodial interrogation of the Defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."

All these cases emphasise and mean that everyone must be made aware of his rights before interrogation to ensure that there is justice. This case above is aimed at protecting the poor, the ignorant and the distorted, that the government must not take advantage of these groups of people. As Clarke has written:¹⁵

"If justice is our concern how can Miranda be wrong? Educated people, aware of their rights know they do not have to answer questions. They know they are entitled to counsel. Experienced criminals, gang members and mafioso also know these things. Common sense will tell a rational and reasonably intelligent person that if he chooses not to talk, no one is likely to force him, even if he does not know his rights. The rich have lawyers. The police know they will call lawyers and do not often try to interrogate powerful or wealthy people because their rights will be vindicated."

Thus the only person whom the police can illegally extract evidence from are in most cases the underprivileged in the society. It is this problem that the investigative authorities, the police in particular have overlooked. The underprivileged make up a

large part of society hence always are in a position to assist the police where a crime has been committed. But the police have taken advantage of the poverty of these people who do not seem to matter in society that they have, during their investigations gone outside their jurisdiction and broke the most important rules 10 and yet they went away with it.

Whether these arguments are justifiable or not the public reputation of the police is likely to decline where there is a general inclusion of illegally obtained evidence. A decline in the police public relationship is more detrimental than the mere exclusion of illegally obtained evidence; in that the police would face more difficulties in the reporting of crime since the police are ~~pro~~-active and as pointed out already rely on the public to report crime. It was contended by English courts that:

"The wrong doing policeman should not be punished by by exclusion of the evidence which injures only the public at large and not the policeman, but by the pursuit of other remedies." 17

In other words, direct remedies against the police will deter the policeman than the exclusion of the evidence. American courts adhere fairly rigidly to the doctrine of exclusion of the "fruits of the poisoned tree", and by way of contrast with the English courts, stress the disciplining of the police as the motivation of the exclusionary rule. The decision in the American case of Dolree Mapp v Ohio 18 established that evidence secured through an illegal search and seizure is inadmissible in

a criminal prosecution. The objective of such a rule is the protection of the citizen, especially the innocent against unwarranted wrongful interference by overzealous police.

It is important to note that something has regards to the manner in which investigations are carried out. The rules that regulate the manner in which investigations should be carried are there and clearly set out. Police officers and other investigation officers in various institutions are aware of the rights of the accused and the consequences of not following the rules but they have repeatedly gone against these rules and still went away without any punishment. It is important at this point to ask ourselves why this is happening. It is of no dispute that the economic status of the country has played a very big role in the apathy in the police force and other institutions. The unaffordable standard of living has put these institutions in a grave situation where one would prefer to extract information in any way he feels like than waste time following procedures which would not even earn him any pecuniary advantage. On the other hand, by virtue of these being well trained men and women and dealing with the society, they are installed with high discipline. Evidence should ~~be therefore~~ extracted in the right manner so that criminals will not have an opening when the matter is brought to court. To ensure that such officers see the cruciality of this part of evidence, punishment must be

installed in any officer whose evidence is rejected because it was grossly extracted illegally. This is a matter for the court to decide how gross the extraction was after hearing all the evidence from both sides. If that is implemented and codified in the constitution or any relevant statutes, the rights of an ordinary citizen will certainly be protected and criminals will not have protection by the courts.

REFERENCES

1. Heydon J.D: CASES AND MATERIALS ON EVIDENCE: London: Butterworths:1975
2. Opit
3. Moore(1852)2Den.c.c. 522
4. (1964) 1 ALLER 237
5. Noor Mohammed V The King(1969)AC182
6. CAP 1 of the Laws of Zambia- The constitution of Zambia
7. clarke.R; CRIMES IN AMERICA: NY; simon and Schuster (1970)p318
8. (1963-64) Z and NRLR 97
9. Wigmore on EVIDENCE VOL 3(1970) Boston Little: Brown and company
10. Kuruma s/o Kaniu V The Queen (1955) AC 197
11. Opit at p288
12. Ernesto Miranda V State of Arizona (1966) 181 ed 2d: 384 US at p436
13. Opit p451
14. Ibid p451
15. Supra note 1: clarke p320
16. (1964) 1 ALLER237
17. Heydon J.D. Cases and Materials on Evidence; london; Butterworths, (1975) p252
18. 367 US 643 (1961)

CHAPTER TWO

HISTORICAL BACKGROUND

AMERICAN LAW

The historical ^A of illegal evidence in America is the same as that of the English law. But it is important to state that for the American ^S, they went further and incorporated ^A as a right of every citizen in the constitution. Therefore it is incumbent to discuss the origin of the Fourth Amendment which gives every citizen a right not to be humiliated by the investigation authorities.

As well established and generally concealed historical fact ^A ^F ^A at the Fourth Amendment was aimed at protecting persons against the unwarranted invasions of privacy which harassment the colonialists under the odious writs of assistance and instrument ^S which was itself a precipitating cause of the revolutionary war. Writs of Assistance took their name from the fact that such a writ commanded all the King's subject to aid in its enforcement on request to do so by the person holding it. These writs ^S were general in character and did not relate to specific persons, places, or things to be searched or seized.

In 1761 James Otis in the famous PAXTON CASE¹ made an objection to these writs that they were employed in the course of enforcing measures which the colonialist firstly regarded as not merely oppressive but wholly unconscionable because they were imposed upon persons not represented in the legislative body which enacted them. So when the framers set about the task of drafting the Fourth Amendment they had two clear objectives in mind: namely:

- a) They clearly intended to prohibit the use of general warrants and the writs of assistance as a means of law enforcement
- b) They fully intended that the guilty should be protected along with the innocent.

The amendment as finally proposed and adopted reads as follows:

"The rights of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated and no warrant shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

The amendment affords two separate guarantees, first that no searches or seizures shall be made which are unreasonable in character even though undertaken with a valid warrant and second, that such searches and seizures as may properly be undertaken must be authorized by a warrant issued under the safeguards of oath.

probable cause and particularity. How this rule is enforced and its operation will be discussed in the next chapter.

ENGLISH LAW

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There may be noted four distinct stages in the history of the law's use of confessions. In the earliest stage i.e. between the 1500 and 1800 there was no restriction as to their reception.

All narratives avowing guilt were accepted in evidence without a question as to their proceeding from hope of promises or from fear or threats even of torture. Standford stated in the Pleas of the Crown³ that:

"If one is indicted or appealed of a felony and on his arraignment he confesses it, this is the best and surest answer that can be in our law for quieting the conscience of the judge and for making it a good and firm condemnation, provided however that the said confession did not proceed from fear, menace, or duress which if it was the case, and the judge has become aware of it, he ought not to receive or record it but cause him to plead not guilty and take an inquest to try the matter."

He went on to state in the Pleas of the Crown⁴ that "a confession was in itself a conviction". This notion re⁵ appeared in the statute. For the confession to lead to conviction it had to be admitted by two witnesses. This was evidently the notion in the

statute of Edward VI. dispensing with the requirement in such a case:

No person shall be indicted or convicted unless he accused by two lawful and sufficient witnesses or shall willingly and without violence confess the same."5

In this era it seems a confession was enough if proved by two witnesses. In the second half of 1700, there was a gradual change in the field of admitting confessions.

In 1775 in RUDD'S CASE6 where the accused had applied for release in consequence of having confessed under an assurance of pardon to be received as an accomplice testifying for the crown. Lord Mansfield made the first judicial utterance limiting the admissibility of ordinary confessions. ^{Presley} the instances had frequently happened of persons having made confessions under promises. In 1783 in WARICKSALL'S CASE7 before Nares J and Eyre B. the modern rule received a full and clear expression and confession were not entitled to credit because of the promises or the threats by which they had been obtained were declared inadmissible in evidence. By the 1800, the whole attitude of the judges had changed. There was a general suspicion of all confessions, a prejudice against them as such and an inclination to repudiate them the slightest pretext. This brought a lot of absurdity. Baron Parke J said that:

"I confess that I cannot look at decisions without some shame when I consider what objections have prevailed to prevent the reception of confessions in evidence. the rule has been extended quite too far and that justice, common sense have too frequently sacrificed at the shrine of mercy." 8

It was in the 1900 that three rules were established as very important before a confession and indeed any illegal evidence can be admitted. If a confession is extracted from the accused involuntarily, it is inadmissible as a matter of law.

Confessions are not accepted too if they infringe the Judges Rules. These are the rules for the guidance of the police during their investigations. These Judges Rules however are not rules of law but rules of practice. As such a confession under English Law obtained contrary to these rules so long as it is voluntary can be admitted. In this case, the judges have a discretion to exclude a confession made in breach of the rules. These rules also apply to the law in Zambia as shall be seen in the next part.

ZAMBIAN LAW =====

The history of the Zambian law regarding illegally obtained evidence has its origin from the common law of England. This is because Zambia was one of the Colonized States of Britain. The

British as colonial masters believed the local people had no properly organized law and that if there was any law, it was ~~for~~ repugnant. It was for this reason that they sought to bring in ~~the~~ English law into operation. Other reasons that led to the introduction of the English law in Zambia is that the whites did not feel they could be governed by the local chiefs and that they were superior to the local administration therefore they had power to impose the law that would operate. It was in this sense that the history of illegally obtained evidence came into existence in the Zambian Law. These laws were carried over at independence in 1964 by the new government. This is confirmed by the provisions of chapter 4 of the Laws of Zambia (1970), the English Law (extent of application) Act which provides that:

- a) The common law; and
- b) the doctrines of equity and
- c) the statutes which were in force in England on the 17th August, 1911 and,
- d) any (later English statutes applied to Zambia) shall be in force in the Republic

The provision meant that even principles such as that of illegally obtained evidence was to be in force in the country. The country also exercised stare decisis in which English cases were and are

still being used, although not binding, to decide local cases. For example in the case of *Liswaniso v The people*.⁹ Chief Justice Silungwe referred to many English cases in order to arrive at a decision. The books that are also relied upon in Zambia on the law of evidence are generally English books. All this substantiates the fact that the English law has a lot of influence on the local law.

Of course the aspect of the on admitting illegally obtained evidence has been criticized by scholars and learned men and women while supported by others. The criticism mainly concerns the unfairness that the law can bring to the individual. But our main concern is based on the manner this law is being misused especially by the investigation authorities in Zambia. This will be our main discussion in Chapter four.

-END NOTES-

1. (7761) 51 Quincy's Reports (mass).
2. The fourth amendment of the American constitution.
3. b2 c51 (1607).
4. 225 Emlyn's ed (1680).
5. Statute 1 Edw vi c12 (1547).
6. 1 Leach G C 298 (1775).
7. 1 Leach G C 298 (1783).
8. R V Baldry (1852) 2 Den C C 430.
9. Supreme Court, Zambia 1976.

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- . Statute 1 Edw vi c12 (1547).
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6. 1 Leach G C 298 (1775)
7. 1 Leach G C 298 (1783)
8. R V Baldry (1852) 2 Den C C 430
9. Supreme Court, Zambia 1976

CHAPTER THREE

THE ADMISSIBILITY OF ILLEGAL OBTAINED EVIDENCE

We have observed in the previous chapter how this type of evidence came to be accepted both in ~~E~~^{En}glish and the Zambian systems and rejected in the American courts. This chapter shall discuss how such evidence is applied in three jurisdictions respectively.

(a) THE AMERICAN SYSTEM

1. CONFESSIONS

American courts do not admit involuntary confessions on the ground of denial of due process of law.

According to Jones:

"Due process of law is actually the basis for the exclusion of self incriminating statements made by persons in the course of police custodial interrogation where certain standards are not complied with."

The American system in this case has made this to be an infringement of the right of due process of law as provided by the constitution.

On the issue of admitting facts discovered in consequence of inadmissible confession, American courts adhere strictly to the doctrine of the "fruits of the poisoned tree" and do not admit such evidence. In RODGERS V. RICHMOND, Justice Brandtner made the following comment:

- * "Our decisions under the Amendment have made clear evidence that convictions following the admission into evidence of confessions which are involuntary that is the product of coercion, either physical or psychological cannot stand because the method used to extract them offered an underlying principle in our Criminal Law."³

(i) ILLEGAL SEARCH AND SEIZURE

American courts do not admit evidence obtained through unconstitutional means. This applies to evidence through illegal searches and seizures. In Mapp V Ohio⁴, the evidence of obscene books and pictures was held to be inadmissible because it was obtained illegally. The law in America desires to protect the privacy of citizens from officious and overzealous agencies of law enforcement. Thus, the constitution provides security to people against unreasonable search and seizure under the amendment to the constitution⁵. In Weeks V US⁶, the court held that papers seized without a search warrant in the home of the accused were not admissible. The main issue was the illegality of the search and the fact that it was contrary to the constitutional right against unreasonable search and seizure under the ^FFourth Amendment to the constitution. Therefore, no matter how evidence is obtained, so long as the mode used in obtaining it is contrary to the constitution, it will not be admissible in American courts.

(ii) THE ENGLISH SYSTEM

1. CONFESSIONS

In the English law, just like the Gambian law, confessions made involuntarily are inadmissible as evidence. In the case of R v Smith, a soldier's confession ~~of being the one who~~ ^{was he?} stabbed another was not admitted by the court because a sergeant major by detaining the soldier on parade for ~~such~~ ^{not} a long time and in fact induced the accused to lose the exercise of his free will. ^{cross} pointed out too that:

"At English law, confessions are only admissible in a criminal case if they are proved to have been voluntary in the sense that they were not obtained by fear or prejudice or hope of advantage exercised or held out by any act done by the defendant if it is confirmed by the finding of property will be admitted." 8

In this respect therefore, the law in ^E England is the same as in Gambia 162

11. ILLEGAL SEARCH

As a general rule at ^E English law, evidence obtained through illegal search and seizure is admissible in courts but has to be relevant to the charge in issue. In the case of Kuruma S/O Kanju v The Queen, evidence was obtained illegally and it was concluded that if evidence is relevant it is admissible notwithstanding how it is obtained. In this case, Lord ^C Goddard said that:

"In their Lordship's opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained." 10

Lord Justice Crompton also said that;

"It matters not how you get it. If you steal it even, it would be admissible in evidence."

(c) THE ZAMBIAN SYSTEM

In Zambia the general rule is that all evidence illegally obtained is admissible as long as it is relevant to the facts in issue. If such evidence is irrelevant, it will not be admitted by the courts¹². In order for us to adequately understand how this evidence is treated by the Zambian courts, we shall discuss it in relation to the two ways it is obtained namely; through confession and illegal searches.

i. CONFESSIONS

For a confession to be admitted, it has to be obtained from the accused voluntarily. Charles J. laid down the law in Zambia when he stated in Muwowo v The People¹³, that:

"An incriminating statement made by an accused person to a person in authority is not admissible in evidence unless it is proved beyond reasonable doubt to have been made by him voluntarily."¹⁴

Justice Charles laid down grounds upon which involuntary confessions have been excluded in Zambia in the case of Zondo v R.¹⁵ In that case he said:

"Confessions are condemned from the point of view that the techniques of eliciting them inevitably leads to unfairness and abuse of other rights and that the rise of confession encourages the police to carry out shoddy investigations."¹⁶

It is important at this point to mention that the test for

admissibility of confessions is on the voluntariness of the confession in question.

It is also important to discuss what happens in consequence of inadmissible confession. In Zambian law, evidence discovered in consequence of inadmissible confession is admissible. In the

case of MULWANDA V THE PEOPLE, 17 PARON P.C.J. said that:
 "Our law, following the law of England, does not necessarily render inadmissible evidence uncovered in an illegal fashion."¹⁸

This implies that evidence discovered in consequence of an illegal confession is at Zambian law admissible.

in ILLEGAL SEARCH

In Zambia, evidence obtained from an illegal search is admissible only if it is relevant to the matter in issue. In

LISWANISO V THE PEOPLE¹⁹, Silungwe C.J. HELD that:

"The evidence of search and seizure of the currency in the present case although based upon irregular search warrant was rightly admitted by the trial court because that evidence was a relevant fact."²⁰

(d) CONCLUSION

It seems the English and the Zambian courts have a similar way of treating illegally obtained evidence. The

admissibility of this evidence by the two systems is based on the fact that it is a fact and do away with the likelihood of falsity. On the other hand, American law does not admit such evidence since the inadmissible confession has infringed

the due process of law. It is also important to stress that in America, rights of an individual as regards the right to privacy is *paramount hence enshrined in the constitution. In Zambia although such a right is enshrined in the constitution, several exceptions have been created that gives power to investigation authorities to enter and search premises without being said to have infringed rights of an individual.

It is in this vein that this research will discuss these investigation authorities in Zambia. This will be the main subject of the next chapter.

END NOTES

1. Jones on Evidence 4th ed (1974) Butterworths p476
2. 365 US 534 (1916) 5L ed 2d 760
3. Ibid 766
4. 367US 383 (1914)
5. Fourth Amendment of the US constitution
6. 232 US 383 (1914)
7. (1959) 2QB 35
8. Cross on Evidence (1974) Butterworth p 276
9. (1941) 2 KB 381
10. Ibid at p 385
11. (1955) AC 197
12. Ibid at p208
13. Cross and Wilkins: Outline of Law of Evidence: London: Butterworths p 279
14. (1960) 4K 81
15. Ibid at p 95
16. (1964) 51NR 102
17. Ibid at p137
18. (1973) Zambian Law Journal Vol. 5
19. (1976) 2K 133
20. Ibid at p137

CHAPTER FOUR

This Chapter will address itself to the institutions that deal with investigations in Zambia. The Chapter will specially address itself to the Anti-Corruption Commission, the Drug Enforcement Commission and the Zambia Police. The chapter shall further endeavour to discuss the modes of investigations of the three institutions and how they are associated to the concept of illegally obtained evidence. In the first instance, we shall discuss the Anti-Corruption Commission

1. THE ANTI-CORRUPTION COMMISSION

The Anti-Corruption Commission started its operations on 17th December, 1982. The law against corruption was enacted earlier on 24th September, 1980. The main reason for the establishment of this institution was simply to react to the increasing crimes of corruption in the country. The government thought it inevitable to establish independent institution to deal with the pressing matters of corruption. On 24th September, 1980, there was an Act of parliament which enacted the law against corruption and established the institution too. The institution became operational on 17th December, 1992. The main objectives of the institution were inter alia to combat corruption and to strengthen laws against corruption. Another main concern of the Commission was prevention of the crime of corruption. The

Commission was to be governed by the Corrupt Practices Act 1980.

MODES OF INVESTIGATION

One of the privileges that the Commission has is that of carrying out investigation on malpractices by any member of the public. Before investigations are conducted, there are certain procedures that an officer of the Commission has to follow. But before we discuss the procedure, it is important to mention here that the Commission can receive information in three ways, namely; from members of the public who came to report a person on alleged or the Commission of a crime or corruption. The Commission can also receive information from members of the public through notes and letters

Once a crime has been reported through any of the ways mentioned above, the procedure is that, it must be entered into a form called the Anti-Corruption Commission Complaint Form. This form contains the name of the Complainant, the date the Complainant was lodged, the time, his address, occupation, telephone number, nationality, passport or national registration card number and the method the complaint was made. This is to ensure that the Complainant, in case his report is made with malice, is cautioned or summoned when necessary. After entering the information, the Officer in Charge verifies the information. If the evidence is overwhelming, the Commissioner grants authority in terms of Section 11(1) (a) of the Corrupt Practices Act to investigate.

The Section* reads as follows;

I authorise/do not authorise officers of the Anti-Corruption Commission to investigate the complaint.

This authorisation is contained in part B of the form. Part C contains the action taken. It indicates whether investigations have been authorised or not.

In instances where information is received of a crime about to be committed, a warrant is sought immediately from any competent magistrate. The seeking of a warrant is aimed at defeating the breach of a constitutional right of an individual. Officers of the Commission are strongly urged to obtain a search warrant even in instances where there is a strong belief that a crime is being committed in a premises. If an officer believes that the suspect will have left by the time he obtained a warrant, he is advised to raise the matter on radio requesting any officer to obtain a warrant immediately. Officers of the Commission are not allowed to enter one's premises without a warrant. This requirement however, may be regarded to be ineffective because an officer cannot make an arrest without a warrant. If a crime is being committed in a premises and an officer has no warrant to enter, by the time a warrant is obtained, the crime would have been committed and investigations would be hazardous if started. It is right to assume then that officers do not possess adequate powers to combat crime since most important power viz power to

enter premises where it is necessary is denied from them. It is however important to note that the Commission was established with relatively wide powers to investigate and prosecute cases of corruption. This was to replace the seemingly ineffective provisions of the Penal Code which dealt with corruption and the Preservation of Corruption Act 1916 of the United Kingdom inherited from the colonial government. It is the powers the Commission has been conferred with that is the subject of our discussion.

As we have already seen above, the Commission has power to carry out investigations which necessarily follows that they can enter premises where it is necessary. Since corruption according to Scott is defined as "wilful failure to act in accordance with formal duties of a public role," or simply maladministration, it is inevitable that instances where false reports are given to the Commission are expected. In these instances, the officer of the Commission is more likely to act contrary to the requirements which leads to justice. Personal judgment by an officer as to have reasonable suspicion that a crime is about or is being committed is defeated. In such instances, the officer is likely to induce the suspect to say something that would implicate him. Such evidence is illegal but of course the Zambian courts will admit it if it is relevant to the issue at hand. At that point, the rights of an individual will have been infringed by the

admission of illegal evidence. Even if there is still a possibility that the courts would use its discretion to admit such evidence or not, it is a matter of fact which could fall either way.

The authorities have not been frequently challenged over the years because it seems that only a certain class of people who are aware of their rights have been involved in the acts of corruption. The average Zambian is unaware of his constitutional or legal rights. This point was raised by one parliamentarian during the debate on the Corruption Act Bill:

"Yes! what about peasants who might be arrested unjustifiably? They do not know their rights to compensation. They will just be tortured for nothing. They will just be told to go back home and yet might have been detained for more than two weeks on mere suspicion - all this for not knowing their rights. All a peasant will be concerned with is that he is free."2

The levels of illiteracy in Zambia has contributed very much in the spread of ignorance of both the constitution and the Corrupt Practice Act. The Act is written in English and very few Zambians are competent in English. Even those who are competent in English have difficulty in comprehending legal language with its archaic terminologies, complex sentence structures and specialised vocabulary. This includes the officer of the Commission and other investigation authorities. Ignorance in the interpretation of the law would lead to illegal acts, in this case, illegal investigations and to this effect, there are

several instances the Commission has been accused of infringing one's rights although not reported in courts of law.

In order to equip its officers with adequate knowledge, the Commission has persistently carried out induction courses at which officers are taught and refreshed ~~with~~ ways of carrying out legal investigation. Officers who act ultra-vires the Act are disciplined according to the provisions in the Act. Such instances occur when something contrary to the purpose of the search happens, this is regarded as abuse of office and punishment would be inflicted upon an officer accordingly.

It is argued however, that the implementation of the Act is likely to be rendered difficult by factors such as; the non-availability of adequate human, financial and physical resources necessary to enforce the law. Lack of manpower is the most vital problem because this would lead to inadequate investigations. In this case, it is not the officers that suffer but the suspects and the public at large. The suspect suffers in the sense that the officers will have too many cases that he would just be interested to extract evidence than serving the public. As a result, illegal means of extracting evidence is bound to increase putting a burden on the courts. But this is not what the Commission is aimed at achieving. Therefore, there is need for more funding, more human resources and incentive otherwise the

purpose of which the Act was aimed at will fail because many malpractice within the Commission would increase.

2. THE DRUG ENFORCEMENT COMMISSION

The Drug Enforcement Commission was established in 1989 by an Act of Parliament. The duties of the commission were at inception, governed by Statutory Instrument No. 87 of 1989 which was later supplemented by Act No. 37 of 1993. This new Act was aimed at introducing stiffer offenses and penalties for offenders. It was also put into place to revise the law relating to Narcotic drugs and to incorporate international conventions governing illicit drugs. The Commission's objectives was to eradicate and prevent abuse of drugs in Zambia.

Basically, the functions of the Commission are contained in Statutory Instrument No. 51 of 1994. These are:

- (i) to collect and disseminate information on Narcotic drugs, viz to receive and investigate any complaint of alleged or suspected breach of this Act and prosecute.
- (ii) to address and advise government ministries and departments, public bodies, companies institutions, statutory bodies and corporations on ways and means of preventing activities of drugs and suggest measures, procedures or methods of work compatible with proper performance of duties which would reduce activities of

dangerous drugs.

(iii) to disseminate information to educate the public on the evils of abusing drugs and the effect of dealing on property acquired from drug trafficking and

(iv) to enlist public support against drugs and works in conjunction with similar authorities outside Zambia. But this research is not aimed at delving into details regarding the operations of the commission generally but will only limit itself to the commission's modes of investigations vis-a-vis illegally obtained evidence.

MODES OF INVESTIGATIONS

The methods by which this institution carry out its investigations is not different from the Anti-Corruption Commission. The Drug Enforcement Commission basically receive of alleged commission of crime under the Act in three ways viz in person, by letter and through telephone. Once information is received of alleged commission of crime under the Act, the officers or special agents begin investigations. Special agents in this case is defined in s7 of the Statutory Instrument No. 51 of 1994 as;

s7 ".... such persons who are appointed by the Commissioner as may be necessary for the performance of the functions of the commission."

If the evidence that these agents find is overwhelming, then prosecution is commenced. It is important to stress here that drug enforcement involves tangible evidence and this evidence has

to be in the possession of the victim to be regarded as the best evidence. * It is in this sequence that we have to consider the danger of planting the evidence. It is easy in the drug trafficking world to trap a suspect by planting drugs in his premises so that the task of investigating becomes easier. This danger haunts many suspected persons dealing in drugs because their constitutional rights are infringed when such a thing happens while the officer in charge of the investigations is heavily protected under the Act. ^{also} The acceptance of every evidence as long as it is relevant to the facts in issue is bound to encourage laxity in the institutions ~~in that~~ The consciousness of the officers to operate in such a way as to serve the society would diminish but instead they would carry out their duties with malice against the suspect which is contrary to the scope of their duties. As earlier stated, the reputation of the Commission is likely to suffer where there is a general inclusion of illegally obtained evidence. Therefore, it is important that the Commission keeps its relationship with the members of the public sound because it is also a ^{re} ~~pro~~-active entity and ^{ies} ~~rely~~ on the public to report crime. It is, on the other hand, an advantage to the Commission that such evidence will be admitted but on the other hand, an individual's rights have been infringed. In such instances, where ~~the~~ members of the public become aware of the evils of the Commission its name is dented and it would automatically lose public support ^{be} ~~it~~ so much desired ^N ~~to solicit.~~

Another issue which needs discussion is the issue pertaining to the powers of the officers of the Commission. In addition to the powers conferred upon the officers, they are also vested with several privileges. Over[^]protection of the officers is likely to lead them to become overzealous in the carrying out their duties. For instance, §9(2) of the Narcotic Drugs and Psychotropic Substance rules 1994 states that :

§9 "A special agent shall not be regarded as an accomplice in any court proceedings while the special agents is carrying out duties in an under cover capacity."

What a special agent is has already been explained above. This section implies that an agent can even go to an extent of purchasing and supplying drugs so that those who are involved in the business can be identified and arrested. He can even act as a friend in the business to the suspect, and lead him and encourage him in the business so that he is found in possession of dangerous drugs. This section needs to be re-examined because sabotage is more likely to occur in certain instances. On the other hand this is contrary to the constitutional right of privacy where one sets a trap to an extent of planting evidence so that you can be prosecuted. There are several instances the Commission has been accused of tampering with an individual's fundamental rights. This is because this section and the investigation thereof ^{have} which lead to obtaining illegal evidence. Therefore, there is need to reduce the immunities of the officers so that rights of individuals can be respected and so that the

What are the rules on ENTRAPMENT?

constitutional provisions pertaining to human rights can be termed as fundamental to society.

But while we would like to see the Commission running its affairs in a manner we desire, it is important to note that this is a government institution and like any other institution of government it faces inadequate funding. This problem has denied the Commission ~~of~~ ^{the} vital machinery incidental to the nature of their duties. There are so many devices which are important to the carrying out of the Commission's investigation that are not available. The Commission has however tried to compensate for ~~the~~ lack of these devices by endeavouring to employ skilled manpower or diploma holders, holders of university degrees and even those possessing higher qualifications such as masters degrees and ~~these qualified personnel~~ ^{who are} ~~is~~ in charge of all technical issues. In addition to employing only skilled manpower in special duties, the Commission also conducts refresher training programs where new methods of investigation are taught. The Commission also works in conjunction with institutions of the same nature in other countries and shares ideas as to how best they can eradicate and prevent drug abuse in their respective countries. The Commission has also got support from non-governmental organisations such as United Nations Development Project (UNDP). ~~organisations~~ ^{which} render financial assistance to help the Commission in its operations. It is therefore a goal of these organisations

that the operation is not only the apprehension of offenders which is needed, but justice must prevail during investigations. That is to say, instances of obtaining evidence illegally must be unheard of because the Commission is not serving itself but the society as a whole.

3. THE POLICE

the police ^{we} is the major and largest investigative institution in the country and ^{we} is governed by the police Act CAP 133, of the laws of Zambia. The police endeavours to enforce the law by combating crime through arrests and taking ^{occasional} such victims to courts of law through the Attorney General. In trying to arrive at an arrest, the police ^{we} may ^{by} required to carry out investigations in which they are expected to abide ^{by} the requirements of the Police Act, the constitution, the Criminal Procedure code and the Judges Rules vis the fundamental rights of an individual.

The country's Republican constitution has a bill of rights in articles 13 to 26 in which civil rights and liberties are guaranteed. The country is also a member state of the UN and OAU. As such Zambia subscribes to the 1948 UN Declaration of Human Rights charter which declares that every person is born with inalienable right to life, liberty and privacy of property and the African ~~freedom~~ ^{or Human Rights Rights} Charter which also declares the same. But in our discussion of the police we will not go into details of

its operations generally. We will confine ourselves to the branch of investigations.

MODES OF INVESTIGATION

Police investigations ~~is~~ governed by s.14 of the Zambia Police Act. This section authorises police officers.

with or without a warrant to enter at any hour of the day or night any place in which he has reasonable grounds to suspect that illegal drinking or gambling is taking place or dissolute or disorderly characters are resorting to

This section is given more force by Section 19(1) of the CPC.5

The police will normally enter premises in three circumstances:

- (i) They will enter ~~a~~ premises in instances where they have information of what is contained ~~on~~ the premises. In this case, a warrant is not necessary if the thing is actually there.
- (ii) They will enter in instances where a suspect who is being chased enters premises and hides. In this case too, they will enter without a warrant
- (iii) They will enter where a warrant has been issued by a competent magistrate

In this case the magistrate has to be convinced that it is in a public interest to grant the officer a warrant to enter someone's premises.

This aspect of the law, where powers are enshrined in the likes of the Zambia Police Act and the CPC have been assailed as unworkable, too vague, unnecessary and so harmful to more important policing objectives.⁶ In the first place, opponents have argued that the concept of reasonable suspicion is too imprecise. The test of this reasonableness is that the officer must justify the search not by reference to intuition, hint or subjective suspicion but in terms of objective facts in the light of which his or her action appears reasonable. Lord Denning made a comment in the case of Chani V Jones where he stated that:

We have to consider on the one hand, the freedom of the individual, his privacy and his possessions are not to be invaded, except for the most compelling reasons. On the other hand, we have to consider the interest of society at large in finding wrongdoers and suppressing crime."

In the case of Tommy Katampi V A.G.⁸ Katampi was awarded K150,000 damages for trespass and damages caused at his grocery in Nakoli township in Kabwe. The shop was raided by party militants who were accompanied by Zambia Police officers in search of essential commodities which they strongly suspected he was hoarding on 17th November, 1985. In his judgement, Justice Chirwa held that:
 "The Zambia Police officers acted irresponsibly because they allowed themselves to be misused by people who were trespassing on the property of the innocent citizen. The trespass was completely uncalled for. It was pure harassment of an innocent citizen by some law enforcement agencies, some of whom were armed."

In this case the court exercised its discretion to decide the way it did. But it should be suggested further that where any evidence is extracted in circumstances where the search was illegal in the first place, the courts should come in to protect the rights of an individual. As already observed earlier, the

danger of allowing acts such as these i.e. allowing and tolerating police officers to conduct searches without a warrant could lead to overzealousness. There is a danger of planting evidence. In that case, it would be injustice to prosecute an innocent individual because of the evidence. This would definitely be contrary to public policy which is mainly interested in the fact that justice must be brought to those who do wrong. Investigations must be conducted according to the procedure required so that criminals will have no chance of escaping or shielding behind the fact that the police officer^s infringed their constitutional right to privacy.

It is true to say that police officers are already overburdened with several duties that their investigations are affected most of the times. The quality of these investigations leaves much to be desired. The state has lost numerous cases due to some police officers' inability to present viable evidence in cases that could otherwise been successfully prosecuted. Legal training and skills need to handle the prosecution process are simply inadequate among most Zambian police officers. Because of these police disabilities, the innocent citizens have paid the price for the crimes. Rights of innocent citizens have been infringed by extraction of illegal confessions and illegal searches when a crime is committed. Police always start investigations late ^{consequently} ~~affording~~ justice to be delayed and it ^{is} only the innocent who are

available* to answer all the questions. In such instances, the police have always been accused of inflicting some inducement by way of threats or beating in order to extract the information they need. Innocent citizens in most cases have ended up confessing to charges they were not themselves party to or accusing others to have been party to the same.

There is need to overhaul the police force so that men and women who possess adequate skill and knowledge are employed. These ~~for~~ ^{men} would be able to appreciate the rights of individual members of society. These ~~men~~ would tolerate the right to remain silent as paramount during investigations. The public is definitely likely not to co-operate with the police but if the police respect their rights, the public will feel they owe a duty to help the police arrive at justice by rendering ^{valuable} viable information.

Therefore, there is need for a skilled police force in all respects that will be able to appreciate rights of individuals both the innocent and the guilty. The police should also respect the public ~~the public~~ as their main assistant when they are investigating crime. If they do that, the public will ~~definitely~~ feel they owe a duty to help the police combat crime. ~~The~~ extraction of illegal evidence is bound to diminish the public relationship with the police. This would be worse than if the police just left the matter until compelling evidence arises.

The courts should not also only consider the interests of the society ² towards crime as well as that of the individual but also the interest of the society towards crime where the police extract information from suspects illegally. This relationship is also important. The courts should not only rule against the state in instances where illegal evidence has been brought before it but should also punish the officer in charge of such illegal investigations. This will encourage the police not only to respect the rights of individuals but also to conduct their investigations diligently without infringing one's rights by obtaining evidence illegally.

END NOTES

1. J.B. Scott: Comparative Political Corruption: Angled
Hitter: New Jersey: Prentice Hall INC 1972 p5
2. Daily Parliamentary debates No. 540 Thursday August 1980
Lusaka: Government Printers. 1980p1080
3. Objectives of the Commission under Act No.1 of 1994
4. CAP 133 of the Laws of Zambia
5. CAP 160 of the Laws of Zambia
6. John Baxter: Laffman Politics: The contribution of community
1955
7. (1970) 148 693
8. (1989) 28
9. Information on the operations of the Anti-Corruption
Commission was rendered by Mr Hamusonde with the sanction of
Mr Russell on 2th October, 1994
10. Information on the operations of the Drug enforcement
Commission was rendered by Mr Sinyani the commission chief
investigations Officer on 25th October 1994
11. Information on the Operations of the Police was rendered by
Mr Muyonda, the training officer at HQ

CHAPTER FIVE

CONCLUSION

It is important to note that the first chapter has endeavored^u to show that it is not the law pertaining to admissibility of illegal evidence that is the problem but the manner in which this law is implemented. Confessions for instance have been abused by the authorities. Professor Ndulo suggests that:

"We may suggest some ways of making our rules less susceptible to abuse and deterring police officers from employing improper interrogation methods and thereby encourage them to conduct fuller investigations into crime."

This chapter attempted to show that it is inevitable that the rules on confessions must be tightened so that the common man who is so often the victim of authorities will be protected.

The second chapter has demonstrated the history of confessions in three jurisdictions namely: The American, English and Gambian. It is clear from the history of illegally obtained evidence in general in America that it became inadmissible because there was need to protect persons against the unwarranted invasions of privacy. The incorporation of the ⁸executory rule in the constitution further how determined the framers of law in America endeavoured to protect the rights of the individual.

The English law on the other hand has shown that the history of illegally obtained evidence underwent several phases in the

early phase, such evidence was validly accepted until late in the 18th Century when courts started rejecting evidence obtained through inducement of an individual.

The Zambian history on illegally obtained evidence had its origin from the common law. Zambia having been once a colony of Britain inherited almost all the principles of law that existed and still exist in Britain. As a result even cases that were decided in Zambia were decided using these law principles and precedent.

Chapter three aimed at comparing the three jurisdiction viz how they apply the doctrine of illegally obtained evidence. We have already seen that the American courts do not admit evidence obtained through illegal means because it infringes the rights of an individual conferred upon him by the constitution. The English and Zambia courts however admits such evidence as long as it is a fact and is relevant. But we have seen above that in both the admission and inadmission of such evidence, there are advantages and disadvantages.

Chapter four aimed at discussing investigative authorities in Zambia. Three authorities have been discussed namely: the Anti-Corruption Commission, the Drug Enforcement commission and the Zambia Police. It has been abused at the expense of innocent individuals. The penalty given to officers who infringe the

rights of an individual is not enough to deter such an officer from conducting shoddy investigations. Some investigations on the other hand are unfortunately unprofessionally handled. Therefore, it is important to re-visit the law on illegally obtained evidence.

RECOMMENDATION

In order that the law regarding illegally obtained evidence can be said to be serving its purpose, there are several recommendations that this research has found that should be implemented:

(a) Overhaul of manpower

There is need to re-train or employ skilled men and women, professionally trained particularly in investigations. This will promote clarity in investigations. Already, the quality of the work of most authorities especially the police, leaves much to be desired. The state has lost numerous cases due to some police officer's inability to present viable evidence in cases that could otherwise have been successfully prosecuted. Legal training and skills needed to handle the prosecution process are simply inadequate among most Gambian Police officers.

(b) Limited resources

It is difficult to implement a law where there is constraint of resources necessary. First of all, there is lack

of human resource in the Gambian law enforcement. The law enforcement agencies are normally overburdened with other duties so much that little attention is given to investigations. In the end, shoddy investigations are conducted leaving the innocent to suffer. There is therefore need to increase skilled manpower to match with the rising crime.

Another constraint concerns the none availability of financial and other resources. It is of no dispute that the authorities discussed in this research are government departments hence, funded by the government. It is also of no dispute that the government is undergoing a difficult phase that it also lacks finance. Therefore, these agencies are likely to receive a smaller allocation that they would require. Financial resources will determine the availability of other resources and services to be offered, namely: transport, accommodation, salaries, and other facilities necessary to execute the agency's duties.

If all these requirements are met, there is a likely hood that investigations will improve and less cases will be lost by the state which are due to shoddy investigations. This means too that the rights of individuals will be said to be respected as the constitution intends them to be treated.

END NOTES 4.

1973 Zambia LI 108-109.

BIBLIOGRAPHY

TEXTBOOKS

1. ALLOT: Essays in African Law: Butterworths: London
2. Clarke R.: Crimes in America: Simon and Schuster: NY
3. Heydon J.D.: Cases and Materials on Evidence: Butterworths
London
4. Jardine: Use of Torture in the Criminal of England; London
5. Jones on Evidence: Butterworths: London
6. Muna Ndulo: Law in Zambia: East African Publishers: Kenya
7. Muna Ndulo: The Law of Evidence in Zambia: Multimedia Publ
Lusaka
8. Wilkins and Cross: Outline of the Law of Evidence: London

OTHER PUBLICATIONS

1. Zambia Law Journal vol. 5(1973)
2. Zambia Law Journal vol. 13 (1981)

CASES

Chani V Jones (1989)ZR

2. Chitenge V The People (1966) SJZ
3. Dolree Mapp V Ohio 367 US 643 (1961)
4. Ernesto Miranda V State of Arizona (1966)16 L ed 2d: 384 US
5. Kuruma S/O Kaniu V The Queen (1955) AC197
6. Lisaniso V The People (1976) ZR 277
7. Mapp V Ohio 367 US 643 (1961)
8. Mulwanda V The People (1976) ZR 133
9. Muwowo V The People(1965) ZR 91 91
10. Noor Mohammed V The King (1969) AC 182
11. Paxton's Case (1751) 51 Quincy's Reports (Mass)
12. R V Barker (1941) 2KB 381
13. R V Smith (1959) 2QB 35
14. Rogers V Richmond 365 US 534 (1916) 5L ed 2d 760
15. Rudd's Case (1975) 1 Leach Cr C 298
16. Tommy Katampi V A.G.
17. Worickshall's Case 1 Leach Cr C 298
18. Weeks V US 232 US 383 (1914)
19. Zondo V The Queen (1963-64) 2 NRLR 97

STATUTES

1. CAP 133 of The Laws of Zambia
2. CAP 160 of the Laws of Zambia
3. Narcotic Drugs and psychotropic substances Act NO.37 of 19
4. Act No.51 of 1994
5. Cap 1 of the Laws of Zambia