I recommend that the obligatory Essay prepared under my supervision by be accepted for examination. I have checked it carefully and I am satisfied it fulfils the requirement relating to format as laid down in the regulations governing obligatory essays.

Entitled

The Administration of Criminal Justice in Zambia: The Local Courts and the Subordinate Courts

Date: 5th August 1988

Supervisor: [Signature]
THE ADMINISTRATION OF JUSTICE IN ZAMBIA:

THE LOCAL COURTS AND THE SUBORDINATE COURTS

by

JOHN SILAVWE

An obligatory essay submitted to the University of Zambia in partial fulfilment for the award of the degree of L.L.B.

The University of Zambia
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LUSAKA.
DEDICATION

This obligatory essay is dedicated to my family
who have all along been a fountain of encouragement throughout
my stay at the University of Zambia.
ACKNOWLEDGEMENTS

This obligatory essay is as a result of careful research in the administration of justice in Zambia, in particular at two primary levels i.e. Local Courts and Subordinate Courts. It intends to contribute to our understanding of problems of Court litigation in this Country at primary levels.

I would like to record my appreciation of the assistance given by many people too numerous to mention by names whose advice and suggestions have been reflected in various parts of this work. I am particularly indebted to my Course Supervisor Mr. K. Mwansa whose careful reading and suggestions of the manuscript put me on inquiry and resulted in the revision of several portions of the text. I am also indebted to R.C. Shule who typed the manuscript with its many alterations. I am further indebted to all my lecturers in the University of Zambia Law School.
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CHAPTER ONE

INTRODUCTION

Any criminal justice system is an apparatus which Society uses to enforce the standard of conduct necessary to protect individuals and the Community. It works by apprehending, Prosecuting, Convicting and Sentencing those members of the Community who violate the basic rules of group existence. The action taken against the law breakers is designed to serve three purposes beyond the immediate punitive one. It removes dangerous people from the community, it deters others from criminal behaviour and it gives Society an opportunity to attempt to transform law-breakers into Law abiding citizens.

However, in Zambia the primary Institutions responsible for the administration of justice which is the focus of this essay are two, i.e. the Local Courts and the Subordinate Courts. The Police, the prosecutors the Courts and other Law enforcing agencies are formally organised to operate an Area of the process of justice. Justice therefore is not easily achieved because the task of one agency may be assisted or hampered by the policies or procedures followed by another agency. But generally speaking the Courts in Zambia occupies a prominent position in the administration of justice although the role of the police also plays a significant part.

The administration of justice in Zambia Courts in recent years is rapidly approaching a Crisis. Crowded Court cause lists and other impediments to speedy trial like lack of transport to transport suspects from remand prisons to Courts, lack of Stationary by Courts and a host of other symptoms signal the approach of a crisis in the smooth administration of Criminal justice system's ability to remain effective in Subordinate Courts. And this crisis affects every segment of the administration of justice.
The aim of this essay is to critically examine the relationship between the Local Courts and the Subordinate Courts being the Primary Institutions in the chain of the administration of justice. This relationship is with regard to the revisionary and appellate powers that the Subordinate Courts have over the Local Courts. In the light of the above, the Magistrates who constitute the largest number of authorised Officers have extensive and broad supervisory powers over the Local Courts as provided by the Local Courts Act.

In the Criminal sphere, the Subordinate Courts deal with the majority of Criminal matters and the superior Courts have only the appellate Jurisdiction except for a few specific offences where such Courts have original Jurisdiction.

The bulk of Customary Law is left to the Local Courts which are presided over by justices who possess knowledge of the customs obtaining in a particular area where the Court is situate. There are no special qualifications required for justices before appointment. The prohibition of legal representation in Local Courts also seems to tie the Local Courts nearer to the traditional customary Society and to distinguish proceedings in the Local Courts from those in the Subordinate Courts. The Local Courts have jurisdiction to hear some matters under our written laws for which justices lack training. This has not only lead to erroneous judgments but has also lowered the standard of justice administered in relation to written laws only.

The Subordinate Courts mainly administer Criminal Matters as opposed to Civil Matters. They hear appeals from the Local Courts involving Customary issues. But most magistrates lack knowledge in Customary matters and are usually reluctant to disturb decisions of the Local Courts especially in marriage related cases.
11. GENERAL VIEW OF THE JUDICIAL SYSTEM IN ZAMBIA

The administration of Primary justice in Zambia is handled by a system of Magistrates and Local Courts and strictly speaking the High Court also, as this is the Court of first instance as well as an appellate Court. The Zambia's legal System has a four-tier system of Courts. The hierarchy of Courts in ascending Order is as follows:-

(a) The Local Courts i.e. the Lowest
(b) The Subordinate Courts
(c) The High Court
(d) The Supreme Court i.e. the Highest Court in Zambia.

iii. STATEMENT OF THE PROBLEM

The subject of this study is to explore the relationship between the Local Courts and the Subordinate Courts as the Primary Institutions for the administration of justice in Zambia.

iv. METHODOLOGY

The collection of data for the subject under consideration shall be carried out by scrutinizing the relevant acts of Parliament in particular the Local Courts Act, Subordinate Courts Act, High Court Act, the Criminal Procedure Code, etc.

Reference to decided cases where possible shall be made to illustrate points under consideration. Interviews will be conducted with Presiding justices of some Local Courts, Magistrates, Local Courts Adviser and other relevant Officers and agencies responsible for the administration of Justice.
CHAPTER TWO

THE LOCAL COURTS

INTRODUCTION

The primary purpose of this Chapter is to provide an insight and analysis of our Local Courts. To this end, it covers a variety of topics ranging from the historical development of our present day Local Courts to the nature of orders made by Local Courts. Essentially, Local Courts administer mainly Customary Law, Provisions of any by-laws and regulations made under the provisions of the Local Government Act and few provisions of written laws specified by the Minister. The appointment of Local Court justices is the responsibility of the Judicial Service Commission acting on behalf of the President.

The jurisdiction of the Local Court depends on the grade of the Court i.e. there are two grades, namely A and B. The nature of Orders that the Local Courts are empowered to make, truely ties our Local Courts to our traditional Societies.

2.1 HISTORICAL PERSPECTIVE

It is a historical fact that from time immemorial long before the advent of the colonial era, there existed tribal Courts which were presided over by area Chiefs who were assisted by a number of elders chosen by the Chiefs. Some of these Courts enjoyed unlimited powers in both Civil and Criminal Jurisdiction.

In 1889 the British Government entrusted the administration of Northern Rhodesia now Zambia to the British South Africa Company. British Courts were set up and were presided over by company officials. Right from its inception, the administration differentiated between Europeans and Africans because no official recognition was extended to tribal Courts. Nonetheless the said unrecognised tribal Courts
continued to function with little interference from company officials. One significant aspect about the Royal Charter of 29th October, 1989 in so far as the application of Customary Law in British Courts was concerned was the Provision that:- "in the administration of justice to the said peoples or inhabitants careful regards shall always be had to the customs and laws of the class or tribe or nation to which the parties belong ....... subject to any British Laws which may be in force in any of the territories aforesaid and applicable to the peoples or inhabitants thereof." The effect of this provision was that Africans who wished to take their cases before British Courts could do so knowing full well that their cases would be determined in accordance with their tribal customs and laws in the same way as they would in a de facto tribal Court. A similar provision was made when the High Court was created for the territory in 1900.

"in Civil Cases between natives the High Court and the Magistrates Court shall be guided by native law so far as that law is not repugnant to natural justice or morality, or to any order made by Her Majesty in Council or to any legislation made under this order."

In any such case the Court may obtain the assistance of one or two assessors to advise the Court upon Customary Law and Customs but the decision of the Court shall be given by the judge or Magistrates alone. However apart from the limited application of customary law, both the Subordinate Courts and the High Court administered British law which was in force in the territory. In addition the Courts were to follow as far as possible the procedure observed in similar cases in England.

In 1924 the Crown assumed full responsibility for administering the territory and the Native Courts ordinance, for the first time
extended official recognition to tribal or Chiefs Courts whose constitution provided that, "...shall consist of such Chief, Headman, Elder or Council of Elders in the area assigned to it as the Governor may direct."

The Native Courts ordinance was repealed in 1966 when the non-racial Local Courts Act\(^4\), came into force on 1st October, 1966. By that time all Chiefs had been asked to withdraw from the bench and the Judicial Service Commission appointed former ordinary Court members to be Presidents with effect from that date\(^5\). However, having outlined the background against which our Local Courts system developed, I now wish to examine in some detail how our present Local Court System are constituted and how they administer Justice.

2.2. \textbf{LAW ADMINISTERED BY LOCAL COURTS}

By Law as provided by the Local Courts Act, all Local Courts which are scattered through-out Zambia, can apply and enforce the following Laws:–

(a) The Customary law applicable in any matter before it so far as that law is not repugnant to natural justice or incompatible with the provisions of any written Law\(^6\)

(b) Provisions of any by-laws and regulations made under the provisions of the Local Government Act in force in the area of jurisdiction of such Local Court\(^7\) and

(c) The Provision of any written Laws which such Local Court is authorised to administer by the Minister\(^6\). The Minister has authorised these Courts to have jurisdiction to administer laws in the schedule to the Local Courts Act. But in the case of Banda V Banda and another\(^9\), it was held that Local Courts are not permitted to enforce written laws of foreign countries. Therefore Section 12 (c) of the Local Courts Act has limited
application and only applies to Zambian written laws authorised by the Minister.

2.3 SELECTION AND APPOINTMENT OF LOCAL COURT JUSTICES

The selection and appointment of Local Court justices is made in accordance with the procedures laid down by the judicial Service Commission itself. The procedure is contained in circular minutes No. LC/1/2/Vol(iii) dated 1st August, 1967 issued by the Registrar of the High Court. The procedure is as follows:

(a) For rural Courts, the Chief concerned should consult local opinion in his area and submit the names of three most suitable candidates for each post to the appropriate Local Courts Officers or Magistrates.

(b) The Local Courts Officer or Magistrates should then interview the three nominees and after assessing their suitability, record their names, ages, standard of education, previous experience, political affiliation and any other useful information and forward these to the Registrar of the High Court with his recommendations.

(c) The Registrar of the High Court will then service the nominations and make his final recommendation to the Judicial Service Commission.

(d) Where a vacancy exists in an Urban Local Court, the Provincial Local Courts Officer concerned will state the necessity for filling the vacancy to the Registrar of the High Court and he will be instructed what procedure to follow.

The Judicial Service Commission for good reasons may refuse to appoint any of the recommended candidates and seek fresh nominations. It is therefore evident from the procedure followed, that although Chiefs no longer sit in Local Courts to hear cases, they still have an
important and influential role to play in selecting Court Justices. However there are no special qualifications for appointment to the Office of Court Justice. All prospective candidates must be mature Zambians who have been proved to be conversant with the Customary law of the area in which they will work. They will have proved to be persons of integrity and good judgment. It is now a necessary requirement that they should be literate. Preference is given to those with better education and retired persons who have held responsible positions during their career. They all serve on renewal of contracts of 3 years duration. A measure of in-service training may be given after appointment but not necessarily and indeed rarely, before a Local Court Justice commences to adjudicate. We interviewed three Local Courts Justices in Mufulira who informed us that they had never attended any in-service training apart from their own personal knowledge of the Customary laws obtaining in their areas. The principles upon which the administration of Justice in Local Courts are based have remained the same and these are:
(a) The aim and objectives of litigation before a Local Court are to inquire into the causes of conflict or matter, find a remedy and cause the guilty party to compensate the innocent party.
(b) True Justice can best be administered by elderly people who are themselves just and
(c) Administration of Justice is not secret Local Courts are easily accessible and open to all i.e. rich or poor.
However it is for the above reasons that selection of personnel to dispense Justice in the Local Courts is limited to local people who are conversant with and understand the local customs, and aspirations of the Community in which they serve. They must understand the fabric of the society thoroughly.
For without this knowledge the administration of Justice in Local Courts would be a mockery.

2.4 **JURISDICTION OF THE LOCAL COURTS**

The Local Courts are divided into Grade A and Grade B Courts and their jurisdiction is limited according to the Grade which the Court warrant assigns to them.\(^{10}\) As to Civil jurisdiction a Grade A Court may exercise jurisdiction to determine claims not exceeding K200, a Grade B may hear Civil claims up to K100.00 in value. These limits do not appear to apply to inheritance or matrimonial claims not based on Customary law.\(^{11}\) The law provides that a Local Court may not exercise jurisdiction over administration or distribution of an intestate estate and must transfer such a case to the High Court if a party or the administrator general has claimed that Customary law should not apply.\(^{12}\) This situation arose in the case of Munalo v Vengeal\(^ {13}\) and the Court explained that this rule in effect suspended the power of the Local Court precluding it from exercising jurisdiction until the High Court has ruled on the application. Thus it can be clearly be said that this Section does not prohibit the High Court from ordering that the estate be handled according to Customary law in a Local Court.\(^ {14}\) To rule otherwise, of course would allow a party to oust jurisdiction from the Local Court by simply filing an application with the High Court. The High Court or Local Court may however, transfer a case record on its own initiative to the High Court if it deems it appropriate.\(^ {15}\) Section 38 requires the transfer from the Local Court to the High Court of certain estates. But it is relevant to note that transfer must be made inter alia if:

(a) the Local Court is satisfied that a properly interested party has made application to the High Court for an order relating to the administration of an intestate deceased's estate or
(b) a properly interested party or the Administrator-General
has made application claiming that the deceased's estate
should not be administered in terms of African Customary Law.

However under subsection 2 of Section 38, the High Court shall make
such order or give such directions in relation to the transferred
application as it thinks fit.

The legislative restrictions on the laws which the Local Courts may
enforce and apply further define and limit the jurisdiction of these
Courts. Local Courts as earlier stated are Primarily empowered to
apply and enforce Customary law and by-laws and regulations promulgated
under the Local Government Act. In addition they may apply and
enforce such written laws as are specified by the Minister through
a relevant statutory instruments. But the High Court has stated
that the Local Court has no jurisdiction to enforce written laws of
foreign Countries. In that case the Petitioner filed a petition
for divorce in a Local Court in which the marriage was celebrated in
South Africa under the South African written law. The advocate for
the respondent argued that since the marriage took place under South
African written law, the Local Court had no jurisdiction to entertain
adultery proceedings. The High Court stated that the jurisdiction of
the Local Courts does not extend to provisions of the written laws of
foreign countries. Hence Zambian Local Courts lack jurisdiction over
any claim, dispute or charge arising out of a marriage celebrated in
terms of an Act enacted by the Parliament of a foreign country. But
by the provisions of the Act which authorises the Local Court to
administer certain provisions of written laws, the Minister has only
authorised written laws specified in the schedule to the extent
indicated in the column.
As to Criminal jurisdiction, Local Courts may try specified offences under written laws only to the extent as authorised by the Minister\textsuperscript{20} but not crimes under Customary law although similar offences may exist under the penal Code\textsuperscript{21}. No Local Court may try an offence in consequence of which death is alleged to have occurred or which may be punished upon conviction with death as provided by the Act\textsuperscript{22}. However criminal jurisdiction should be seen in the light of the Constitution which states:-

"No person shall be convicted of any criminal offence unless that offence is defined and the penalty is prescribed in any written law."\textsuperscript{23}

Therefore since Customary law is not written it does not form part of our Criminal law.

With regard to sentencing powers of the Local Courts, the following rules apply: a Grade A Court may not impose a fine exceeding K100.00 or imprisonment sentence of not more than one year or corporal punishment of more than 12 strokes. For Grade B Courts the limits are: fines must not exceed K50.00, imprisonment may not be more than 6 months and only six strokes of the cane may be allowed as provided by the Act\textsuperscript{24}. Laws enacted by foreign Parliaments are not enforceable in Local Courts as earlier stated\textsuperscript{25}. But interpretation of the provisions allowing enforcement of African Customary law has allowed application of Zambian Local Courts of Customary laws of tribes native to foreign countries where the Local Court has found that a Zambian resident before it has retained and continued to live by such a foreign Customary law after migrating to Zambia\textsuperscript{26}. In that case the applicant was a widow of the deceased. Both were Rhodesia resident in Zambia who had married under the Shona Customary law whilst
in Zambia. The deceased cousin applied to the High Court to have the estate of the deceased administered in the Probate Division of the High Court and not according to African Customary law. The High Court stated that section 38 of the Act²⁷ appears to indicate that there were circumstances in which an African's estate in Zambia should not be distributed in accordance with African Customary law though such circumstances are not indicated in the Act. Furthermore the High Court held that the law to be applied to the administration or distribution of the deceased estate was Shona Customary law and the Court declined to have the estate administered in the Probate Division of the High Court as prayed.

The Local Courts Act also specifies limits on the territorial jurisdiction of a Local Court. As to most Civil matters, the Court may hear a case if the defendant resided within the Court's jurisdiction or if the cause of action arose within the Court's jurisdiction. A Court may only hold proceedings, adjudicating rights over real property, if the Court has territorial jurisdiction over the situs itself²⁸. For the exercise of Criminal jurisdiction the Charge must claim the accused committed the offence or was an accessory to an offence "wholly or in part" within the area of jurisdiction of such Court²⁹. It seems according to this section, that an accessory may be tried only where his own acts which give rise to the charge of accessory were carried out not necessarily where the principal offence occurred. This if true could give rise to the anomalous and inefficient situation where a principal is tried in one Court but accessories assisting in carrying out the same crime would have to be tried in a different Court. The proper meaning of this provision has not been stated since there appears to have been no case seeking its interpretation and the Provision conflicts with the provisions in the Criminal Procedure Code which outlines divisions of jurisdiction and
venue preferences and suggesting different results from the clauses of the Local Courts.  

2.5 **LOCAL COURT ORDERS**

Any Local Court in cases of a civil nature are empowered to make the following orders:

(a) Order the award of compensation which may include an amount for costs and expenses necessarily or reasonably incurred by a successful party or his witnesses.

(b) Order the specific performance of a contract.

(c) Order the restitution of any property.

(d) Make any other order which the justice of the case may require and may make any combination of the above. However, a Local Court is also empowered on the request of any properly interested party, appoint an administrator to administer the estate of any person who has died intestate and whose estate falls to be administered or distributed in terms of African Customary Law. The appointed administrator may bring and defend proceedings in a Local Court on behalf of the estate.

In Criminal matters the Local Courts are empowered to make any or combination of the following order:

(a) Order the imposition of a fine.

(b) Order the infliction of a term of imprisonment.

(c) Order the administration of corporal punishment.

(d) Order the operation of the whole or any part of a sentence of imprisonment passed upon a person by the Court to be suspended for a period not exceeding 3 years on such conditions relating to compensation to be made by the offender for damage or pecuniary loss or to good conduct or to any other matter, as the Court may specify.
in that order

(e) Make any other order, including an order for compensation or restitution of property, which the justice of the case may require.

However a sentence of corporal punishment and imprisonment without option of a fine imposed by a Local Court shall not be carried into effect if no appeal has been entered until the corporal punishment or sentence of imprisonment has been confirmed by an authorised officer.\textsuperscript{35}

From the foregoing orders, it cannot be doubted that Local Courts especially in Civil matters, administer justice which is compatible with our traditional societies.
1. Royal Charter of incorporation of the British South Africa Company, October 29, 1689
2. The North Eastern Rhodesia - in - Council 1900
   Article 35
3. No 33 of 1929
4. No. 20 of 1966
5. Gazette Notice No. 1639 of 1966
6. Cap. 54 S 12 (1) (a)
7. Cap. 54 S 12 (b)
8. Cap. 54 S 13
9. √19757 ZR 123
10. Cap. 54, S 68 (Subsidiary) Rule 3
11. Ibid Rule 4 (a) (i)
12. Cap. 54, S38 (a) - (b)
13. √19747 ZR 91
14. Ibid, page 95
15. Cap. 54, S 38 (c) - (d)
16. Cap. 54, S12 (b)
17. Supra
18. Cap 54 S13
19. Local Courts (Jurisdiction) Order Paragraph 2
    378 of 1967, 22 of 1972, Local Courts (Jurisdiction)
    Order
21. Sec Cap. 1, Article 20 (8) Contra Sec Cap. 54,
    S 12 (2), S 13
22. Cap 54, S 11
23. Cap 1, Article 20 (8)
24. Cap 54, S 68 (Subsidiary) Rule 4 (i) (ii) (iii)
25. Supra
26. Supra
27. Cap. 54
28. Cap. 54, § 8
29. Cap. 54 § 9
31. Cap 54, § 35(1)
32. Cap 54, § 36
33. Cap. 54 § 37 (2)
34. Cap 54 § 39
35. Cap 54 Rule 13(1), 14 (2) Subsidiary)
CHAPTER THREE

THE SUBORDINATE COURTS

INTRODUCTION

The majority of Criminal litigation in Zambia is handled by the Subordinate Courts. The Courts are manned by both lay and professional magistrates. The lay magistrates receive their training at the National Institute for Public Administration. However their training do not cover courses in Customary law. The litigants who are not happy with the judgment or order of the Subordinate Court may appeal to the High Court which has appellate jurisdiction as well as revisory powers.

3.1 ESTABLISHMENT OF SUBORDINATE COURTS

The Subordinate Courts were previously known as Magistrate Courts and were the Lowest in the former European Judicial hierarchy. These Courts are established by Section 3 of the Subordinate Courts Act and are found in each District.

At the moment there are 43 Subordinate Courts presided over by 117 Magistrates. Every District in the Country must have at least one class two Magistrate with a bigger District having at least a class one Magistrate who has jurisdiction to hear appeals from the Local Courts since Subordinate Court have no original Jurisdiction in Customary Law matters. The Magistracy is composed of both lay and Professionally qualified magistrates. However, all Magistrates are appointed by the Judicial Service Commission which acts on behalf of the President. Needless to emphasise that these Magistrates assume judicial responsibilities in Subordinate Courts with a Challenge of administering justice.
3.2 SELECTION AND QUALIFICATION OF CANDIDATE TO TRAIN AS LAY MAGISTRATES I.E. MAGISTRATES CLASSES I - III.

The qualification currently required are as follows:-

(a) Zambian Citizen

(b) Minimum age of 25 years

(c) Four 'O' Level passes plus credit at 'O' level in English or equivalent examinations.

(d) A record of successful employment

(e) No Criminal record

The initial selection is done from application forms and accompanying documents and those applicants who fulfill the qualification requirements set above and who are considered to be suitable for consideration are called for interview by a specially Constituted Selection board set up by the judicial Service Commission. For example in 1980, 1,400 applicants applied and only 20 were selected to attend the course.

The second stage is to select candidates who qualify from the applications and documents received. These are short listed and later are called for an interview in the third stage. The interviewing panel is carefully selected and Constituted by the Judicial Service Commission².

The Course is extremely popular. In 1980 there were 1,400 responses to the advertisements for only 20 available places. For 1982 and 1986 intakes over 2,500 applications were received each year for only 24 places per intake³. However, candidates come from different backgrounds, Public and private sectors, Rural and Urban Areas with the average age of 30 years. In 1980, most applicants were Primary School teachers which prompted a comment from one of the instructor
that, "we have not been able to discover any Sub-Conscious connection between instructing the young and trying the old." This however does not represent a general case.

3.3 **THE COURSE CONTENT OF MAGISTRACY TRAINING**

Up to 1986 the Course was conducted in two separate parts, namely, the basic Course which ran for a year and the advanced Court which lasted for 3 months.

(1) **BASIC COURSE**

The aim of this Course was to give students through knowledge of the law and procedure pertaining to the functions of a Magistrate Class III with a particular emphasis on Criminal Jurisdiction. The subjects covered were the following:

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<td>2. General Principles of English Law - 'O' Level</td>
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<td>8. Interpretation and use of statutes</td>
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<td>9. Constitution</td>
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<td>10. Contract (introduction) (both covered)</td>
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<td>11. Tort (introduction) Under 2</td>
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<td>12. Local Courts - Confirmation (Review)</td>
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<td>13. Legal Aid</td>
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<td>14. Communication skills</td>
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<td>15. Human Relations and Humanism</td>
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<td>16. Social Services - Probation</td>
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<td>17. Court Administration</td>
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<td>18. Drafting charges</td>
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<td>19. Writing Judgments</td>
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<th>COURSE</th>
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<tr>
<td>20. Principles of Sentencing</td>
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<td>26. Course administration</td>
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<td>27. Others Magisterial duties included:</td>
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<tr>
<td>Inquests, Mental disorders, Commissioner for Oath</td>
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<td>and Prison visits.</td>
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Source:- NIPA, LEGAL DEPARTMENT

However, Criminal Law, Criminal Procedure and Criminal evidence were more emphasised. Moots were held on a regular basis after students had acquired some sufficient basic knowledge. To Supplement the regular class room learning in form of lectures talks were held by experienced officers from the Office of the Director for Public Prosecution, Labour and Welfare departments, Legal Aid department and other similar Institutions.

In addition visit to Courts, Prison approved school for juveniles, the Local Mental hospital and Pathology Department including where possible attendance at a Post Mortem Examination were arranged.

But nevertheless some students failed to make the grade and those were dropped. A final examination was held at the end of the year with a 3 hour paper in each of the major subjects and shorter papers in the other subjects. Throughout the year each student's ability to speak in public, personal characteristics, leadership qualities and suitability for the magistracy were carefully observed and noted in his confidential file.
This information however, formed part of the final report on each student.

It was constantly made clear to each student that passing the course did not on its own entitle him to be appointed a Magistrate, but merely provided him with the necessary qualification which permitted him to be considered for appointment. In practice however unless during the course, the student had seriously misconducted himself or displayed characteristics which rendered him unsuitable for the bench, it was usual for successful candidates to be appointed. Upon successful completion they were initially appointed as Magistrate class III on Probation for a period of 6 months and then confirmed after two years of service. During the Probation period they worked under a practicing and experienced Magistrate.

On the whole the course was designed to produce a competent Magistrate and the Chief Justice had been pleased with their performance in the field. Hence at the end of this course each Magistrate had acquired the following skills:

(1) A detailed knowledge of the Criminal Law in general and the application of the Penal Code in particular.
(2) A detailed knowledge of Criminal Procedure and the application of the Criminal Procedure Code.
(3) A detailed knowledge of the Provisions relating to juveniles.
(4) A detailed knowledge of the rules of evidence in Criminal cases.
(5) A Basic knowledge of the rules of Civil procedure.
(6) A basic knowledge of the rules of evidence in Civil Law.
(7) A good knowledge of selected statutes in common use.
(8) A good knowledge of the Provisions relating to Affidavits.
(9) An ability to hold a Court, keep a correct record and deliver judgment.

(10) An ability to hold inquests

(11) An ability to conduct Proceedings under the Mental Health Act.

(11) **THE ADVANCED COURSE:**

This Course was conducted for Serving Magistrates who had been in Post for two years or three years since appointment after the basic course. It's aim was to give Magistrates a thorough knowledge of the rules of Civil procedure and a working knowledge of more areas of Civil Law especially contract and tort. In addition subjects such as preparation of estimates and Customary Law were taught. The entire syllabus consisted of the following:

<table>
<thead>
<tr>
<th>COURSE</th>
<th>HOURS SPENT</th>
</tr>
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<tbody>
<tr>
<td>1. Civil Procedure</td>
<td>80</td>
</tr>
<tr>
<td>2. Civil remedies</td>
<td>40</td>
</tr>
<tr>
<td>3. Civil Evidence</td>
<td>50</td>
</tr>
<tr>
<td>4. Recent Statutes</td>
<td>20</td>
</tr>
<tr>
<td>5. Customary Law</td>
<td>10</td>
</tr>
<tr>
<td>6. Valuation procedures</td>
<td>10</td>
</tr>
<tr>
<td>7. Local Courts</td>
<td>15</td>
</tr>
<tr>
<td>8. Legal Aid</td>
<td>6</td>
</tr>
<tr>
<td>10. Court administration</td>
<td>26</td>
</tr>
<tr>
<td>11. Practical Moota</td>
<td>44</td>
</tr>
<tr>
<td>12. Assignments</td>
<td>10</td>
</tr>
<tr>
<td>13. Law Library</td>
<td>24</td>
</tr>
<tr>
<td>14. Guest speakers</td>
<td>10</td>
</tr>
<tr>
<td>15. Visits</td>
<td>10</td>
</tr>
<tr>
<td>16. Course administration</td>
<td>10</td>
</tr>
</tbody>
</table>

SOURCE:-- NIPA LEGAL DEPARTMENT
It cannot be doubted from the type of Courses above that the emphasis was on Civil aspects of Magisterial duties. This course in effect was designed to Supplement the basic course. The Course was not conducted on regular basis but only as required by the Judicial Department. At the end of the course the Magistrates acquired the following skills:

(1) A detailed knowledge of the rules of Civil Procedure.
(2) A detailed knowledge of the rules of evidence in Civil Areas.
(3) A good working knowledge of the Law of contract.
(4) A good working knowledge of other selected Areas of Civil Law.
(5) A detailed knowledge of Civil remedies
(6) An ability to hold Civil Trial.

However, I need mention that since the Magisterial Training began only two advanced courses had been conducted for a total of 20 students. This has been attributed to lack of Funds.

(iii) THE NEW COURSE:

Up until 1986 the courses (basic and advanced) were conducted seperately. In 1986 a decision was made to amalgamate the two and produce one syllabus and the Course has been expanded to last for two years. The reasons which prompted this development were:

(a) The duration of the old basic course was inadequate and did not give sufficient Training to Magistrates as it was not possible to cover all subjects thoroughly in one year.

(b) The inability to run the advanced course was serious to Magistrates in as so far as their Civil duties were concerned. As seen above it was this course which covered these functions and all matters relating to Civil jurisdiction.
(c) Lack of funds made it difficult to carry out the advanced course. Additionally it became increasingly difficult to secure attendance of magistrates who were already in service, since their judicial functions could not be suspended for such a long period as 3 months.

Even though the two courses have been combined the basic qualification for applicant's method of recruitment and all general rules relating to the conduct of the course remains unchanged. The first graduates from the new course will graduate at the end of this year (1988).

The new course is intended to increase efficiency of the Magistrates.

3.3. THE TRAINING OF PROFESSIONAL MAGISTRATES

All law students including those who intend to become magistrates enter the school of Law from the other schools especially Humanities and Social Sciences where they take four basic subjects including English language. The duration of the Law School course is 3 years. In the first year students take five subjects namely:-

Law of torts, Law of Contract, Legal Process, Criminal Law and Constitutional Law. In the second year the courses offered are:-

Law of evidence, property law, and succession, Commercial Law, Administrative Law, Family Law and a practical course called moot Court which is designed to expose students to the art of advocacy and brief drafting. The Moot Court Course is non-examinable and is graded on pass or fail basis. At third year level, students take 4 taught Courses and an obligatory essay Course. The obligatory essay course which is designed to introduce students to Legal research and writing is compulsory along with jurisprudence and the Law of business Associations. The optional Course from which students can choose two are Public International Law, Conflict of Laws, International Trade and Investment, Criminology, Labour Law and the Law of Taxation. However, the Compulsory Courses are considered indispensable to the
Study of Law to which all students should be exposed. Optional courses are designed to afford students a chance to specialise in areas of their choice and interest.

For a student to be awarded a Bachelor of Laws degree, he must receive instructions in form of lectures and tutorials in all the courses taken in the school inclusive of the obligatory essay in which a candidate should obtain a minimum of a C+ grade. For the purpose of quality and strength of the degree it is classified in four categories of pass credit, merit and distinction.

At the end of the Law school, a person intending to practice Law or to become a professionally qualified Magistrate will enter the Law Practice Institute at National Institute for Public Administration to undertake a Course conducted by the Council of Legal Education. Entry requirements to the Institute are a Law degree obtained from the University of Zambia or other recognised University or one must have passed the prescribed Examinations set by the Council. In addition a candidate must have enrolled as a student with the Council. The emphasis at the institute is the acquisition of Practical skills which are considered essential to the practice of law. The curriculum consists of ten courses namely, Professional conduct and ethics, Book-keeping and Accounts, conveyancing and Legal drafting, probate and succession, commercial transactions, company procedure, civil procedure I and II, Domestic Relations, Criminal Procedure and the Law of Evidence.

The Course runs over a period of one academic year. During that period students are attached to Legal Firms and Government Departments, usually the Legal Aid, Registrar of Lands, Registrar of Companies, Attorney General’s Chambers and some Parastatal Companies.
hours are from 8 - 12 noon on a daily basis during which students are introduced to various aspects of the Law Practice and are expected to attend formal classes in the afternoons. At the end of the year, candidates sit for the Legal Practitioner's Qualifying Examinations.

However, a candidate must pass all the Courses in order to be admitted to the Bar as a Legal Practitioner. If at first sitting a candidate passes less than four courses, he has to resit all the courses including those in which he had passed. A candidate resitting papers in which he had previously failed must pass not less than two if he is resitting in more than two Courses.

Upon a successful completion of this Course, a person intending to join the Magistracy is appointed a Resident Magistrate. If he was a lay Magistrate he will immediately be elevated to Professional ranks with a title of a Resident Magistrate.

3.5 JURISDICTION OF SUBORDINATE COURTS

The Subordinate Courts Act says that each Court may normally exercise its jurisdiction only in the area for which it is constituted.\(^8\)

The High Court Act Notwithstanding that restriction in the Subordinate Courts Act, allows the High Court to transfer a case to a Subordinate Court regardless of its district and for that purpose its transferee's Court jurisdiction is considered as extending throughout Zambia.\(^9\)

The same section of the High Court Act, however also allows that such a transfer does not enlarge the Civil Jurisdictional limits placed on Subordinate Courts by Part III of the Subordinate Courts Act which speaks of subject matter and territorial Jurisdiction.\(^10\) These restrictions do not seem to apply to transfer of Criminal cases across district lines. As to civil cases the High Court Act, must
have intended to retain only the subject matter restrictions in Part II of the Subordinate Courts Act, although the language is not clear because of the retention of the territorial restrictions would defeat the entire transfer Provision. This interpretation that the reference to Part III only means the subject matter Provision is consistent as well with the liberality of Order XIV of the Subordinate Court (Civil Jurisdiction) Rules which allows for trials conducted in the non-preferred venue under certain circumstances. These rules suggest generally that a Civil case should be brought where the defendant or one of the defendants resides or carries on business or if a case arises from a contract, where the contract ought to have been performed. A suit commenced in a wrong district however, may continue and be tried unless either the Magistrate directs that it cease or a defendant objects in which case the High Court may Order a transfer:

Presumably as it contains no exclusory clause to the contrary section 4 of the Subordinate Court Act states, "each Court shall ordinarily exercise such jurisdiction only within the limits of the District for which each such Court is constituted." It also applies to Criminal Jurisdiction in Subordinate Courts. The Criminal Procedure Code also controlling the exercise of Criminal Jurisdiction expresses further preferences for the district in which the trial should be held. In most circumstances the Law prefers a district in which the offence was wholly or partly committed, in which the consequences of the Offence ensued, through which the accused passed if the offence occurred on the train or in which the accused was apprehended or is in Custody. A Magistrate may not transfer a case to another Subordinate Court lacking jurisdiction under these rules but must send an accused found in his district to a Court in whose district the offence is alleged to have occurred.
The fact that the High Court is specifically empowered to authorize a Court to try a case otherwise outside its territorial, 14 also suggests that these restrictions amounts to normal jurisdictional limits. Section 352 of Criminal Procedure Code gives considerable discretion to Courts to overlook inept or erring prosecutors as it states, "no finding, sentence or Order can be set aside merely on the ground that the proceedings took place or the decision was reached in the wrong District, unless it appears that such error has in fact occasioned a substantial miscarriage of Justice."

The jurisdiction of the Subordinate Courts depends on its Class-ratings and the type of Magistrate sitting. For example a Subordinate Court designated class I with a Resident Magistrate or class I Magistrate sitting, may hear claims in personal suits arising from tort, contract or both where the amount in controversy does not exceed K400.00 15. If however, Principal Resident Magistrate or Senior Resident Magistrate sits, the limit rises to K800.00 \( \text{16} \). Class II Magistrate K200.00, 17, Class III Magistrate K50.00 18. The jurisdiction varies between Classes, not only in amount but also as to types of action triable as well. Only the first or second class Subordinate Courts may entertain an application for an ejectment Order, enforcement of attachments is reserved to first and second class Courts. And while all Subordinate Courts may hear certain actions grounded in marriage and family Law, certain other types of cases in those Areas are restricted to the Higher Subordinate Courts 19.

The enabling article in the Constitution 20 permitting transfer of fundamental rights cases to the High Court implies by such cases may be heard in a Subordinate Court as well although it may be that such suits would be governed by the monetary limit in Cap. 45. The landlord and Tenant (Business Premises) Act No. 34 of 1971 for example
provides for Subordinate Courts to adjudicate in certain Commercial rental cases where the annual rent of the Premises does not exceed K3,600 per annum. A close reading of this Act however, shows that the types of action and Orders envisaged are distinguishable from the Civil powers granted in the Subordinate Courts Act regarding personal suits and recovery of land. It has been held thus that K3,600 P/A limit in the Landlord and Tenant (Business Premises) Act does not enhance the jurisdiction granted in the Subordinate Courts Act regarding the type of suits allowed there beyond the limits imposed by the later Act. The Rent Act No. 10 of 1972 also gives Subordinate Courts Jurisdiction in certain actions regarding rent payments. (Again limited to premises for which the annual rent does not exceed K3,600.)

Subordinate Courts have no jurisdiction to issue habeas corpus, nor does the Jurisdiction extend to include a suit in which title to Office, validity of a will and related matters nor validity of a marriage other than customary Law marriage is in question. However if title to land is in dispute, a Subordinate Court may only adjudicate the matter with the consent of all the Parties. These restrictions, however may be superseded by Orders issued by the Chief Justice increasing the Jurisdiction of a Subordinate Court.

Criminal Jurisdiction also varies according to the type of Magistrate and Class of court. The Primary restrictions are stated in terms of sentencing limits. For example a Class I Magistrate may impose a Sentence of imprisonment up to 5 years in length while Lower ranking Magistrates may impose no more than 3 years imprisonment. These Sections not only limit the Sentencing power of the Courts, they restrict as well the types of Offence which the Court may try. Where a minimum Sentence imposed by statute exceeds the maximum Sentencing
power of a Court, it has been held that the Court lacks Jurisdiction to try the Offence. In that case the appellant was convicted of stock theft by Magistrate Class III who later discovered that the appellant had a previous conviction for the same Offence. He committed the accused to the High Court for sentence purportedly under the Criminal Procedure Code. The Supreme Court stated that Section 217 gives a discretionary power to a Magistrate who is of the opinion that greater punishment should be imposed than he has power to impose to commit a convicted person to the High Court for sentence. The Court held that Provisions of that Section do not cover cases of statutory minimum sentence outside the Sentencing powers of trial Courts. Only senior Resident Magistrates and Resident Magistrates who have such powers, powers of Sentencing have jurisdiction to try cases where mandatory minimum sentences should be imposed.

By Provisions of Act 297 1974 the appellant was liable to a statutory minimum sentence of seven years imprisonment which the trial Magistrate had no power to impose. The Criminal procedure Code also prescribes limits beyond which even though the Magistrate has power to sentence an offender, a sentence given must be referred to the High Court for confirmation similar Provisions appear regarding imposition of fines. These Provisions do not affect the Jurisdictional Power of the Court to hear the Offence, but they merely affect Sentencing and execution of the sentence. The Criminal Procedure Code provides for the Chief Justice by designating particular Offences to exclude them from Subordinate Court Jurisdiction e.g. Murder and Treason are statutorily barred from Trial before a Subordinate Court, unless special authority is given by the High Court for such a Trial. In the case of Susen Chakulya v. The People the defence applied to the High Court for such permission for the Subordinate Court to conduct trial in which the accused was charged
with attempted murder of her step son but the High Court declined to grant such authority to have the matter tried by the Subordinate Court in Kitwe. Where it appears inspite of such committal of an accused to the High Court for trial, that a Subordinate Court could suitably dispose of the case the Director of Public Prosecutions may Order that case returned to a Subordinate Court.\textsuperscript{32} A Subordinate Court may hold other criminal related proceedings and render appropriate, decision as well. For example a Subordinate Court may, if it deems it appropriate require a bond with or without sureties for keeping the peace and ensuring good behaviour and may imprison a person failing to give security as ordered.\textsuperscript{33}

3.5. PRELIMINARY INQUIRY

A subordinate Court is empowered to hold a preliminary inquiry whether it could ultimately have tried the case or not before committing the accused to trial before the High Court.\textsuperscript{34} In general these preliminary inquiry normally obtain evidence for review and determine if the accused should in fact be committed to the High Court for trial in the light of the evidence adduced.\textsuperscript{35} In addition however, the Subordinate Court has power to dispose of a case Summarily (without Committal to the High Court), if after the Preliminary Inquiry, it appears the Offence with which the accused should properly be charged is within the Court's jurisdiction and the Magistrate deems it appropriate so to act.\textsuperscript{36} The summary adjudication is according to this Law subject to the Provisions of Part VI of the Criminal Procedure Code which outlines rights to call witnesses, cross-examine the opposite party's witnesses.\textsuperscript{37} However Section 232 of the Criminal Procedure Code however seems in our view to imply a different set of rights in a summary adjudication procedure. According to Section 232, if at the close
of evidence, the Court proposes to deal with the case summarily, the accused may still cross-examine any prosecution witness he has not already examined. Thus if the accused wishes to cross-examine a prosecution witness as to any point in the Preliminary Inquiry, he must examine the witness completely as to every point and reveal any possible defences arising from that witness's testimony or risk being barred from raising these points later should the Court choose to adjudicate the matter summarily. It is our considered view that this-all or nothing cross-examination rule requires the defence to make is a very difficult choice. Worse it is not inconceivable that this provision in Section 232 of the Criminal Procedure Code could be read under the same implied exclusion to bar the defence from calling new witnesses after the court decides to adjudicate the matter summarily. In view of the relative hardship this approach would impose on the defendant and the radical departure from British traditions, it seems unlikely that the Zambian Parliament intended such a result.38

All appeals from the subordinate Court go to the High Court which also has review papers.
1. Mwansa K. The Subordinate Courts (unpublished UNZA)
   The Report of the African Commonwealth Magistrate's
   Local, Primary and Customary Courts and Future of
   Customary Law held at Lusaka 27th July - 2nd
   August, 1980 Government Printer P 140
3. Information from Mr. E.G. Swabrick - Head of Legal Department
   NIPA
4. Campbell (Supra)
5. Swabrick (Supra)
6. Personal Communication with Mr. Swabrick
7. Spaulding F.G. (1970):- One Nation, One Judiciary, The Lower
   1 and 2 P 125
8. Cap. 45, s4
9. Cap. 50 s22 (2) - (3)
10. Ibid see also Cap. 45, s20 (1), 22, 21
11. Cap 45, Rule 7 (Subsidiary) Subordinate Courts
    (Civil jurisdiction) Rules Order XIV
12. Ibid
13. See Cap 160, s66, 77 - 79
14. Cap. 160, s80
15. Cap. 45, s20 (1) (a)
16. Cap. 45, s20 (2)
17. Cap. 45, s21
18. Cap. 45, s22(a)
19. Compare Cap. 45, s20 with Cap. 45, s21, 22
20. Cap. 1, Article 29
21. Cap. 45, s18
22. See Cap. 45, s20
23. Cap. 45, S13
24. Cap. 45 S24
25. Cap. 160, S7
26. Mapona v The People, SCZ Judgment No. 10 of 1979
27. Cap. 160, S217
29. Cap. 160 S9
30. Cap. 160 S11 (2)
31. (unreported 1988)
32. Cap. 160 S10
33. See Cap. 160, Ss 40 - 60
34. See Generally Cap 160, Ss10 222 - 232
35. Cap. 160 S223
36. Cap. 160 S232
37. Ibid
38. Cap. 1 Article 29 (2) (a)
FUNCTIONAL RELATIONSHIP BETWEEN THE LOCAL COURTS
AND SUBORDINATE COURTS

INTRODUCTION

This Chapter will consider the functional relationship between the Local Courts and the Subordinate Courts in terms of the appellate and supervisory roles the Subordinate Courts exercises over Local Courts. All appeals from the Local Courts lie to the Subordinate Courts who have also the duty apart from hearing appeals, to inspect Local Courts records to satisfy itself as to the correctness, legality or propriety of any judgment, order, decision or sentence recorded made or imposed by such Court, or as to the regularity of such proceedings. Furthermore we shall also consider the nature of powers the Subordinate Court has on appeal.

4.1 INSPECTION AND REVISION BY AN AUTHORISED OFFICER

An authorised Officer is empowered under the Act to inspect the records of the Local Courts for the purpose of satisfying himself as to the correctness, legality or propriety of any judgement, order, discussion of sentence recorded or imposed by such Courts as to regularity of such proceedings. In practice the authorised Officer is supposed to inspect these records once in every month. In general, however the first forms of appellate and supervisory jurisdiction of the Local Courts lie in the hands of the authorised Officer who is defined as the Local Courts Officer, or Subordinate Courts Magistrate so designated by the Chief Justice or the Local Courts adviser. If no valid appeal has been entered and no application for leave to appeal out of time has been made, one of these supervisory Officer mentioned above may normally order records from a Local Court within his jurisdiction, require production of evidence and hear submission, then reverse the decision of the Local Courts, quash a conviction or
order a retrial de novo before the same or another Local Court, re-hear the case himself in some instances or refer the case to the Subordinate for sentencing beyond the Local Courts power. Before varying an order to a party's prejudice however, the Officer must give that party an opportunity to be heard. Moreover general transfer powers allows an authorised Officer, to transfer a case to a Local Court of a different venue or to a Subordinate Court after commencement of the case but before Judgement. A Local Court may also order a transfer, subject to appeal and to statutory limitations. To ensure adequate opportunity for supervision, the Local Court Act requires a Local Court to comply with requests by an authorised officer asking the Court (Local Court) to submit appropriate reports and records in such form as the Officer requires.

4.2 APPEALING FROM LOCAL COURTS

As to normal appellate procedure any party aggrieved by a Local Court decision, judgement or order not already reviewed or if the case has been reviewed by the Local Courts Officer or a Third Class Magistrate, may appeal to a second or first class Magistrate within whose area of jurisdiction such Local Court is situated. If the decision has been reviewed by any other authorised Officer, the appeal lies instead to the High Court. A party may further appeal against the decision rendered by an appellate Court under these provisions. If the appellate decision was rendered by a subordinate, the second appeal lies to the High Court. If the first appeal was to the High Court the second appeal lies to the Supreme Court.

The Act (Cap 54) prohibits an authorised officer from revising a decision, if application to appeal out of time has been made or if a valid appeal has been entered or unless the appeal has been
withdrawn by reversing, amending or varying in any manner such judgement, order or decision. This section does not speak of revision of an appeal dismissed by an appellate body. In that case an order of Custody was made against the appellant in favour of her sister-in-law by the Livingstone Local Court. She appealed to the subordinate Court in Livingstone which dismissed her appeal when she did not attend the adjourned hearing. Some five weeks later the appellant appeared once more before the Subordinate Court and stated, "I would not live these people to go to Rhodesia with my children. In fact the person who took away the children is not here. I do not know where the man and the children are at present." The Magistrate then made an order that this was a deliberate refusal to obey the Court's order and committed the appellant to prison for 14 days. The High Court stated that when an appeal is dismissed under section 58 of the Local Courts Act, the Magistrate can not exercise powers of revision under section 54 of the Local Courts Act. It declared this purported review and consequent committal as a nullity. Unfortunately, the clarity of this declaration and the true status of the Lower Courts decision were cast into some doubt as the High Court proceeded to "set aside" the committal order which in our view it need not have been done if the order was indeed a nullity and which therefore suggested that the High Court in fact exercised its revisory powers to set aside an erroneous judgement within the Subordinate Court's power.

Regarding appeals from Local Court decisions, the Local Court Act specifies the standard an appellate Court should use for determining whether or not to modify the decision. It states that no proceeding, warrant, process, order or decree may be varied or declared void solely by reason of defect of procedure or want of form, but every
appellate court or person exercising power of revision shall decide all matters without undue regard to technicalities.\textsuperscript{10} I am of the view that this provision serves to make proceedings easier in the Local Court. Finally it should be noted that any Court exercising its appellate jurisdiction (Subordinate Court) has power to grant leave to appeal out of time and also to permit the release on bail of a person who is in custody by an order made in the case by the Local Court and whose sentence has been suspended.\textsuperscript{11} The Principles and considerations taken into account by Magistrates in Subordinate Courts when exercising their discretion about admitting to bail shall be taken into account by Local Courts when considering an application for bail under this section.\textsuperscript{11} However all orders relating to bail or sureties made by a Local Court are appealable to and may be revised by the Subordinate Court. The Subordinate Court may reduce the bail or deposit required by the Local Court or may vary or add any conditions by the Local Court.

However the power of the authorised officer over the Local Court must be seen in the light of Rules 12, 13 and 14 of the Subsidiary legislation (Cap 54). A sentence of imprisonment imposed by a Local Court, shall not be carried into effect until the sentence has been confirmed by the authorised officer.\textsuperscript{12} Where a person is convicted and sentenced without the option of a fine, such sentence shall require the confirmation of the authorised Officer.\textsuperscript{13} Any corporal punishment ordered by the Local Court shall not be carried out until the record has been sent to the authorised Officer and confirm such corporal punishment.\textsuperscript{14}

In its appellate jurisdiction the Subordinate Court may exercise any of the following powers\textsuperscript{15}:--
(a) to grant leave to appeal out of time
(b) to take or cause to be taken additional evidence for reasons to be recorded
(c) to dismiss the appeal if, in the opinion of the Subordinate Court, there has been no substantial miscarriage of justice notwithstanding that the point raised in the appeal could be decided in favour of the appellant
(d) to set aside the proceedings of the lower court and order the case to be retried in any court of competent jurisdiction
(e) to enhance, suspend, reduce or otherwise modify the effect of sentence or order of the Local Court
(f) to quash or annul the verdict, order or sentence of the Local Court or any part thereof, with or without substitution of another verdict order or sentence
(g) to permit the release on bail of a person who is in custody by order made by the Local Court and whose sentence has been suspendend.

In the exercise of its appellate jurisdiction, on matters of African customary law the Subordinate Court in the exercise of its powers in dealing with any such matter may require the assistance of such Africans as assessors and make such use of such assessors as advisers on matters of African Customary law as may be necessary provided that such assessors shall have no personal or pecuniary interest in the matter. 16

It can therefore be appreciated from the foregoing that the functional relationship between the Local Courts and the Subordinate Courts is of great significance in terms of the administration of justice in Local Courts. The Subordinate Courts in its appellate body corrects Local Courts errors to ensure proper administration of justice.
FOOTNOTES

1. Cap. 54, S54
2. Cap. 54 S53
3. Cap. 54, S54 (1) (a)
4. Cap. 54, S53 (1) - (4)
5. Ibid
6. Ibid
7. Cap. 54, S56 (2) (a) (11)
8. Cap. 54, S54 (3) (a)
9. $\sqrt{19767}$ ZR 45
10. Cap 54 S62
11. Cap 54, S21
12. Cap 54, Rule 12 (2) (Subsidiary)
13. Cap 54, Rule 13 (1) (Subsidiary)
14. Cap. 54, Rule 14(2)(Subsidiary)
15. Cap. 54, S58
16. Cap 54, S61
CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

The comparative qualifications of the Justices and Clerks creates an anomaly in the existing Local Court System. The authority to decide cases is lodged in the Justices and the ability to read the Law and Interpret written Law is lodged in the Clerks. Apart from its potential to degrade the standard of Justice this anomalous situation leads to friction between clerks and Justices. One Clerk interviewed in Mufulira informed the writer that normally he encounters problems when Justices refuse to abide by his Interpretation of the written Law. This inevitably results into injustice because Judicial ability of Justices to interpret written Law on their own is non-existent. But one thing is clear, the Justices and the Clerks share one attribute in common. Neither group receives training for their tasks prior to beginning Service. Justices generally lack the ability to grasp the concepts expressed in written Laws. Therefore Judicial powers especially in Criminal matters are exercised by Justices and Clerks who lack even basic legal training and this falls short of the rule of Law. We would therefore recommend that Criminal jurisdiction should be withdrawn from the Local Courts and leave Local Courts deal with cases involving matters of customary Law or to reduce the Criminal jurisdiction to the barest minimum with automatic review power in some qualified person. In the alternative, we would recommend that Local Courts should still retain jurisdiction to apply written Law including Penal Legislation but where they do so, they should receive some form of training to enable them to Interpret such written Law correctly. In line with the above recommendations all Justices presiding over Local Courts should therefore be literate
in English Language i.e. must attain a certain academic qualification.

The practice of reviewing findings of the Local Courts by authorised Officers has in the past proved to be of great value, as a check on the proceedings of the Local Courts. However, on the basis of our interviews with Clerks at 4 Local Courts situated in Mfulira District, it became apparent that Magistrates as authorised Officers have never inspected Local Court records as required by Law for periods ranging from 6 months to 2 years. One reason advanced by the Magistrates interviewed was they were already over burdened by their Magisterial duties. We would therefore recommend that in view of the workload on the part of the Magistrates, they should cease to be Authorised Officers for the purpose of Inspecting Local Courts records and appoint other persons with lesser duties. Magistrates must only be left with review and appellate jurisdiction. Local Courts Officers are also Authorised Officers vested with the authority to Inspect Local Courts records once every month. But in practice, my Investigations revealed that they have failed to do so, an indication also of failure on their part to perform basic Supervisory functions. But one reason advanced for their failure to perform their supervisory duties was that they were too few in number to have sufficient time to Inspect all the Local Courts records as required by Law, especially in Urban Local Court where there is alot of litigation due to Urbanization. We would therefore recommend that the number of Local Courts Officers be increased to cope up with litigation especially in Urban Local Courts to enable them inspect records regularly to satisfy themselves as to the regularity of the proceedings.
There is no doubt that it is precisely in the area of Customary Law that the Magistrates are least qualified. The Magistrates are empowered to review Local Courts cases and hear appeals from Local Courts arising mainly out of Customary Law. Most Magistrates have spent most of their lives in urban areas rather than in rural conditions. For example when the writer trained as Magistrates more than 90% of the trainees had spent their adult lives in Urban Areas. Customary Law apparently must be learned by living in villages where it is practiced. Therefore in practice most Magistrates are unqualified to administer Customary Law and where they do so they reach their decisions on grounds of "Natural Justice" or personal knowledge of the particular type of Society.

We appreciate that both the Local Courts Act and Subordinate Courts Act have provisions for assessors, these assessors in practice are hardly used by the Magistrates. We therefore recommend that it must be made mandatory in appeal cases from the Local Courts in matters involving questions of Customary Law to have the assessors present to render assistance to the Magistrates.

But whether this approach is a practical one is another matter. We also recommend the use of assessors at first instance especially in Urban Local Courts where there is a multiplicity of ethnic groups due to Urbanization. In the alternative, we would recommend that customary Law be recorded if it has to be preserved but to adopt one Customary Law at the present time might be met with stern resistance. In either case recording Customary Law would make it possible for Magistrates to administer it easily. With this in mind, we recommend that future Training Courses for Magistrates should include a course in customary Law. We have been prompted to recommend the above because nearly all of the appeals from the
Local Courts heard by Magistrates I interviewed, are Civil Cases involving questions of customery Law. Unaccustomed as they are in dealing with Customary Law, the Magistrates, interviewed said that they felt reluctant to disturb the decisions of the Local Courts especially in Marriage-related cases. This is so because the Local Courts Act has provided little substantive guidance for them.

This essay has attempted mainly to show the relationship between the Local Courts and the Subordinate Courts in terms of Supervisory and appellate Jurisdiction. It has also demonstrated the broad supervisory powers of the High Court over the Subordinate Courts. The administration of Justice in Local Courts is different from that obtaining in the Subordinate Courts in that Local Courts administer mainly Customary Law which is unwritten and the Courts are presided over by persons who have no Legal background. It is in the light of that, that there is need for the Subordinate Court to have supervisory powers over it.

Looking at the appeals from the Local Courts to superior Courts, it becomes evident from the interviews conducted that only a tiny proportion of cases from the Local Courts are appealed beyond the Subordinate Court level. However, whatever view may be held of the standard administered by the Local Courts, there can be no doubt that their decisions have conveyed a general satisfaction to the Communities within their jurisdiction. The small number of appeals against the decisions of the Local Courts to superior Courts proves that they are administering Justice soundly inspite of the growing complexities of the cases they have to deal with especially in the Urban Local Courts which are faced with the problem of Urbanization.
It cannot be doubted therefore that the Local Courts are still ideal. It is accepted that Local Courts are readily accessible to people, they are understood by them, their involvement of laymen of standing in the administration of Justice, their low cost and they do not impose on the state any excessive burden. Furthermore, the prohibition of legal representation in Local Courts also seems to tie the Local Courts nearer to the traditional Customary Society. This is intended to avoid intellectual overpowering of the bench and the premature introduction of lawyer's technicalities of procedure and evidence.

The broad supervisory and revisory powers of the Subordinate Court do provide often a means of correcting Local Courts errors and this functional relationship is of profound importance. This however, in our view does not provide an ultimate solution, it can only act as an occasional corrective measure. This is so because not all cases are appealed to the Subordinate Courts and those appealed can only represent a sampling of the activity of lower Courts. Many cases therefore never obtain review at all especially the Local Court cases which are supposed to be reviewed by authorised officers who in most cases have other duties to perform. Indeed if all Local Court cases were reviewed, the workload on higher Courts would become unmanageable. Moreover relying heavily on the higher Courts for correction does axle of damage by the time appropriate review is obtained. Thus the existence and use of broad supervisory powers while useful cannot replace continued improvement if the judicial process in both the Local Courts and Subordinate Courts is to command respectability and dignity essential for the administration of justice.
There is another notable feature of inexperience at primary levels of justice i.e. Local Courts and Subordinate Courts. It is evident that there is no coherent Sentencing policy which has been formulated. The present disparity between sentences imposed by both the Local Courts and Magistrate Courts in similar cases must urgently be tackled if the system is to retain the respect that it deserves. But nevertheless Sentencing disparities is a product of wide judicial discretion. Needless to say that the primary institutions of justice are as important as any other in any legal system. Zambia being a developing nation is going through rapid economic, cultural and political changes and since Local Courts do not operate in a vacuum, they are bound to change with times. But the change when it comes should not erode the nature of justice that is understood and appreciated by the majority of our people and which is enshrined in our cultural heritage and any attempt at a revolutionary change would spell disaster.

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