

**CORROBORATION IN CRIMINAL CASES.**

**CAN THE PRINCIPLE BE EXTENDED TO COVER MORE  
CASES THAN IT DOES?**

**BY**

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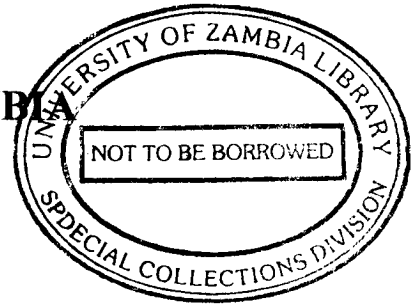
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**A dissertation submitted to the faculty of law of the University of  
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## **DEDICATION**

**This paper is dedicated to my mother Mrs Agness Chipanta, my brothers David Chipanta and Conrad Chipanta and to my sister Mrs. Dorothy Chipanta Kamalata .**

## ACKNOWLEDGMENTS

My sincere gratitude goes to our good Lord for His mercy and loving kindness without whose love, I would not have made it to this end.

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# CHAPTER ONE

## 1.0 INTRODUCTION

It is a general rule that the court can act or convict on uncorroborated evidence or the testimony of single witnesses. Such testimony however has to be sufficient in both civil and criminal matters for conviction. This general rule can only be applicable if no statute or special rule of practice which requires corroboration of such evidence is available. In the absence of such requirements, the court can accept the uncorroborated evidence, but this does not mean that it can not reject such evidence. Nevertheless, the judge has to warn himself of the dangers of convicting on such evidence. It therefore suffices to note that the court is not under any obligation to believe whatever uncorroborated and uncontradicted evidence that may be presented before it. Corroboration may thus be necessary in some cases only mostly criminal and a few civil.

In view of the above corroboration had world widely been considered to be of necessity in certain matters of criminal law nature. Most civil matters generally need not be corroborated as the testimony of single witnesses is ordinarily regarded as sufficient proof of a fact. Moreover, it is generally thought that evidence is readily available in civil matters than it is in criminal matters. Equally, some criminal matters need not be corroborated and it has been stated that the uncorroboration evidence of one witness is ordinarily sufficient to sustain a conviction of crime<sup>1</sup>.

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<sup>1</sup> Anderson, A. Ronald. Wharton's Criminal Evidence. 1955. Vol 3, p. 395



Corroboration is needed as evidence in specific matters to help the judges confirm that an offence was committed by the offender. In both civil and criminal matters, offences are committed and as such one wonders why only certain matters require independent evidence while others do not. The judge in either civil or criminal matters has to confirm that the offender did commit the alleged offence. Unlike in criminal matters where a majority number of offences need corroboration, in civil matters, corroboration is required only in affiliation proceeding<sup>2</sup>, which proceedings are rare in Zambia for reasons to be alluded to later.

The areas which require corroboration are very limited. However, the principle of corroboration may be of necessity even to those other areas where it has not been applied before. The law is dynamic and certain new cases may require corroboration even if there is no strict rule requiring the same.

## 1.1 **HISTORICAL BACKGROUND**

Certain situations prompted the application of the principle of corroboration. Such situations were not usually of a straight forward nature as to whether the offender indeed committed the alleged offence. The judges and the jury did not find it easy to confirm that the offender was guilty of the alleged offence. In illustrating such situations, Sir James Stephen<sup>3</sup> had the following to say,

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<sup>2</sup> Mwewa V Kaunda. The Law Relating to Corroboration in Zambia. Obligatory Essay. 1985

<sup>3</sup> General View of the Criminal Law in Cross on Evidence 1985 p.207

*“The circumstances may be such that there is no check on the witness and no power to obtain any further evidence on the subject. Under these circumstances juries may, and often do acquit.... This case arises where the fact deposed to is a passing occurrence – such as a verbal confession or a sexual crime – leaving no trace behind it, except in the memory of an eye or ear witness .... The justification of this is, that the power of lying is unlimited, the causes of lying and delusion are numerous, and many of them are unknown, and the means of detection are limited”.*

Therefore, the situations where such that no other person had knowledge of the offence apart from the offender and also no trace of the occurrence of the offence was left behind. It is only human nature that in such situations, the offender would have the unlimited power of lying in order to protect himself. In essence, it was to meet situations such as above that judges developed rules of practice under which juries must be warned of the dangers of convicting on an uncorroboration evidence<sup>4</sup>.

The modern English Law of Evidence and the Canon or Civil Laws have some similarities which link them to the history of corroboration. For instance, in English Law, more than one oath helper was required when compurgation was

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<sup>4</sup> Cross Rupert. Cross on Evidence. 1985, p.207

among the standard methods of trial<sup>5</sup>. Canon Law under the Roman influence also demanded the requirements of a number of witnesses<sup>6</sup> during trial. However, the two systems diverged more or less completely when the English jury trial began to assume their present form in the seventeen century. Before that period however, the jury were themselves like witnesses in the sense that it could be said that more than one witness was always necessary at common law trial<sup>7</sup>. In both systems, it can be noted that the evidence of the offender alone was not sufficient and as such other witnesses were necessary. It has also been significantly maintained that more than one witness was necessary in proceedings without a jury as where the validity of challenges fell to be determined<sup>8</sup>. Some efforts to impose rules that require more than witness were made by statute when the jurors ceased to resemble the modern witnesses. However, those provisions were never generalized and are of no significance<sup>9</sup> at present.

As regards the requirement of more than one witness, Napoleon did observe that

*“the testimony of one honourable man could not prove a single rascal guilty, through the testimony of two rascals could prove a honourable man guilty”*<sup>10</sup>

As a matter of concern on the number of witnesses, rigid rules concerning the same can hardly be justified as a matter of policy. Nevertheless, it is generally assumed

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<sup>5</sup> Ibid, p.207

<sup>6</sup> Ibid, p.207

<sup>7</sup> Ibid, p.208

<sup>8</sup> Ibid, p.208

<sup>9</sup> Ibid, p.208

<sup>10</sup> Napoleon in Cross on Evidence. 1985. p.208

that there is a limited class of cases in which the same form of corroboration is desirable in the interests of justice.<sup>11</sup>

When corroboration is required as a matter of law, a conviction or finding of fact in its absence will necessarily be set aside by an appellate court or tribunal<sup>12</sup>. On the other hand, when corroboration is required as a matter of practice the greatest caution must be exercised in coming to a conclusion in its absence, but, provided due precautions have been taken, the conclusion can not be attacked on legal grounds.

Finally, the history of corroboration can be traced back from our ancestors. More than one witness was always required in order for one to provide the alleged guilty person guilty. It carried weight if the person alleging had other witnesses to confirm the allegations. Generally, no one is prevented from providing witnesses to confirm the commission or non commission of the offence. It is just trite law that the evidence of more than witness is likely to be more convincing than that of a sole witness.

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<sup>1</sup> Cross Rupert. Cross on Evidence. 1085. p. 208

<sup>2</sup> Ibid, p.209

## CHAPTER TWO

### 2.0 THE DEFINITION OF CORROBORATION

Different scholars have defined corroboration in many ways. It must however be observed that corroboration has no technical legal meaning. It has been defined as evidence tending to confirm some fact of which other evidence is given<sup>13</sup>. Evidence may be available and corroboration is that evidence which may be used to confirm some fact from the evidence that has already been given. Also, corroboration is the,

*“Independent evidence which implicates a person accused of a crime by connecting him with it”<sup>14</sup>*

From this definition corroboration has to be independent from the evidence given by the accused. If not independent, then it is not corroboration. In addition, the accused must be connected to that evidence so that it is shown that indeed the accused was involved in the commission of the crime. For instance,

*“if a witness says the accused and I stole the sheep and I put the skins in a certain place, the discovery of the skin in that place does not corroborate the witness’s evidence as against the accused, but if the skins were found in the accuser’s house, this would be corroboration because it tends to confirm the statement that the accused had some hand to play in the theft”<sup>15</sup>*

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<sup>3</sup> Heydon, J. D Cases & Materials on Evidence 1975 P. 65

<sup>4</sup> Bird, Roger Osborn’s concise Law Dictionary 1983 P. 95

<sup>5</sup> R v. Birkett (1839) 8 C & P 732

Suffice to note the above example and definitions it can be inferred that corroboration need not be direct but may be circumstantial and must proceed from an independent source because a witness is not able to corroborate oneself. In other words, the evidence must be extraneous to the witness who is to be corroborated. It has further been observed that,

*“Corroboration need not be direct evidence that the accused committed the crime, it is sufficient if it is merely circumstantial evidence of his connection with the crime”<sup>16</sup>*

Thus there is no specific requirement that the evidence to be regarded, as corroboration has to be directly linked to the crime committed. It is sufficient if the circumstances can connect the accused to the crime committed. Further, it has also been observed that evidence which amounts to corroboration must be evidence from which an inference can be made that the main fact happened<sup>17</sup>. Therefore, corroboration may be on some or all material facts.

Corroboration has also been interpreted as referring to something which leads an impartial and reasonable mind to believe that material testimony is true, testimony of some substantial fact or circumstance independent of a statement of a witness<sup>18</sup>. This definition equally requires that corroborative evidence be

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<sup>16</sup> Halbury's Law of England 4<sup>th</sup> Edition Volume 17

<sup>17</sup> Kaunda, Mwewa Vincent .The Law Relating to Corroboration in Zambia, with Specific Reference to the Testimony of Accomplice Witnesses .Obligatory Essay 1984/5 P. 6

<sup>18</sup> Conrad C Edwin .Modern Trial Evidence. (1956) Volume 2. P. 325

independent so that a reasonable and impartial mind may be led to believe the material testimony given by the accused.

Corroboration has also been defined as evidence which strengthens or supports other evidence <sup>19</sup>. The case of **R vs Baskerville** <sup>20</sup> also affirmed that definition and further stated that corroboration must be evidence which implicates the accused, that is, which confirms the evidence that the crime has been committed.

Further, corroborative evidence is that evidence which lends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed but that it was committed by the accused <sup>21</sup>. Corroboration in that case will be there to confirm that the offence was committed by that particular offender or accused who has been implicated.

The aforesaid definitions of corroboration contain some common elements in them and that is, the evidence has to be independent. Therefore, corroboration can conclusively be said to be evidence other than that of the accused, (independent) or some other person whose evidence also requires to be corroborated, which tends to show that the evidence of the witness is true. It also confirms the existence of a fact in issue <sup>22</sup> and may consist of implied and express admissions made by the accused. Corroboration will not only confirm that the

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<sup>19</sup> Thomas v. Jones (1921) 1 KB 22

<sup>20</sup> (1916) 2 K B 658

<sup>21</sup> Supra, note 4

<sup>22</sup> Buzzard, J. H Phipson on Evidence (1970) 11<sup>th</sup> Edition p. 874

accused committed the offence but also that the offence was committed by that particular accused.

## **2.1 THE NATURE OF CORROBORATION**

Corroboration in English Law has taken more forms than one. The nature of this principle however may either be general or specific. Suffice to note the above primarily, it may be said that the nature of corroboration will necessarily vary according to the particular circumstances of the offence charged <sup>23</sup>. Nevertheless, some forms may be similar regardless of the circumstances of the offences in issue.

From the specific nature point of view, among the many forms is,

## **2.2 CIRCUMSTANTIAL EVIDENCE**

This is the evidence that is based on the surrounding circumstances before and after the commission of the offence. This evidence as a nature of corroboration often owes its strength to its cumulative effect. It is regarded in a manner similar to the case of a rope comprised of several cords.

*“One strand of the cord might be insufficient to sustain the weight, but three stranded together might be quite of sufficient strength”* <sup>24</sup>.

The above clearly establishes the cumulative effect which makes circumstantial evidence a relevant form of corroboration.

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<sup>23</sup> Halsbury's Laws of England 4<sup>th</sup> Edition Volume 17 P. 202

<sup>24</sup> Cross, Rupert Cross on Evidence (1985) P. 226



Additionally, the requirement that corroborative evidence must implicate the person against whom it is directed in a material particular necessitates a considerable qualification of the above doctrine as a form of corroboration. Through this doctrine, any proof other than the direct evidence thereof may be given and such can be said as forming part of corroboration.

Apart from being direct or circumstantial, corroboration may be either testimonial or documentary. It may also consist of evidence of contradictory statements made by the defendant when acting as a witness whether or not made under oath or whether oral or written<sup>25</sup>.

### **2.3 TESTIMONIAL EVIDENCE**

This as a form of corroboration is the testimony given by two or more witnesses in support of some material fact. This too is one of the recognized specific nature of corroboration in English Law. It is also a common form from which many scholars have knowingly and unknowingly based their interpretation of corroboration.

The history of the doctrine of corroboration firmly established the insistence on a plurality of witnesses as a device to ensure truthfulness<sup>26</sup>. The earlier laws embodied a rule requiring more than one witness and where there was a jury, the medieval jurors satisfied the requirement of two or more witnesses<sup>27</sup>. In the later

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<sup>25</sup> Anderson, Ronald Wharton's Criminal Evidence (1955) Volume 3 P. 398

<sup>26</sup> Nokes on Evidence

<sup>27</sup> Supra, P. 500

centuries the jury in relation to the recent witnesses could not and cannot be considered as satisfying the requirement of two or more witnesses.

Needless to note the above, it goes without mention that the purpose of the doctrine of corroboration seems to have been embodied in testimonial evidence. In **Director of Public Prosecution vs. Hester**<sup>28</sup>, Lord Morris stated *inter alia* that ,

*“The purpose of corroboration is not to give validity of credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible and corroborative evidence will only fill its role if it itself is completely credible”*

Testimonial evidence will in essence only support and confirm the evidence already given. It has nothing to do with the creditworthiness of the evidence, as it will only support the truthfulness of the earlier evidence.

From the general observation of the doctrine of corroboration, the following will suffice.

## **2.4 EXPRESS AND IMPLIED ADMISSIONS**

The admission must first and foremost conform in itself to the general rules of admissibility and so be capable of being received for the purpose of proving guilt as charged. Express admissions made by the accused in criminal matters, may be

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<sup>28</sup> (1973) A C 296 at 315

accepted as corroboration. In civil matters, the admission of intercourse by the respondent in affiliation proceedings, or admission of other acts of intimacy is capable of constituting corroboration<sup>29</sup>.

#### 2.4.1 SILENCE

This may in some cases amount to implied admission if it is natural and reasonable to expect a reply. Crave J in his judgment in **R. v. Mitchell**<sup>30</sup> stated *inter alia* that,

*“Undoubtedly, when persons are speaking on even terms, and a charge is made, and the person charged says nothing and expresses no indignation, and does nothing to repel the charge, that is some evidence to show that he admits the charge to be true”*

Therefore, if the accused and the accuser stand on the same footing or are speaking on even terms then, the accused's silence may be treated as an admission. This proposition of the law was affirmed and applied in the case of **R. v. Camp**<sup>31</sup>. In that case the accused's failure to reply to the observation of the girl's father about some pills was held to tend to corroborate the girl's evidence that the accused had attempted to procure her miscarriage. However, if the accused is innocent, he may reasonably be expected to give evidence of his guilt. The court in that case further said that the accusations were indeed grave and called for a reply from the accused.

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<sup>29</sup> Tapper, Colin: Outline of the Law of Evidence 1986, P. 78

<sup>30</sup> (1892) 17 Cox CC 503

<sup>31</sup> (1880) 14 Cox CC 390

Suffice to note the above, emphasis need be made that silence can only constitute an implied admission and hence corroborate other evidence where the accusations or questions are made by someone not in authority <sup>32</sup> meaning that the accused and the accuser must stand on the same footing. In the premises, silence on the part of an accused when charged by a Police Officer can not amount to corroboration as the Officer is not on the same footing as the accused. If the Police Officer or any other person in authority gave a warning and the accused remained silent after that, that would not amount to corroboration and to say that it does would be a misdirection in law.

In some cases however, silence can not amount to corroboration. It has been observed that if the accused was silent when charged by a police officer, that can not constitute corroboration on account of the right to silence <sup>33</sup>. Notice thus has to be made that failure by the accused to testify does not amount to corroboration. This is because the accused person has the right to remain silent. Further the Constitution of Zambia Chapter One of the Laws of Zambia does provide that no person who is charged for a criminal offence shall be compelled to give evidence at the trial. The Criminal Procedure Code <sup>34</sup> also prohibits the prosecution from commenting on the failure of the accused to testify.

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<sup>32</sup> Kaunda, Mwewa Vincent The Law Relating to Corroboration in Zambia Obligatory Essay 1985 P. 13

<sup>33</sup> Chapter 1 of the Laws of Zambia

<sup>34</sup> Chapter 87 of the Laws of Zambia

Failure to give evidence cannot amount to corroboration because to hold otherwise would militate against the rule that the accused is not obliged to give evidence<sup>35</sup>.

#### 2.4.2 LIES OF THE ACCUSED OR DEFENDANT

False statement out of court may or may not amount to corroboration. They may amount to corroboration if they are indicative of a sense of guilt and are proved by independent evidence. However, everything will depend on the circumstances of the case.

As regards lies told in court, it was once suggested in **R. v Chapman** and **R v Baldwin**<sup>36</sup> that such could not amount to corroboration. This view has now been rejected and the position regarding such lies should be taken to be similar to that of lies told out of court. In line with the above, Lord Chief Justice Lane in **R. v Lucas**<sup>37</sup>, conveniently summarized what may amount to a lie by stating that,

*“The lie...must first of all be deliberate. Secondly, it must relate to a material issue. Thirdly, the motivation for the lie must be a realization of guilt and a fear of the truth... Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness”.*

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<sup>35</sup> Tapper Colin Outline of the Law of Evidence (1986) P. 79  
(1973) Q B 774, (1973) 2 ALLER 624

<sup>36</sup> (1973) Q B 774, (1973) 2 ALLER 624

<sup>37</sup> (1981) Q B 720, (1981) 2 ALLER 1008

Further, it is worth nothing that a person's statement in court may well be held to corroborate the case against himself as was held in **R. v. Dossi**<sup>38</sup>. In that case, it was held that the accused's admission that he fondled the girl "*Platonically*" corroborated the girl's evidence that he had indecently assaulted her.

## **2.5. OTHER RELEVANT CONDUCT OF THE ACCUSED OR DEFENDANT**

The previous conduct of the accused which shows the propensity to commit a crime with a particular person may constitute corroboration as was held in **R. v. Hartley**<sup>39</sup>. Also, the evidence supplied by the accused's *modus operandi* may be cited as an example of corroboration as was held in **Director of Public Prosecutions v. Boardman**<sup>40</sup>. All in all, it can be said that examples of corroboration include, previous or subsequent acts of intercourse or familiarity in sexual cases, and rehearsals of an alleged robbery.

Regarding the accused's or defendant's previous statements, such may not constitute corroboration<sup>41</sup>. It is only trite law that a witness can not corroborate himself. Hence his previous statements whether proven by him or by another witness, do not constitute corroboration. Complaints in sexual cases are admissible to prove consistency but they do not corroborate the Complainant's evidence.

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<sup>38</sup> 1918) 13 Cr App Rep 158

<sup>39</sup> (1941) 1 K B 5

<sup>40</sup> 1975) AC 421, (1974) 3 ALLER 887

<sup>41</sup> Supra, note 23

A somewhat different rule has however been developed in regard to the visible distress condition of the Complainant which is witnessed independently. This has been held to be evidence capable of amounting to corroboration of the Complainant's evidence <sup>42</sup>. Two conditions however must be satisfied and these are; the evidence must be independently observed, and it must appear to the court to be genuine and unfeigned. In **R. v. Chauhan** <sup>43</sup> the accused was charged with indecent assault of a woman. The Complainant extricated herself and ran to a lavatory, where she was observed by a fellow employee, who had heard her cries. The accused admitted that he had been with the Complainant, but denied any wrong doing, and said that the Complainant had been behaving normally. The trial judge left the Complainant's distress to the jury as potential corroboration of her evidence. On appeal against the conviction, the Court of Appeal upheld the judges "*summing-up*" and in that regard, it was held that the judge had been right to permit the jury to consider the Complainant's visible distress, about which the fellow employee (independent observer) had testified, with a clear warning to regard it as corroboration only if they were sure that the distress was genuine and unfeigned.

Repetition has been held as not constituting corroboration <sup>44</sup>. Thus the truth of a statement cannot be said to be corroboration merely because it was written before or said before.

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<sup>42</sup> Murphy, Peter Murphy on Evidence 2000 P. 500

<sup>43</sup> (1981) 73 Cr App Rep 232

<sup>44</sup> Supra, note 20

In conclusion, regardless of the surrounding facts, it can firmly be submitted that the test <sup>45</sup> applicable to determine the nature and extent of corroboration is the same whether the case falls within the rule of practice at common law or within the class of offence for which corroboration is required by statute. It appears the same principle apply to civil cases in which corroboration is to be looked for. The case of **Alli vs. Alli (DC)**<sup>46</sup> alludes to that.

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<sup>45</sup> As laid down in R v. Baskerville by Lord Reading CJ

<sup>46</sup> (1965) 3 ALLER 480



## CHAPTER THREE

### 3.0 MATTERS THAT REQUIRE CORROBORATION

The doctrine of corroboration seeks to guard against the danger of deliberate false implication by singly or jointly fabricating a story against the accused or the respondent. It therefore, suffices at this moment to note primarily that the essence of looking for corroboration is to see whether the evidence given before court is to be believed or not.

Under the Common Law, the general rule is that as a matter of law, the uncorroborated evidence of one witness will normally suffice<sup>47</sup>, and any judgment or conviction may be based on the uncorroborated evidence of a single witness or on the uncorroborated evidence of any kind<sup>48</sup>. Basically there is no general requirement of corroboration. Despite this, the jury and the judges in United Kingdom (UK) and the judge and assessors in Zambia (since there is no jury) may well hesitate to convict on the word of one witness when there are no confirmatory circumstances, but legal rules prohibiting them from doing so are exceptions<sup>49</sup>.

It is trite law that to every general rule, there are exceptions. The aforesaid general rule has exceptions, which can basically be divided into two groups, that which requires corroboration as a matter of law and as a matter of practice.

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<sup>47</sup> Tapper, Colin. Outline of the Law of Evidence .1986  
<sup>48</sup> Murphy, Peter Murphy on Evidence 2000  
<sup>49</sup> Supra, note 47

### 3.1 CORROBORATION REQUIRED AS A MATTER OF LAW

As a matter of law, the requirement of the doctrine of corroboration can be considered as mandatory. In certain matters, the statutes may require particular evidence to be corroborated as a matter of law. If such evidence is not corroborated or no other confirmatory evidence exists, the effect is that such a finding or conviction will be set aside on appeal.

The matters in which corroboration is required as a matter of law include the following:-

#### 3.1.1 PREJURY

This has been defined as the false swearing or the making on oath by a witness or interpreter in a judicial proceeding of a statement material in that proceeding, which he knows to be false or which he does not believe to be true<sup>50</sup>. Perjury as an offence is created under Section 104 (1) of the Penal Code of Zambia<sup>51</sup> which stipulates that,

*“Any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then pending in that proceeding or intended to be raised in that proceeding, is guilty of the misdemeanour termed perjury”.*

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<sup>50</sup> Bird, Roger Osborn's Concise Law Dictionary 1983 P. 250

<sup>51</sup> Chapter 87 of the Laws of Zambia

As required by law, the evidence given on a charge of perjury has to be corroborated before a conviction or judgment can be made. Under the Zambian Penal Code, Section 107 affirms the position that such matters need corroborative evidence. It provides that,

*“A person cannot be convicted of committing perjury ... solely upon the evidence of one witness as to the falsity of any statement alleged to be false”.*

Strictly speaking, it seems no matters of perjury have been tried in Zambia. However, there are numerous English authorities that have applied the above provisions of the law and those can still be regarded as authority for persuasive reasons in the Zambian set up.

In the old case of **R v. Shaw**<sup>52</sup> it was held that upon an indictment for perjury, it is necessary to have more than the evidence of one witness and that the degree of corroboration although not definite must be something, which in the opinion of the tribunal before it, is deserving the name of corroboration.

From the many decided cases, it suffices to observe that corroboration for perjury may be found from another witness, documents<sup>53</sup>, letters<sup>54</sup> or admissions by the accused<sup>55</sup>. Further, it can be noted that the statute does limit the extent to which corroborative evidence is required, that is, the falsity of the statement. Therefore,

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<sup>52</sup> 1865 L & G 575, 15 Digest 830

<sup>53</sup> R v. Threlfall (1941) 10 Crim App Rep 112

<sup>54</sup> Jeffery v. Johnson (1952) ALLER 450

<sup>55</sup> Barney Confait v. R (1958) E A 289

as was held in the recent case of **R v. Rider**<sup>56</sup>, no requirement is imposed in respect of other elements of the offence.

### 3.1.2 SEDITION

This is the offence of publishing either orally or otherwise any words or documents with the intention of inciting hatred or contempt against the Sovereign, or the Government and the Constitution<sup>57</sup>. In Zambia, the law that requires corroborative evidence for the offence of seditious practice is governed by Section 57 of the Penal Code which *inter alia* provides that,

*“No person shall be convicted of an offence in respect of seditious practices (Section 57) on the uncorroborated testimony of one witness”.*

In the case of **Chitambala and Others v. R**<sup>58</sup> the accused were charged with contravention of the Penal Code Section 53 D (1) (a) of Northern Rhodesia, with conspiracy to publish a document with a seditious intention. The matter was dismissed for lack of corroborative evidence.

### 3.1.3 AFFILIATION

Affiliation proceedings in Zambia are brought before the Subordinate Court of the first class pursuant to Section 20 (f) to (i) of the Subordinate Court Act, Chapter 45. By virtue of the English Extent of Applications Act, the Bastardy Law Amendment Act 1872 of the United Kingdom (UK) is applicable to Zambia. Section 4 of the said Act provides that after the birth of a bastard child, the court

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<sup>56</sup> (1986) 83 Cr APP R 207

<sup>57</sup> Supra, note 4

<sup>58</sup> (1957) 6 NRLR 29

will hear the evidence of the woman and also that tendered by the alleged father. If the evidence of the mother is corroborated in some material particular by other evidence to the satisfaction of the court, the court may adjudge the man to be the putative father of the bastard child. That section requires the evidence of the woman as to the paternity to be corroborated by independent testimony which can either be direct or circumstantial.

In **Reffell v. Morton**<sup>59</sup> it was held that the corroborative evidence within section 4 of the aforesaid Act, must be evidence having some relation to the conduct of the putative father or the person summoned as being the father. In the case of **James v. R**<sup>60</sup>, the court rejected the evidence showing that the Complainant had sexual intercourse with the Respondent. The court further said that, that evidence did not confirm any more than an act of sexual intercourse and in particular did not offer any confirmation of the identity of the man involved or of the alleged lack of consent.

However, in **Hodges v. Bennet**<sup>61</sup> the payment of money for the maintenance of the child was held to be corroborative evidence of paternity. The conduct of the man in that case was considered and referred to as corroboration. Therefore, the manner in which the man or Respondent conducts himself towards the Complainant or the bastard child may be sufficient evidence to corroborate paternity.

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<sup>59</sup> (1906) 70 J. P 347

<sup>60</sup> P C Jamaica (1970) 55 Cr APP R 299

<sup>61</sup> (1860) 5 H & N 625

Suffice to note that *Zambian courts apply the Bastardy Laws Amendments Act 1872 of United Kingdom (UK)*, the English cases interpreting the Act equally apply to Zambia and corroboration has to be looked for and considered as can be seen from the aforesaid cases.

A strict observation of the African and particularly *Zambian Law* will firmly reveal that paternity suits in Africa and especially Zambia are very few. The reasons behind this may be due to the ignorance of the law by the mother, intimidation of the mother by the alleged father or people around her or may even be due to the fear of taking the father of one's child to court. Also, the fear of court fees may be another reason why paternity suits are not pursued. In addition, some mothers may feel independent and therefore too proud to take the alleged father to court.

#### **3.1.4 SPEED (ROADS AND ROAD TRAFFIC ACT CHAPTER 464)**

In accordance with Section 192 (3) of the aforesaid Act, an offence is created by any person who drives a vehicle at a speed exceeding the prescribed maximum speed. Corroborative evidence in convicting such an offender may be required as there is a likelihood of having unreliable estimated speed of the vehicle Section 192 (4) of the Act justifies the requirement and clearly provides that,

*“No person shall be convicted of an offence under the provisions of subsection (3) merely on the evidence of one witness solely to the effect that, in the opinion of the witness, he was driving a vehicle at a speed*

*greater than the maximum speed prescribed or specified in respect of a vehicle of the class or description of which such vehicle belongs.”*

Usually before the offence is established, a person will give his or her opinion in estimating the speed. However, corroborative evidence is necessary before the alleged offender can be convicted. In view of that proposition, it was been observed that what is prohibited is a conviction on one witness's opinion of the speed at which the accused was driving<sup>62</sup>. Therefore, based solely on the opinion, which is uncorroborated, the court may not convict the Defendant as there will be lack of corroboration as required by the law.

A witness's view, based on his personal observation, concerning the speed at which a vehicle was moving is nothing more than his opinion and that cannot be the basis of conviction. Nevertheless, a police statement that he drove behind the accused reading a speedometer of a police car constitutes a prima facie evidence against the accused. Furthermore, that will be sufficient to support a conviction if the accuracy of the speedometer is not successfully challenged<sup>63</sup>.

It hastens to note that evidence solely based on technology cannot corroborate the available evidence as the accuracy may be doubted at times. Also, the sole opinion of a witness cannot be corroborative evidence. Hence, the inference that can be drawn from the aforesaid is that a combination of the witness' opinion coupled with technological evidence will suffice as corroborative evidence.

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<sup>62</sup> Tapper, Colin The Outline of the Law of Evidence 1986 P. 73

<sup>63</sup> Supra

However, suffice to note the rapid development in technological, it would be unreasonable to wholly dismiss evidence adduced through technological means. Evidence adduced by means of mechanical devices should be taken as prima facie evidence of the speed used until evidence rebutting it is obtained<sup>64</sup>. The problem will nonetheless arise as on whom the burden of proof lies to rebut such evidence.

A number of cases have applied the law regarding conviction on over-speeding as above. The case of **Birghtly v. Pearson**<sup>65</sup> inter alia applied the principle that the opinion of one witness is not sufficient. The court on appeal in the same case found that the vehicle had not been observed by two Police Officers at the same moment and therefore the evidence did not comply with the requirements of the Act. Possibly, that evidence might have been facilitated by malice hence the requirement for corroboration.

### 3.1.5 PROCURATION

This offence is created by Section 140 of the Penal Code of Zambia Chapter 87.

As regards the requirement of corroboration, the proviso in Section 141 stipulates that no one shall be convicted of an offence of procuration and procuring defilement of women by threats or fraud or administering drugs, merely upon the evidence of one witness only. Such a witness is to be corroborated in some material particular by evidence implicating the accused.

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<sup>64</sup> Margaret Sekaggya The Law of Corroboration with specific Reference to Zambia LL. M dissertation 1990

<sup>65</sup> (1938) 4 All ER 127



### 3.1.6 CHILDREN OF TENDER YEARS

There appears to be no definite definition of who a child of tender age is. The Juveniles Act of Zambia Chapter 53 does not define who a child of tender age is. It does however define a child as a person who has not attained the age of sixteen years. Some English statutes have on the other hand defined a child as a person under the age of fourteen<sup>66</sup>. Therefore, there seems to be a big disparity between the Zambian and English Acts. In the case of **R v. Campbell**<sup>67</sup>, considering who a child of tender age is, it was stated that,

*“It will be observed that there is no definition in the Act of what is meant by “a child of tender years” though a child is defined as a person under the age of fourteen. Whether a child is of tender years is a matter for the good sense of the court, and though it may be difficult to decide whether a child understands the obligation of an oath, a court probably would have no difficulty in deciding whether he or she was of tender years”.*

It can thus be inferred that the duty of determining whether the child is of tender age is on the court. It was held in **Chewe v. The People**<sup>68</sup> that if it is found that the child is not of tender years, then the Section in issue, Section 122 (1) of the Juveniles Act does not apply and the witness’s evidence cannot be received on oath. The court may make an inquiry as to the child’s age or if necessary assess it itself as was held in **Mwape v. The People**<sup>69</sup>. The court may rely on the visual

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<sup>66</sup> Supra, Note 17  
<sup>67</sup> (1957) 40 Cr APP. R 95 at P. 99  
<sup>68</sup> (1974) ZR 18  
<sup>69</sup> (1979 ZR 54

observation and if it appears that the offender is a juvenile an inquiry must then be made to ascertain his exact age.

As regards the requirement of corroboration of the evidence of a tender aged child, Section 122 of the Juveniles Act Chapter 53 of the Laws of Zambia provides that,

*“Where, in any proceedings against any person for any offence or in any, civil proceedings, any child of tender years called as a witness does not in the opinion of the court, understand the nature of an oath, his evidence may be received though not on oath, if, in the opinion of the court he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth, and his evidence though not given on oath but otherwise taken and reduced into writing so as to comply with the requirements of any law in force for the time being, shall be deemed to be a deposition within the meaning of any law so in force”.*

*Provided that where evidence admitted by virtue of this section is given on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support thereof implicating him”.*

In applying that provision when handling the evidence of children of tender years, the courts in Zambia conclusively laid out some strict procedures which were clarified in the case of **Zulu v. The People**<sup>70</sup> as follows;

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<sup>70</sup> (1973) ZR 326 at p.326

- (a) *"The court must first decide that the proposed witness is a child of tender years, if he is not, the section does not apply and the only manner in which the witness evidence can be received is on oath.*
- (b) *If the court decides that the witness is a child of tender years, it must then inquire whether the child understands the nature of an oath, if he does, he is sworn in the ordinary way and his evidence is received on the same basis as that of an adult witness.*
- (c) *If, having decided that the proposing witness is a child of tender years, the court is not satisfied that the child understands the nature of an oath, it must then satisfy itself that he is possessed of sufficient intelligence to justify the reception of his evidence and that he understands the duty of speaking the truth. If the court is satisfied on both these matters then the child's evidence may be received although not on oath, and in that event, in addition to any other cautionary rules relating to corroboration (for instance because the offence charged is a sexual one) there arises the statutory requirement of corroboration contained in the proviso to Section 122 (1). But if the court is not satisfied on either of the foregoing matters, the child's evidence may not be received at all"*

The above procedure has been held in several cases to be proper and conclusive regarding children of tender years and in fact, the judge will quash any conviction which does not follow it<sup>71</sup>.

With regards to the unsworn child's evidence, some cases have held that such evidence can corroborate the sworn evidence of another child<sup>72</sup>. That position has been criticised as the other child will equally need to be corroborated. The court in **R v. Manser**<sup>73</sup> even went further and considered the fact that there was a possibility of the children having collaborated with each other because the offence was committed to them in succession at the same place during a game. Most cases that criticised that position did not however address themselves to the issue of "*mutual corroboration*" The position seem to be irreconcilable. From the Zambian perspective, however, the child's unsworn evidence has been held not sufficient to corroborate another child's unsworn evidence<sup>74</sup>. The position whether the child's unsworn evidence can corroborate another child's sworn evidence remains unsettled. The judges must at all times take precautions when receiving children's evidence.

### **3.2.0 CORROBORATION REQUIRED AS A MATTER OF PRACTICE**

Even though corroboration may not be required as matter of law, some instances will require it as a matter of practice. If corroboration is not required as a matter

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<sup>71</sup> D. P. P. v. Hester (1972) 3 All ER 1056, Sakala v. The People (1972) ZR 150, The People v. Banda (1972) ZR 307, Mwewa v. The People (1978) ZR 27

<sup>72</sup> R v. Campbell (1956) 2 QB 432 at 438

<sup>73</sup> (1934) 25 Cr. APP. R. (27) Mwewa v. The People (1978) ZR 277 which followed the holding DPP v. Hester (1972) ALL ER 1056

<sup>74</sup> Supra note, 18

of law, the judge may convict on the uncorroborated evidence provided that he or she warns the jury or himself or herself of the dangers of convicting on such evidence. If no warning is given, the conviction can be quashed and the fact that no warning was given can be a ground of appeal. The court has also stated that the judge can convict on uncorroborated or on single witness' evidence provided, there are special and compelling grounds. This requirement was first applied and appeared in Zambia in the case of **Machobane v. The People**<sup>75</sup> where it was not defined. Later, it was affirmed in **Phiri and Others v. The People**<sup>76</sup> wherein it was defined as "*something more*", that is, circumstances which do not constitute corroboration as a matter of strict law.

The requirement for a warning is mandatory and if that warning is properly given, the jury may convict even in the absence of corroboration. Originally this requirement was confined to three kinds of evidence, namely, that of accomplices of the accused, that of children of tender years (their sworn evidence) and that of complainants in sexual cases<sup>77</sup>. In more recent times, suggestions have been made and apparently accepted, that there might be other cases in which corroboration should be looked for as a matter of practice<sup>78</sup>.

### 3.2.1 ACCOMPLICES

An accomplice has been defined as any person who either as a principal or as an accessory has been associated with another person in the commission of any

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<sup>75</sup> (1972) ZR 101

<sup>76</sup> (1978) ZR 79

<sup>77</sup> Murphy, Peter Murphy on Evidence 2000 p.496

<sup>78</sup> Ibid P. 496

offence<sup>79</sup>. Primarily, an accomplice has also been defined as any party to the crime charged, whether he is a principal, or someone who merely aids and abets its commission<sup>80</sup>. The person thus called accomplice is directly connected with the offence charged as that person may have either aided or abetted the commission of the offence or actually did commit that offence when acting with another person. Therefore, there is no agreed definition of who an accomplice is. In **Davies v. Director of Public Prosecution**<sup>81</sup>, the following persons if called as witness for the prosecution, were held to be falling in the category of accomplices,

- a) *“Persons who are **Participes Criminis** in respect of the actual crime charged, whether as principals or accessories before or after the fact, or persons committing, procuring or aiding and abetting misdemeanours. (This was said to be the natural meaning of the term accomplice)*
- b) *Receivers of stolen property testifying at the trial of those alleged to have stolen the goods received by them.*
- c) *The parties to other crimes alleged to have been committed by the accused, when evidence of such crimes is received on the ground that it is of particular relevance or that it tends to prove something more than there criminal propensity.”*

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<sup>79</sup> Bird, Roger Osborn's Concise Law Dictionary. 1983

<sup>80</sup> Tapper Colin. Outline of the Law of Evidence .1986

<sup>81</sup> (1954) AC 372 All ER 507

It has been held that once the circumstances of the case reasonably reveal that it is possible that the witness could have a motive to give false evidence, the danger of false implication is present and must be excluded before a conviction<sup>82</sup>.

As regards the rule of accomplice evidence, BARON DCJ in **Phiri v. The People**<sup>83</sup> did examine the reasons for the rule. He stated *inter alia* that the reason why it is dangerous to convict on the uncorroborated evidence of a true accomplice is that because of his familiarity with the circumstances of the offence, he is in a position to put forward a very plausible story which in the nature of things it will be difficult if not impossible to shake in cross-examination, because in many cases, the only point on which he is not telling the truth is as to the identity of one or more of his companions. In fact, an accomplice necessarily knows all the facts of the case, and his story, when the question of identity is raised does not receive any support from its consistency with those facts<sup>84</sup>. It is naturally expected that in a situation where he gives evidence and reasonably believe that on the reliance of that evidence, he too can be convicted, that evidence may not reflect the true story as the witness will try to protect himself or herself by altering the story. The evidence thus has to be corroborated. If otherwise the conviction is made on the basis of uncorroborated evidence, the danger is that the accomplice will minimize his role in the crime and exaggerate that of the accused.<sup>85</sup>

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<sup>82</sup> Musupi v. The People (1978) ZR 271

<sup>83</sup> (1978) ZR 79

<sup>84</sup> John Hatchard and Muna Ndulo. The Law of Evidence in Zambia. 1992

<sup>85</sup> Cross, Rupert Cross on Evidence 1985

Suffice to note the above, it should be noted that corroboration in relation to an accomplice's evidence does not mean that there should be independent evidence of that which the accomplice relates as that would merely be confirmatory of other independent testimony<sup>86</sup>. In the much celebrated case of **R. v. Baskerville**<sup>87</sup>, Lord Reading LCJ pointed out that what is required is some additional evidence rendering it probable that the story of the accomplice is true, and that it is reasonably safe to act upon his statement. This was later reaffirmed in **R v. Beck**<sup>88</sup>.

In the premises, it is just reasonable that the accomplice's evidence is corroborated to ensure that justice naturally prevails.

### 3.2.2 SEXUAL OFFENCES

In the absence of statute, corroboration is not required in the trial of sex crimes, and a conviction may be sustained on the testimony of the complainant alone, if the testimony is credible. However, this too is an area where the judge must warn himself of the dangers of convicting on the uncorroborated evidence of a Complainant or Prosecutrix. Sexual offences may include cases of rape, indecent assault, sodomy, incest, defilement and homosexual offences.

The evidence of victims of sexual offences has been regarded as peculiarly susceptible to fantasy or fabrication, perhaps motivated by frustration, spite or remorse. Corroboration rules it can be inferred, were therefore intended to reduce

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<sup>86</sup> Ibid. 219

<sup>87</sup> (1916) 2 KB 658

<sup>88</sup> (1982) All ER 207



the danger arising from the fact that complaints of sexual offences are easy to make but difficult to refute. In that regard, corroboration is necessary when the testimony of the Prosecutrix is obtained through fear, threats, coercion or duress<sup>89</sup>. And when evidence is ordered in corroboration of the testimony of the Prosecutrix, it must have some real supporting evidence. Basically, it must as the nature of corroboration requires, connect the accused with the crime.

As regards the significance of the judge warning himself before convicting on the uncorroborated, the case of **Tembo v. The People**<sup>90</sup> did allude to that. In that case, the Appellant was charged with rape and it was held that corroboration should be looked for and the jury must be warned of the danger of acting without it in all cases of sexual offences, irrespective of the age or sex of the complainant or another party involved. Failure by the court to warn itself was held to be a misdirection that can only be cured by the application of the proviso<sup>91</sup>.

Sexual offences require corroboration in order to ensure that justice is delivered. If not corroborated, it is possible that the Complainant may complain on the basis of malice or spite not necessarily that the offence was committed. The offender at times may possibly be convicted on the wrong evidence or may not be convicted even when he is guilty. Since sexual offences are very serious offences, the offenders must not be let free instead should be punished for the offence they committed.

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<sup>89</sup> Anderson, Ronald. A. Wharton's Criminal Evidence 1955 P. 408

<sup>90</sup> (1966) ZR 126

<sup>91</sup> Phiri V. The People (1978) ZR 79

In recent times, the requirement of corroboration in some jurisdictions has been abolished as that has not been considered as of necessity. In England for instance, corroboration rules in respect of sexual offences were abolished by the Criminal Justice and Public Order Act 1994<sup>92</sup>. In Canada too, this was abolished in 1987. The law in Zambia however still requires corroboration in sexual offences though there are very few recent decisions on the same.

### **3.2.3 SWORN EVIDENCE OF CHILDREN OF TENDER AGE**

The sworn evidence of a child need not be corroborated as a matter of law, but the judge should be warned, not that she or he must find corroboration, but that there is a risk in acting on the uncorroborated evidence of young boys and girls though she or he may do so if convinced that the witness is telling the truth<sup>93</sup>. In receiving the sworn evidence of a child of tender age either in corroborating another child's evidence sworn or unsworn, or the evidence of an adult, the judge must warn himself or herself of the dangers of such evidence. Although children may be less likely to be acting from improper motives than adults, they are more susceptible to the influence of third persons such as their parents, guardians or close relatives, as such, may allow their imaginations to run away from them and thereby giving false information. The many cases decided on the basis of the judge warning himself or herself in receiving such evidence, are in criminal matters as can be observed. However, the principle in issue might well be applied in a civil suit for the jurisdiction of the rule is the tender years or age of the witness, rather

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<sup>92</sup> [www.info.gov.hk/gia/general](http://www.info.gov.hk/gia/general)

<sup>93</sup> Cross, Rupert Cross on Evidence 1985

than the nature of the case<sup>94</sup>.

### 3.2.4 SUSPECT WITNESSES

These are witnesses whose evidence is clearly suspect because of their history of severe mental illness and their criminal character. These do not fall in any earlier category wherein corroboration was required as a matter of practice. In **R v. Bagshaw**<sup>95</sup>, the court held that it was dangerous to convict on the uncorroborated evidence of such witnesses. The later case of **R .v. Spencer**<sup>96</sup> overrode that rule. In determining that, the case of **R v. Beck**<sup>97</sup> was referred to. In that case the concern was not with mentally ill witnesses, but with witnesses who had a purpose of their own to serve. The evidence of such witnesses may definitely be suspect as those have an interest to serve. Possibly they can give altered evidence to ensure that their interests are protected.

### 3.2.5 CORROBORATION AND CONFESSIONS

This is another recently suggested area in which the same approach should be taken with respect to confessions<sup>98</sup>. It has been suggested that the judge should warn the jury of the any danger in herein in convicting solely on the basis of confessions and the judge should draw the jury's or his attention to the presence or absence of evidence supporting the confession<sup>99</sup>. This may necessarily include

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<sup>94</sup> Ibid, P. 224

<sup>95</sup> (1984) IWL R 477

<sup>96</sup> (1987) AC 128

<sup>97</sup> (1982) IWL R 461

<sup>98</sup> Murphy, Peter Murphy on Evidence 2000

<sup>99</sup> Ibid, P. 509

the circumstances in which the confession was made for instance the fact that it was tape recorded.

The claims against the estates of the deceased persons have also been held as matters requiring corroboration.

Suffice to note the dynamism in the field of law, it can firmly be stated here that the doors as to what matters may need warning before acting on uncorroborated evidence, cannot be closed. New areas of matters may be developed where corroboration will be required as a matter of practice. Alternatively, different jurisdictions have different paces of development in the area of law and as such, matters of requirements of corroboration as a matter of practice must be individually assessed based on the specific practice in a particular jurisdiction and the behaviour of nationals in such a jurisdiction. As regards the development of law, Zambia can never be compared to England. Thus the rules on requirements of corroboration as a matter of practice must be considered and examined critically and differently, as human behaviour is not static and is different. This requirement generally is based on the behaviour of the witnesses.

There are many other cases where the judge must warn himself even though those may not have been reported or recognised yet. With time, more cases will possibly be suggested and as such the list of the matters or cases to be categorised in the aforesaid is endless.

## CHAPTER FOUR

### 4.0 THE SIGNIFICANCE OF CORROBORATION

The doctrine of Corroboration is significant in most criminal matters and not civil. Its significance is seen first and foremost, from the protection that it renders to the innocent party. This is so because,

*“it is hard for two or more witnesses to agree upon all circumstances relating unto a lie as not to thwart one another”.*<sup>100</sup>

In the event that lies are told, those have to be detailed and the witnesses telling them have to be skillfully cross-examined.

It goes without mention here that the arguments in favour of corroboration rule stipulates that it is possible two people might decide to tell the same lie in court against the accused<sup>101</sup>. However, although they might tell such a lie, it is difficult that they will agree on all the details especially during cross-examination. It may usually turn out in cross-examination that, the two witnesses concocted their stories as a result of the discrepancies which may be found in their testimonies. In that instance, the innocent party is protected as he or she cannot be convicted on the basis of such evidence. Corroboration therefore protects the innocent party as independent evidence is required from more than one witness and it is not easy for two or more persons to tell lies without discrepancies in their testimonies.

As regards the significance of corroboration, Montesquieu commented that,

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<sup>100</sup> Heydon, J. N. Case and Material on Evidence. 1975 p. 69

<sup>101</sup> Mwewa V. Kaunda. Obligatory Essay 1985

*“reason requires two witnesses because a witness who affirms and a party who denies, make assertion against assertion, and it requires a third party to turn the scale”.*<sup>102</sup>

The implication of the afore-stated comment is that, there are usually two parties in a criminal trial, the accused and the Prosecution. On one hand, the Prosecution will be saying that the accused did commit the offence and on the other hand the accused will be denying the allegations. In the premises, the court may not really be too sure as to who is telling the truth and who is not. The only way to be certain with who is telling the truth, is to look for the testimony of another independent witness or witnesses to corroborate either the prosecution or the accused.

This preposition however, has been criticised as being,

*“a mechanical method of obtaining security unrelated to the real forms and causes of unreliable testimonies”.*<sup>103</sup>

A conclusion as to the credibility of the evidence may not easily be retrieved from the number of witnesses. It does not matter how many witnesses a party has. Therefore, a party may have ten or even more witnesses but still lose the case and another may have a single witness but still win the case. It is said that sometimes, a single witness, by the simplicity and clearness of his narrative, by the probability and consistency of the incident of the incidents he relates, by their

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<sup>102</sup> Wigmore J. H. (1940) Wigmore on Evidence p.

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<sup>103</sup> Supra

agreement with other matters of fact too notorious to stand in need of testimony, will be enough to stamp conviction on the reluctant mind<sup>104</sup>.

Therefore, witnesses should be judged by the credibility of their evidence and not their number. Montesquieu's contention was that, the laws which cause a man to perish upon the testimony of a single witness are fatal to liberty. He in fact proposed that there was equality between the denial of the accused and the testimony of the witness<sup>105</sup>. In reacting to that, Evans stated that,

*"The supposed equality between the denial of the accused and the testimony of the witness is merely fanciful, unless it can be said that there is an equal inducement to make a false accusation for the purpose of destroying an individual with whom there is no previous animosity, and to deny the commission of the crime for which a party is justly liable to undergo punishment between a person who by his falsehood has everything to lose and nothing to gain and nothing to lose".*<sup>106</sup>

Corroboration also gives protection to the accused. This is so because at times, the accused may be innocent if the accusations were facilitated by malice or fabricated out of hatred or even jealousy. Corroboration therefore will be significant to determine the innocence of that accused. In view of that, the difference in the statements of two or more malicious and false witnesses when examined separately, is a powerful protection for the accused. It must be accepted

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<sup>104</sup> Supra, note 3

<sup>105</sup> Mwewa .V. Kaunda Obligatory Essay 1985

<sup>106</sup> Wigmore J H. (1941) of cit p.257.

that in most cases, a greater injustice may be done by giving credence to the story of a single witness. Such a rule as aforesaid, may be desirable in a society where the standard of truth is low<sup>107</sup> and not in those with considerably high standards of truth.

Certain cases are easy to fabricate while others are not. With those that are easy to fabricate, honourable men may have their integrity and reputation destroyed by the assertion of a single rogue. On the other side, the undermining of a rogue's credibility by putting his character into question affords some solution to an honourable man accused of the crime.<sup>108</sup> However, some rogues may tell the truth and some honourable men may commit crimes. Possibly, one honourable man could not prove a single rascal guilty though two rascals could prove an honourable man guilty<sup>109</sup>.

Proof of commission of crime in such instances therefore becomes difficult. At that point, it hastens to concede the occasional dangers of trusting a single witness, but a general corroboration rule requiring two witnesses is not in itself sufficient to overcome the dangers and disadvantages which are thereby introduced.

The need for corroboration equally becomes significant when handling accomplice evidence. This is so because the testimony of one witness mostly is highly suspicious. The accused for instance, may implicate another person who he

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<sup>107</sup> Ibid,

<sup>108</sup> Mwewa .V. Kaunda .Supra

<sup>109</sup> Cross, R. (1985) Cross On Evidemce.



does not even know and claim that he conspired with that person to commit the crime in issue. If there is no any other evidence available for exhibition in court, that person may be convicted. The accomplice will mostly try to get off the hook by implicating other people. A clear exemplification is in the on going case of the former Republican President, **Dr. F.T.J Chiluba**, wherein Mr. Musonda in his testimony claims that he got instructions from the then President, but there is no evidence of that. Dr. Chiluba did not sign any document which could be used as exhibit in court. Independent evidence will therefore be required to confirm that Dr. Chiluba indeed gave instructions that money be transferred.

Therefore, to ensure that justice prevails, the testimony of accomplices should be corroborated. In **Phiri v. The People**,<sup>110</sup> it was at the end examined that,

*“The reason why it is dangerous to convict on the uncorroborated evidence of a true accomplice is that because of his familiarity with the circumstances of the offence, he is in a position to put forward a very plausible story which in the nature of things it would be difficult if not impossible to shake in cross – examination because in many cases, the only point on which he is not telling the truth is as to the identity of one or more of his companions.”*

However, it has also been argued that an accomplice who incriminates himself at the same time as incriminating the defendant is presumably more to be trusted<sup>111</sup>.

The substantive question that the court should be asking is about the witness's

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<sup>10</sup> (1978) ZR 79

<sup>11</sup> [www.evidence/corrob.search.com](http://www.evidence/corrob.search.com)

motives in giving evidence and whether those motives are such as to make the testimony unreliable and in need of corroborative evidence. In cases where the testimony is tainted with improper motives Lord Hailsham in **DPP v.**

**Kilbourne**<sup>112</sup> said that a judge would be wise to warn about any witness where that witness has some purpose of his or her own to serve. If the motive is proper, then corroborative evidence will not be very significant as the evidence may be trustworthy although it would still be dangerous to convict on such in matters that require it either as a rule of practice or statute.

It suffices to observe here that matters of accomplices and sexual offences are easy to concoct and as such, corroboration plays an important role in deciding such. In line with that, where there is a situation which is analogous to the two categories, the Lords in **Spencer (1986) 2 ALLER 928** stated that the judge should give a full warning of the dangers of convicting on uncorroborated evidence. Corroboration then becomes vital to determine the credibility of the witnesses in accomplice and sexual offences.

Seeing that the doctrine of corroboration is very significant in criminal matters, its importance therefore as **Honourable Mr Justice Japhet Banda** of the High Court for Zambia put it is that, it prevents evidence from been manufactured. It may not be easy to manufacture evidence as other independent witnesses may be needed and concoction of evidence may as such not be possible. Corroboration therefore becomes significant as evidence is not manufactured.

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<sup>112</sup> (1973) ALL ER 440

It goes without mention here that the significance of the doctrine of corroboration either in criminal or in few civil matters, is that it helps in confirming that the offender committed the alleged offence. It is undoubtful that the independent evidence may fail to prevent the fabrication of evidence thereby protecting the innocent party. Even though certain matters may not require corroboration, the judge still has to warn himself or herself of the dangers of convicting on the uncorroborated evidence.

The availability of evidence from more than one witness helps the judge in delivering justice and fair judgment. The judges may at times not be certain on who to believe where both parties seem to be telling the truth. Possibly in such matters, the judge may give credence to that party who is able to articulate himself or herself well. Corroboration henceforth prevents such, as a lot of manufactured evidence may result therefrom .

Further, **Mr Charles Chanda** of CC Chambers commenting on the significance of corroboration stipulated that, corroboration helps preserve the individual rights as one is innocent until proven guilty. With corroboration, one's rights are preserved as the judgment can only be passed after the judge has heard the evidence available. Before proof of the alleged guilty conduct, one is innocent and as such, may not be convicted.

As regards the aforesaid, corroboration will therefore prevent decisions been based on malice. Instead, the decisions should be based on intelligence and credit as the number of witnesses is immaterial as earlier mentioned. In view of that, the Common Law lays down four principles, namely;

- I. Credibility does not depend on the number of witnesses
- II. Generally, the testimony of one witness is enough
- III. Mere assertion of any witness does not of itself need to be believed even though he is un impeached in any manner.
- IV. All the rules requiring two witnesses are exceptions to the general rule<sup>113</sup>.

The significance of corroboration can not be over-emphasized as it is *res ipsa loquitur*. It's definition as earlier given in Chapter 2 clearly summarises its significance. Further, its operation evidently gives the significance as it is from there where the innocent party can be protected and the judge helped in deciding the matters amicably.

In Affiliation Proceedings, specifically matters of paternity, technology requires that the DNA test be taken. The results thereof may also be produced as corroborative evidence and evidence itself which will help in coming to a conclusion as who the father of the child is.

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<sup>113</sup> Heydon J. D. Supra

## **CHAPTER FIVE**

### **5.0 PROBLEMS OF THE NON-APPLICABILITY OF CORROBORATION**

From the significance of corroboration as discussed in Chapter 4, the lack of corroboration in most civil matters prompt the arise of problems such as difficulties in delivering justice. At times, judges may not be certain on who is telling the truth. Determination of such matters will then be based on the intelligence and the articulation of issues by the witness. However, we must concede here that even intelligent people can tell lies and commit crimes. The weight of such decisions may therefore be questioned.

It needs not slip one's mind that corroboration confirms the commission of an offence. Civil matters too need confirmation that an offence was committed. Thus, the absence of corroborative evidence may delay the deliverance of justice and as such, the judge will have to look around for evidence or even carefully examine the parties even when one is lying. It is worth noting here that justice delayed is justice denied.

It is usually believed that evidence is readily available in civil matters. This however, may not always be the case as there might be times when additional evidence may be required. In such cases, corroborative evidence will then be required to help in the speedy settlement of the matter. The judge will be assisted with the rules of corroboration in determining matters.

Since civil matters are mostly not very grave and corroboration is not strictly adhered to, it is easy for stories to be concocted and offenders are usually encouraged as they know that the rule is not very strict. Thus, the absence of corroborative evidence perpetrates unlawful contractors and commission of civil offences.

Lack of corroborative evidence encourages the destruction of people's reputation and integrity. This is so as one can just fabricate a story about another and no strict rules of corroboration are required in deciding such matters.

## **5.1 RECOMMENDATIONS**

At the core of this paper has been the discussion of the applicability and non-applicability of the doctrine of corroboration. From its significance, it is firmly recommended that the doctrine be extended to cover more cases than it does now. Specifically, to include more civil matters in terms of strict adherence.

Some contrasts can however, be raised to that on the basis that the standard of proof used in determining civil matters is sufficient. That is, the standard of proof being on the balance of probability. Even though the standard has been set, certain other civil matters require a considerably high standard of proof and as such corroboration requirement would be necessary. A strong inference can thus be made to say most civil matters would justly be determined with corroborative evidence.

Contrasting to the extension of the doctrine, **Honourable Mr. Justice Anderson Zikonda** of the High Court for Zambia, commented that the nature of litigation of civil matters clearly shows that corroboration may not be required as most civil matters are not as serious as criminal wherein the sentence may even be death. Nevertheless, the seriousness of the matter and the gravity of the sentence need not be used to determine the relevance of corroboration. Whether the matter is serious or not, the fact is that an offence has been committed and confirmation of offender having committed that is necessary.

It hastens here to observe that most civil matters are localised. An extension therefore, of the doctrine would be favourable and non-prejudicial. The evidence available is local and thus the settled standard of proof may not be enough. The paper therefore recommends that the principle be extended in order to make use of the local evidence and avoid prejudice.

Commenting on the necessity to extend the principle, **Judge Kabalata** of the High Court of Zambia stated that there is no rule which precludes the plaintiff from calling other supportive evidence. This clearly confirms the relevancy of corroboration in all matters. In civil matters however, the doctrine is sidelined or rather not strictly adhered to. Even if one is not precluded from calling supportive evidence, the rules ensuring adherence of the doctrine are vital thus the need for extension of the doctrine.

The requirement of corroborative evidence is further seen to be Biblical as the gospel of Mathews 18: 16 clearly states that,

*“If your brother does not listen take one or two others with you, so that every fact may be established on the testimony of two or three witnesses”*

The necessity of corroboration can therefore not be over-emphasized and its requirement is rooted in the Bible. In fact, what needs to be observed is that, the doctrine seems to be required in all matters. But what happens is that certain offences are differentiated from others as been more serious thus require corroborative evidence. The Bible did not specify as to the facts been civil or criminal. Both matters either civil or criminal require corroborative evidence. The adherence to the rule in criminal matters is more strict than in civil matters and that is where the problem comes in.

The critical point to be noted here is that, the offender committed the crime in all matters thus the doctrine be applied equally. Even though most civil matters are compensatory, corroboration is still relevant as no one would like to compensate another even when she or he did not commit the offence whose commission requires her or him to compensate someone.

For the foresaid reasons and the fact that offences are committed in both civil and criminal matters, the doctrine of corroboration should be extended to cover more cases that it does now. This extension would also prompt the speedy deliverance



of justice as the independent evidence greatly assists the judges in determining the matters. It is worth noting that the requirement already exists but only lacks adherence.

Finally it is recommended that the doctrine be strictly adhered to in civil matters. Strict rules requiring corroboration should be laid down and conformity with those be ensured. One need not doubt the wonders that corroboration can do in delivering justice; the outlined significances are only a nutshell of those wonders.

Civil matters would generally benefit from the extension and the legal fraternity would actually be seen to be dynamic and responsive to the needs of the changing society.

The requirement of corroboration in only criminal matters and a few civil matters has been in existence for sometime in memorial. The dynamism of law therefore strongly require change. New offences are created everyday and new laws and rules of handling such need to be introduced to ensure fair and just determination of matters. The extension of the principle is the only answer and response to the changes that the law requires.

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