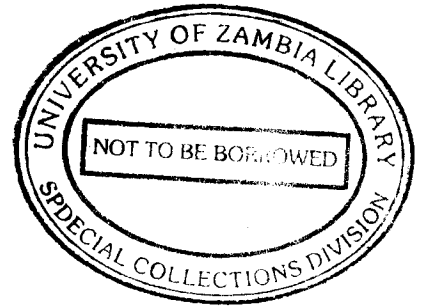


**A CRITICAL ANALYSIS OF THE APPLICATION
OF THE LAW RELATING TO CORROBORATION
BY ZAMBIAN COURTS.**



BY

PAUL CHAVULA

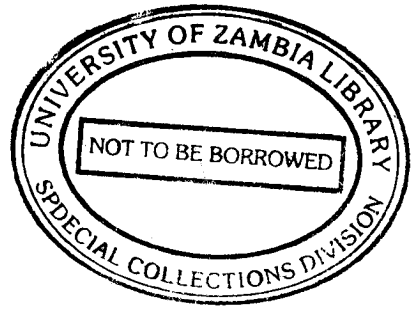
A dissertation submitted to the faculty of law of the University of Zambia in partial fulfillment of the requirements for the award of the bachelor of laws (LL.B) degree.

**FACULTY OF LAW
THE UNIVERSITY OF ZAMBIA
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JANUARY, 2008

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW



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I therefore bear the absolute responsibility for the contents, errors, defects and any omissions therein.

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DEDICATION

This work is dedicated to my late dear father, Mr. Widson Chavula who died on 30th July, 2007 whilst I was drafting a research proposal in respect of this work. He attached great importance to my education. May his soul rest in peace.

And

To, my beloved mother Mrs. Margaret Chavula and my dearest friend Jacqueline Hamusute for the moral and spiritual support without which I could not have attained this level of success.

ACKNOWLEDGEMENT

Any legal material is never the work of one man, this work is no exception. I therefore would like to thank all the people who contributed in any way to the successful completion of this work.

Firstly, I would like to thank the LORD almighty for His mercy, love and kindness without which, I would not have made it to this end.

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DEFINITION OF NON-ENGLISH WORDS

Vire dire

A question and answer examination or inquiry which the trial court conducts in order to be satisfied that a child of tender years understands the nature and the meaning of an oath and that his evidence can be received.

Participes Criminis

Parties to the crime charged

Stricto Sensu

In the strict sense

ABSTRACT

Laws, be they substantive or procedural normally affect the public either positively or negatively and thus lawyers must have a full understanding of the implications of the law so that they help courts in applying laws which will be responsive to the demands of the society. There is a huge volume of decisions of lower courts which are being overruled on appeal in sexual and other offences in which corroboration is a requisite. This has been a source of concern among women activists, the church, the civil society and indeed the general public. All these sections of the public demand that the law, be it substantive or procedural should ensure that offenders are punished for their acts. In response to cries from different sectors of the public, the Supreme Court of Zambia does from time to time move in to modify common law in an attempt to make the law easily comprehensible and serve the demands of the society. Despite the Supreme Court modifying common law rules relating to corroboration, some magistrates still fail to comprehend and properly apply such modified laws thereby leading to an increased number of decisions of lower courts to be frequently overruled on appeal and guilty offenders walking to freedom, hence there is need to find a solution. It is therefore the objective of this research paper to critically analyse whether the manner in which Zambian courts apply the law relating to corroboration is appropriate to meet the concerns of the Zambian society and ascertain how best the criminal justice system can implement the law relating to corroboration. It is also the aim of this research paper to raise awareness of the modified rules relating to corroboration to the police officers, lawyers, the civil society and the general public. The general public must be aware of the existing rules relating to corroboration in order that they can fully understand and appreciate the judgments passed down by superior courts.

CHAPTER ONE

INTRODUCTION AND HISTORICAL DEVELOPMENT

1.0 INTRODUCTION

In every society the law, be it substantive or procedural is seen as an instrument of social control. It is used to serve the needs of the society by balancing public interests against individual interests. Therefore, law is always resorted to in order to deal with social occurrences and further the interests of the society. When a particular law is perceived by the society to be bad, there is always uproar from the general public. A good law must be seen to be an instrument to serve the ends of a free society. This research intends to examine why a huge volume of decisions of lower courts are frequently overruled on appeal in cases where corroboration is a requisite. Furthermore, evaluation whether or not the law relating to corroboration, as applied by Zambian courts is the best possible law to meet the demands of the Zambian society will be carried out.

1.1 BACKGROUND TO THE RESEARCH PROBLEM

Zambia like most former British colonies is a common law jurisdiction which derives most of its laws and juridical practice from England. This is evident from the statutory legacy remaining from the past. As a general rule, most existing laws of the colonies were carried over beyond independence. Despite some innovations having been made in certain areas of the law, the influence of common law has remained substantial in Zambia. The perceptions of common law are probably more influential in the law of evidence, especially in the realm of corroboration evidence. Common law applies to

Zambia by virtue of The English Law (Extent of Application) Act¹ which declares the extent to which laws of England apply in the Republic. English law imported into Zambia includes the common law rules of corroboration. The law relating to corroboration in Zambia has undergone tremendous change and development, for instance, complex and technical principles have been enunciated by the Supreme Court in some respects. Manifestations of such technical rules includes the 'something more' principle established in the case of *Phiri (E) and Others v The People*². The technicality of such principles throws a lot of doubt on the ability of some magistrates to handle cases where corroboration is required.

1.2 STATEMENT OF THE PROBLEM

There has been an increase in the number of decisions from lower courts being overruled on appeal and accused persons walking to freedom because of the technicality of rules relating to corroboration. This in turn has caused a lot of uproar by the public, who are wondering whether corroboration or indeed the courts really serve the needs of the society. It is the purpose of this research, therefore, to evaluate the Zambian courts' approach to corroboration. It is necessary to ascertain what leads to the increase in the number of decisions of lower courts to be overruled when appealed against, in cases where corroboration is a requirement. This research critically examines the application of the law relating to corroboration by Zambian courts and evaluates whether this law serve the needs of the people and the changing circumstances of the Zambian society. This research endeavors to highlight the technicalities inherent in corroboration and ascertain

¹ Section 2, Chapter 11 of the Laws of Zambia

² [1978] ZR 79

whether such technicalities are a cause of many decisions from lower courts being overruled by the superior courts on appeal. This research also examines innovations made by Zambian courts to corroboration and ascertains whether such innovations have really succeeded in protecting the rights of both the general public and the accused persons. The research further evaluates whether the law relating to corroboration, as applied by Zambian courts is good law to serve the needs of the Zambian society.

1.3 OBJECTIVES OF THE STUDY

The justification of undertaking this study is to try and help lower courts in Zambia overcome the tendency of frequently passing decisions which are subsequently overruled by the superior courts on appeal in matters where corroboration is a requisite. The study will help lawyers to keep abreast with the current principles relating to corroboration as established by the Supreme Court of Zambia. This research will also help the church, the civil society and the public in general to fully understand and appreciate the judgments passed down by the superior courts instead of unnecessarily condemning such judgments. A lot of decisions from lower courts are being overruled on appeal because lawyers handling the case or the magistrate lack up-to-date materials to keep in line with the current principles. This study further point out inadequacies in statutory laws relating to corroboration in Zambia and recommends for the enactment of laws specifically covering corroboration or codify the existing principles into a single Act, unlike the current trend where this law is spread in different books and law reports.

The specific questions which this research endeavors to answer are; To what extent is the practice by Zambian courts at variance with that by courts in other jurisdictions as regards corroboration?, What are the causes of the increase in the number of decisions from lower courts being overruled by the superior courts on appeal?, What innovations have the Zambian courts made to corroboration?, Does corroboration protect the rights of both the victims of crime and the accused persons? Is corroboration really good law to serve the needs of the Zambian society? Are there inadequacies in statutory law relating to corroboration in Zambia?

This research takes two methods namely; desk research based on secondary information namely, statutes, case law, text books and journals. In addition, personal interviews have been conducted with persons who are knowledgeable in criminal law and the law of evidence, such persons as judges, magistrates, lawyers and public prosecutors.

There is presently a limited body of literature that has been published on the law relating to corroboration in Zambia. Notably, the work of John Hatchard and Muna Ndulo³ can be regarded as the sole authoritative book on the law of evidence in Zambia at present. This work discusses corroboration in general. This author relies heavily on this book.

In an unpublished dissertation, Kaunda (1985)⁴ examined corroboration with reference to the testimony of accomplices in Zambia. The present work is different from Kaunda's paper in the sense that it does not confine itself to the testimony of accomplices.

³ Hatchard, J and Muna Ndulo (1991) The Law of Evidence in Zambia. Lusaka: Multi Media Publications

⁴Victor Kaunda .M. The Law Relating to Corroboration in Zambia with Specific Reference to Testimony of Accomplices. Obligatory Essay. UNZA. 1985 (unpublished)

Mukulwamutiyo's (1992)⁵ unpublished dissertation provides a detailed account of circumstances when issues of corroboration arise in criminal trials and how they are resolved by courts. This work is different from Mukulwamutiyo's paper in that it goes further to examine innovations made by Zambian courts to corroboration and evaluates whether this law is appropriate to serve the Zambian society. Interestingly, Chipanta (2005)⁶ wrote on corroboration in which she recommends the extension of the principle of corroboration to cover more cases (even civil cases) than it does presently. The present work is different from Chipanta's paper in that it does not propose the extension of the principle but rather relaxation of technicalities in some respects to reduce on the volume of cases from lower courts being overruled on appeal.

This research is presented in five chapters; the first is basically an introductory chapter which also examines the development of corroboration in the historical perspective. Chapter two offers the definition of corroboration and examines the nature of corroboration. Chapter three specifically analyses the rationale for corroboration. Chapter four provides a critical examination of how Zambian Courts approach corroboration and evaluates whether corroboration is good law to serve the needs of the Zambian society. This chapter is divided into two parts; part one examines the need for corroboration as a mandatory requirement, in cases of children of tender years, exceeding speed limit, procurement, perjury, affiliation and sedition. Part two examines the need for corroboration as a rule of practice in cases of accomplices, single identifying witnesses,

⁵Ernest Mukulwamutiyo. Issues of Corroboration in Criminal Cases in Zambia. Obligatory Essay. UNZA. 1992 (unpublished)

⁶ Chipanta, M. Corroboration in Criminal Cases: Can the Principle be Extended to Cover More Cases than it Does? Obligatory Essay. UNZA. 2005 (unpublished)

complainants in sexual offences, sworn testimony of child and confessions. Chapter five concludes the research with the author making observations and various recommendations which, if adopted, would have enabled to reduce a huge volume of decisions from lower courts being overruled on appeal. It is observed that because corroboration is too technical, convictions by lower courts are mostly set aside on appeal. The author recommends that Zambian courts should review their approach to corroboration to minimize technicalities thereby reducing frequent overruling of decisions from lower courts. Chapter five argues that the enactment of a comprehensive statute codifying isolated rules and principles on corroboration would be a better idea than the present structure of having the law relating to corroboration spread in different text books and law reports.

1.4 HISTORICAL DEVELOPMENT OF CORROBORATION

Corroboration is a common law principle which is meant to guard against the dangers of deliberate false implication by singly or jointly fabricating a story against the accused person. Corroboration can be understood better by reviewing the law and its development in the historical perspective. Suffice to mention that corroboration has a long historical background, one can safely say that it has a biblical genesis as revealed by the book of Deuteronomy 17:6 which clearly states that;

“Whoever is deserving of death shall be put to death on the testimony of two or three witnesses; he shall not be put to death on the testimony of one witness”⁷

⁷ The Holy Bible, The Gideon International

The necessity for corroboration is further emphasized in the gospel of Matthews 18:16

this states that;

“But if he will not hear, take with you one or two more, that by the mouth of two or three witnesses every word may be established”

It suffices to state therefore, that corroboration has its origin and requirement rooted in the Bible.

Corroboration can also be traced to the Anglo-Saxon and Roman times⁸ when the Roman laws embodied a rule requiring more witnesses than one. Some people argued that the rule of corroboration prevents a man of honour from being destroyed by the assertions of a single rogue⁹. Admittedly, the requirement of more than one witness in corroboration was emphasized by Napoleon when he stated that,

“One honorable man by his testimony could not prove a rascal guilty, though two rascals by their testimony could prove an honorable man guilty”.¹⁰

Montesquieu, on corroboration, stated that reason requires two witnesses because a witness who affirms and the party accused who denies, make assertion against assertion and it requires a third party to turn the scale¹¹. It is from this premise that common law judges did not find it easy to confirm that the offender was guilty of the alleged offence on assertions of one man; Sir James Stephen¹² had the following to say in illustrating such difficulties,

⁸ J.D Heydon (1975) Cases and Materials on Evidence. London; Butterworth. P. 78

⁹ Op.Cit. P.68

¹⁰ Ibid. P.68

¹¹ Ibid. P.69

¹² General View of the Criminal Law in Cross on Evidence. 1985, P.207

“...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.”

Suffice to state that modern English Law of evidence has several similarities which link it to this history of corroboration.

Corroboration was imported into Zambian courts through colonialism. Northern Rhodesia was administered on a tribal basis before its administration was taken over by the British South African Company (BSA) formed by John Cecil Rhodes and incorporated under the Royal Charter. The territory was divided into two regions; North-Western Rhodesia and North-Eastern Rhodesia. The British government later passed a Northern Rhodesia Order-In-Council 1911 on 17th August 1911 which had the effect of merging the two regions into one territory called Northern Rhodesia. When the two regions merged into one territory, all laws of England passed prior to this date continued to be applicable to the territory. The legislation which introduced English law in Zambia was the English Law (Extent of Application) Ordinance of 1963.¹³ This statute has been repealed and it is now the English Law (Extent of Application) Act Chapter 11 of the laws of Zambia. It provides that pre-1911 laws apply to the Republic unless expressly excluded by a statute in Zambia and not in England¹⁴. It is through this statute that corroboration was imported into Zambia.

¹³ Section 2 of Ordinance No. 4 of 1963, re-introduced in 1970 under of the Laws of Zambia, now chapter 11 of the Laws of Zambia.

¹⁴ Op.Cit 1990, P.4

The application of common law and statutes of general application in Zambia is limited by the condition “so far as local circumstances of the country may permit”. This condition has since been codified in *Zambian statutes*, for instance section 14 of the *Subordinate Court Act*¹⁵ stipulates that:

“All British Acts declared by any Act to extend or apply to Zambia shall be in force so far only as the circumstances of Zambia permit...it shall be lawful for a subordinate court to construe the same with such verbal alterations, not affecting the substance....”

The duty of determining whether local circumstances permit English law to be applied is left to the courts. The Supreme Court has made a number of innovations to common law including the rules relating to corroboration. It is from this background therefore, that the approach of *Zambian Courts* to corroboration is evaluated.

Having introduced the sphere of the research of the research problem and given the origin of corroboration in the historical perspective, the next chapter offers the definition of corroboration and analyses its nature.

¹⁵ Chapter 45 of the *Laws of Zambia*

CHAPTER TWO

THE NATURE OF CORROBORATION

2.0 Definition of Corroboration

The word 'corroboration' in itself has no special legal meaning: it is connected with the latin word *robur* and the English word *robust* and it means strengthen; perhaps the best synonym is support.¹⁶ Corroboration is independent evidence which supports the evidence of a witness in a material particular.¹⁷ Corroboration was adequately defined by Lord Reading in *R v Baskerville* which definition has been approved in many common law jurisdictions including Zambia. Lord Reading stated that;

“Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the accused committed it.”¹⁸

Corroborative evidence is independent evidence which confirms in a material particular that the crime has been committed and that it is the accused who committed it. Independent evidence is that which comes from an independent person or source extraneous to the complainant or a person to whom a complaint is made by the witness. Therefore, a complainant can not corroborate himself by his own testimony. The need for corroboration to come from an independent source was justified in *R v Whitehead*¹⁹, in which Whitehead was charged of having had unlawful carnal knowledge of a girl of 15 years whilst she was in his service. The girl had told her mother about the incident who in

¹⁶ Per Lord Pearson in *DPP v HESTER* [1973] AC at p. 321

¹⁷ Hatchard and Ndulo. *The Law of Evidence in Zambia: Cases and Materials*, 1991, P.128

¹⁸ [1916] 2 KB 658

¹⁹ [1929] 1KB 99

turn took her to the doctor. In the trial court, the mother's testimony was held to be corroborative of the girl's testimony. On appeal, it was held that what the girl told her mother could not amount to corroboration of the girl's story because it proceeded from the girl herself and therefore it was merely the girl's story at second hand. The Court further noted that if corroborative evidence emanates from the complainant himself, then it will only be necessary for him/her to repeat the story twenty five times in order to get twenty five corroborations of the same story.

The Supreme Court of Zambia approved and emphasized the principle of independent testimony in *Nsofu v The People*²⁰, where it stated that;

'What is looked for under the common law rule is confirmation from some other source that the suspect witness is telling the truth in some part of his story which goes to show that the accused committed the offence he stands charged'.

It must be stated that repetition of the same story by the complainant does no more than show consistency of conduct. In *Mwelwa v The People*²¹, the trial court in its judgment, made reference to the fact that the complainant made an early complaint to her sister-in-law and her husband, it then considered this evidence as corroboration. On appeal, it was stated that such evidence could not be regarded as corroboration as it only went to the issue of consistency on the part of the complainant.

The case of *R v Redpath*²², further demonstrates what amounts to independent testimony. In this case, the appellant was convicted of indecent assault on a girl aged seven years.

²⁰ [1973] ZR 287 at 291

²¹ [1972] ZR 29

²² [1962] 4 Cr. App Rep 319

The girl alleged that the appellant pulled her to the ground and indecently assaulted her whilst she was playing with her two friends on the moor. Her mother testified that she came home trembling and in a terrible state and immediately made a complaint. Two witnesses who were near the scene stated that they saw a motor car parked by the moor and a man they identified as the appellant walked towards the girl and later returned and drove off. No sooner had this happened than the girl emerged from the moor in a very distressed condition and one of the witnesses took her home. The girl's complaint to her mother was held to be evidence of a consistent story but not corroboration. However, observation of the witness who took her home, an independent by-stander, was held to be strong evidence corroborating the girl's story. Suffice to mention that any other independent evidence other than testimony may as well amount to corroboration. For instance, in cases of rape, where a defence of consent is pleaded, torn clothing of a prosecutrix may be held as evidence independent from her testimony and corroborative of her testimony that she did not consent to the sexual act.

It suffices to mention that corroborative evidence must implicate the accused person with the commission of the crime alleged. Corroborative evidence should not necessarily confirm all circumstances of the crime; otherwise the evidence of the principal witness would not be essential to the case²³. Corroboration must only confirm material circumstances of the crime such as the identity of the accused in relation to the crime where it is in issue. There is need to confirm only the material circumstances of the crime

²³ Sekaggya, M. The law of Corroboration With Specific Reference to Zambia, LL.M Thesis. 1990. UNZA.(unpublished)

or what is technically termed as the material particular²⁴. In *Nsofu v The People*²⁵, it was held that the material particular which needed to be confirmed was the identity of the accused person in relation to the crime.

Corroboration determines the truthfulness of the witness's story. In *DPP v Kilbourne*²⁶, the court had this to say in relation to the truthfulness of a story;

“When one is doubtful whether or not to believe a particular statement, one naturally looks to see whether it fits with other statements or circumstances relating to a particular matter...the better it fits in, the more one is inclined to believe it.”

It can therefore be stated that corroboration is independent testimony which confirms the truth of the complainant's story, therefore, if a complainant's story falls on its own inanity, the question of it needing corroboration does not arise. In *Machilika v The people*²⁷, once the court proved that the story of the complainant was untrue, the issue of corroboration was not even raised and the conviction was set aside.

From the evaluation of the definition of corroboration as enunciated by Lord Reading in *R v Baskerville supra*, it must be noted that corroboration has three main traits;

- >It must be independent from evidence to be corroborated.
- >It must in a material particular implicate the accused person to the crime committed.
- >It must confirm other evidence which is itself truthful from the outset.

²⁴ Ibid

²⁵ [1973] ZR 287

²⁶ [1973] 1 All ER 440

²⁷ [1978] ZR 44

2.1 What Amounts to Corroboration

In English law, corroboration has taken more forms than one.²⁸ The nature of corroboration will normally vary according to the particular circumstances of the offence charged, though some forms may be similar regardless of the circumstances of the offences in issue.

The presence of an accused person at the place of occurrence of a crime may amount to corroboration. Such presence may suggest the opportunity of the accused to commit the offence where it is the only reasonable inference which could be drawn from the circumstances. Suffice to emphasise that this evidence is circumstantial. In *Nsofu v The people supra*, the court found corroborative evidence on the basis of the accused person's opportunity to commit the offence.

Medical evidence may also amount to corroboration that the offence was committed, for instance, in cases of rape or defilement, where sexual intercourse is in issue, medical evidence will confirm the fact that the complainant had sexual connection with someone within a period of hours prior to medical examination.

It suffices to state that the physical appearance of the complainant may amount to corroboration in sexual offences²⁹. The weakness of this type of evidence is that there is a possibility that the distressed condition may be feigned or simulated, therefore it is prudent for the trial court to warn itself that the evidence of distress at the time of making

²⁸ Chipanta, M. Corroboration In Criminal Cases: Can the Principle be Extended to Cover More Cases than it Does?, Obligatory Essay, 2005 P.9

²⁹ R v Trigg [1963] All ER 490

of the complaint may not be enough in itself to amount to sufficient corroboration as it may well be simulated.³⁰ In *Kalimukwa v The people*³¹, the appellant allegedly attempted to rape the complainant. The victim allegedly reported the matter immediately to the officer-in-charge who confirmed in his evidence having seen the complainant weeping. It was held that the distressed condition of the complainant soon after the alleged offence may amount to corroboration but that such distressed condition must not be overemphasized.

The accused person's own previous conduct or statement made by him may amount to corroboration if it has a probative value. Before such evidence can be considered for corroborative purposes, it must be admissible. In *Makin v Attorney General*,³² it was stated that evidence to show that the accused has been guilty of criminal acts other than those covered by the indictment is not admissible except upon the issue that the acts charged against the accused were designed in order to rebut a defence open to him. In accepting this evidence, it must be established that there is a connecting link or nexus which binds the alleged crimes together. In *DPP v Kilbourne*,³³ the appellant was convicted of homosexual offences in respect of a number of boys. All the offences except one were alleged to have been committed in the appellant's house. The one which was not committed in the house bore a close similarity in the manner of commission. It was held that the evidence of any offence was admissible in respect of any other offences charged, as there was a nexus between all the offences, by the reason of similarity of his

³⁰ Sekagya, M. The Law of Corroboration With Specific Reference to Zambia, LL.M Dissertation, 1990

³¹ [1971] ZR 85

³² [1894] AC 57

³³ [1973] 57 Cr. App. Rep 381

homosexual conduct in relation to the commission of these offences. The court further pointed out that when you find a man doing the same kind of criminal act in the same kind of way towards two or more people, you may be entitled to say that the man is pursuing a course of criminal conduct and you may take the evidence on one charge as evidence on another.

The accused person's own previous statements may amount to corroboration. In *Chibinga and another v The people*,³⁴ the appellants were charged with murder and the prosecution's evidence was that the appellants cut the deceased's body into several pieces and threw them on the railway line. There was adduced evidence of one witness who stated that some weeks after the murder, he was at the tavern when he saw the first appellant brandishing a knife against another man's neck. Evidence further disclosed that the man remonstrated with the first appellant who then told him that, "I can cut you into pieces as I do to people at the railway line". This witness later alerted the police to arrest this man. On appeal, the Supreme Court stated that it was satisfied that the evidence of that witness as to the statement made by the first appellant in the tavern was corroborative that the appellant was involved in the murder at the railway line.

Silence in the face of a charge or non denial of a statement accusing one of a crime would give rise to an inference that the accused accepts the truth of the charge hence corroborative of the alleged crime if it is natural and reasonable to expect a reply³⁵. However, it is trite that a judge should not make adverse suggestions implying an

³⁴ SCJ# 84 of 1986

³⁵ Chipanta, M. Corroboration In Criminal Cases: Can the Principle be Extended to Cover More Cases than it Does?, Obligatory Essay 2005, P.12

inference of guilt from the accused person's silence. In *R v Whitehead*³⁶, it was held that the non denial of the offence by the prisoner when formally charged by the police was not corroboration and neither would failure of a man to get into the witness's box to give evidence amount to corroboration. However, it suffices to emphasize that a man's silence in the face of a charge out of court may be corroboration where a reply might reasonably have been expected from an innocent person,³⁷ provided the accused and the accuser are capable of speaking on even terms. In *R v Cramp*³⁸, the prosecution relied on the evidence of a father who alleged that the accused gave his daughter pills. In this case, the girl's father met the accused person in the street and told him this; "I have here those things which you gave my daughter to procure abortion". The accused did not reply. The court found that the unchallenged statement of the father corroborated the girl's evidence that the accused had attempted to procure her miscarriage. Truly, such grave accusations reasonably called for a reply from an innocent person since the father and the accused person were capable of speaking on even terms.

Furthermore, lies or false statements by the accused person or defendant in or out of court may amount to corroboration if they are indicative of a sense of guilt.³⁹ In *R v Lucas*,⁴⁰ what may amount to a lie was conveniently summarized in these terms;

"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

³⁶ [1929] 1KB 99

³⁷ Sekagya, M. The Law of Corroboration With Specific Reference to Zambia, LL.M dissertation 1990, P.95

³⁸ [1880] 17 Cox 503

³⁹ Chipanta, M Corroboration in Criminal Cases: Can the Principle be Extended to cover More Cases than it Does?, Obligatory Essay 2005 P. 14

⁴⁰ [1981] QB 720

to be corroborated, that is to say by admission or by evidence from an independent witness”.

Admittedly, if an accused person gives a variety of untrue explanations for his conduct, it is a reasonable inference that he is trying to cover his guilty.

An accused person's statement on oath is evidence for all purposes of his trial and may be source of corroboration of a prosecution witness where this is required⁴¹. In *R v Dossi*,⁴² it was held that the accused person's admission that he had fondled the girls 'platonically' corroborated the girls' evidence that he had indecently assaulted them.

In conclusion, it can firmly be submitted that the nature of corroboration be it in cases which fall within the rule of practice at common law or within class of cases for which corroboration is required by statute is in six categories namely; lies by the accused person, silence by the accused in the face of a charge or non denial of a statement of accusation, accused person's own previous conduct or statements made by him, distressed condition of the complainant, medical evidence and evidence of opportunity. It suffices to mention that the nature of corroboration, be it in Zambia or in England is the same as it encompasses the issues discussed herein. Having elaborately discussed the nature of corroboration, the next chapter analyses the rationale for corroboration.

⁴¹ Mukulwamutiyo, E. Issues of Corroboration in Criminal Cases in Zambia, Obligatory Essay 1992, P.23

⁴² [1918] 13 Cr App Rep 158

CHAPTER THREE

THE RATIONALE FOR CORROBORATION

There is no general rule of law or practice in Zambia which require corroboration of the evidence of a single witness.⁴³ A court is quite entitled to act on the uncorroborated evidence of one witness, even in the face of more than one witness to the contrary.⁴⁴ Suffice to state that it is the credibility and not the number of witnesses which matters most in proving an issue. It is trite that every general rule is riddled with exceptions; therefore in Zambia and other common law jurisdictions, there are exceptional cases where corroboration is either necessary or desirable. The exceptional instances are in two categories, namely; where corroboration is required as a matter of statute and where it is required as a matter of practice. The rationale for corroboration in each category of exception varies from case to case.

The rationale for corroboration can be fully appreciated by considering the remarks of Montesquieu who commented that,

“...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”⁴⁵

The strength of these remarks is that because there are two parties to an allegation, the court can only ascertain the truth in specified instances by looking for testimony of other independent witnesses to corroborate the principal witness. The doctrine of corroboration seeks to guard against the danger of deliberate false implication by singly or jointly

⁴³ Sekagya, M The Law of Corroboration With Specific Reference to Zambia, LL.M Thesis 1990 P.65

⁴⁴ Phipson and Elliot. Manual of the Law of Evidence, 11th Ed. 1980 P,155

⁴⁵ Wigmore J.H. Wigmore on Evidence. 1940 P.257

fabricating a story against the accused. It suffices to state that the essence of looking for corroborating evidence is to ascertain whether the evidence given before the court is to be believed or not. The rationale for corroboration must be considered in relation to the particular type of witness or offence in question. In Zambia, the evidence of a child of tender years and that of accomplices require corroboration. Furthermore, specified types of offences (for instance, sexual offences) require corroborative evidence in order that the court can convict on the basis of them.

The reason for requiring corroboration of the evidence of a child of tender years is premised on the fact that the child's power of observation and memory are less reliable than that of adults. Additionally, children are said to be very egocentric so that details seemingly unrelated to their own world are quickly forgotten by them⁴⁶. H.A Hammelman in his article on 'Children as Witnesses' expressed his doubt on the memory of children of tender years when he stated as follows;

"It is well known that the attitude of children to reality and truth differs widely from that of adults and that, where young children will make fairly reliable witnesses, it is absurd to expect true testimony from others, though older."⁴⁷

Detective Inspector Kantina, a Criminal Investigations Officer at Chifubu Police Station in Ndola, feels that there are inherent dangers in placing reliance upon the evidence of a child because children are immature in mind such that they are susceptible to be influenced by both adults and other children to invent untrue stories⁴⁸. Although children

⁴⁶ Op.Cit P.70

⁴⁷ 1950. 13 MLR 235

⁴⁸ Interview conducted on 7th October, 2007 at Chifubu Police Station in Ndola District Copperbelt Province

may be less likely to be fraudulent or acting from improper motives than adults, in *Chisha v The People*,⁴⁹ Silungwe C.J as he then was, noted that owing to immaturity or perhaps to lively imaginative gifts, children are more under the influence of third parties and may fail to appreciate the gulf that separates truth from falsehood. Lastly, suffice to mention that children have little notion of the duty to speak the truth and they may lack true appreciation of the importance of their evidence in a case.

The rationale for corroborating the evidence of an accomplice is premised on the danger of a concocted story designed to throw the blame on the accused person⁵⁰. In the most celebrated Zambian case of *Phiri (E) and others v The People*⁵¹, it was stated that;

“It is dangerous to convict on the uncorroborated evidence of a true accomplice, because of his familiarity with the circumstances of the offence, he can put forward a very plausible story which in the nature of things it will be very difficult to shake in cross examination, because in many cases the only point on which he is not telling the truth is as regards the identity of one or more of his companions”

An accomplice is different from other ordinary witnesses hence there are obvious dangers of false implication. There may in some cases be motives of self-interest; or of self-exculpation; or of vindictiveness⁵². His knowledge of the crime gives him a special opportunity to be a more plausible and impressive witness.

The reasons for requiring corroborative evidence in sexual offences are numerous and seem to over emphasise the fact that the victim of a crime can not be trusted. The law

⁴⁹ [1980] ZR 36

⁵⁰ DPP v Kilbourne [1973] AC 729

⁵¹ [1978] ZR 79

⁵² Phipson and Elliot. Manual of the Law of Evidence, 11th Ed. 1980,P.155

seems to protect the accused more than the victim of sexual assault. This appears to be so because it is felt that allegations involving sexual offences are easy to fabricate but extremely difficult to refute. Women may sometimes concoct a story to implicate a person because of fear of the reaction or the anger of a husband or a father. Additionally, in a violent sexual attack, the victim may be overwhelmed by confusion and hysteria as to increase the chances of wrong identification especially where the attacker is a stranger. Sub Inspector Nyambe, a public prosecutor at Ndola Subordinates Court points out that sometimes women may not wish to admit consensual intercourse of which they are later ashamed of, hence need for their story to be corroborated.⁵³

The law requires that the evidence of a single identifying witness need to be corroborated because of the apparent possibility of an honest mistake or mistaken identification. Due to the fact that criminals use sophisticated methods such as use of masks, a correct identification is sometimes difficult. In *Fawaz and Chelelwa v The People*,⁵⁴ it was held that in single witness identification, corroboration or something more is required to exclude the possibility of mistaken identification. Previously, in *Haamenda v The People*⁵⁵, Chomba J.S as he then was, recalled with approval the remarks of Lord Widgery in *R vTurnbull*⁵⁶, where he stated that;

“...where the quality of identification is good and remains so at the close of the defence case, the danger of mistaken identification is lessened; but the poorer the quality, the greater the danger. In the latter event the judge should direct the jury that they should look for supporting evidence which has the effect of buttressing the weak evidence of identification”.

⁵³ Interview conducted on 9th October 2007 at Ndola Subordinates Court in Ndola District.

⁵⁴ [1995-1997] ZR 3

⁵⁵ [1977] ZR 184

⁵⁶ [1976] 3 All ER 549

Where the voluntariness of a confession is in put in issue, the law requires corroborative evidence because confessions are sometimes extracted from the accused persons in police custody through illegal means. It must be pointed out that a confession is sufficient to justify a conviction even in capital cases where it is proved by evidence independent of the confession.⁵⁷ Usually allegations to the effect that the confession was not a free and voluntary one arises when the accused alleges that he was beaten or threatened or in any way induced by the person in authority, invariably the police, to make a statement. In such an instance the court looks for independent evidence to corroborate the assertion by the police that the confession was tendered freely and voluntarily.

Corroboration further renders protection to the accused person against false accusations. 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.⁵⁸ Corroboration therefore protects the innocent persons against false accusations because in certain instances independent evidence is required from more than one witness or other sources as it is not easy for persons to tell lies without discrepancies in their testimonies.⁵⁹

According to Hatchard and Ndulo, the requirement for mandatory corroboration in cases of perjury is designed to remove the barrier to witnesses to freely and voluntarily give evidence that they may ran the risk of being convicted of perjury solely on the evidence

⁵⁷ Silungwe, A, Confessions In Criminal Cases In Zambia, LL.M Thesis 1977, P.102

⁵⁸ Heydon, J.D. Cases and Materials on Evidence. 1975 P.69

⁵⁹ Chipanta, M. Corroboration In Criminal Cases: Can the Principle be Extended to Cover More Cases than it Does? Obligatory Essay, UNZA, 2005

of one opposing party.⁶⁰ Furthermore, the rationale for corroboration in traffic offences is based on the unreliability of a single witness estimating the speed of a vehicle in motion. Furthermore, section 6(2) of the Affiliation and Maintenance of Children Act, Chapter 64 of the Laws of Zambia requires corroboration of the evidence of the mother as to the putative father of the child in affiliation proceedings because the charge is easy to make but very difficult to refute.

It has been shown from the preceding discussion, that the rationale for corroboration, be it in cases where it is statutorily required or where as a matter of practice courts require it are many and vary from case to case. In some cases it is the seriousness of the offence charged whereas in others it is due to the complexity of the case or the unreliability of witnesses involved. Although there are certain principles common to all cases in which corroboration evidence is a requisite, each category of cases may, depending on its own facts, give rise to different dangers.

Having examined that nature and the rationale for corroboration, the next chapter evaluates the *Zambian courts approach to corroboration* and ascertains whether such an approach is the best to serve the needs of the *Zambian society*.

⁶⁰ John Hatchard and Muna Ndulo. The Law of Evidence in Zambia; Cases and Materials. 1991, P.128

CHAPTER FOUR

ZAMBIAN COURTS' APPROACH TO CORROBORATION

At the outset, it must be stated that this chapter is the core of this research hence it is elaborate and lengthy. The chapter critically examines the Zambian courts' perspective of corroboration and relates it to the practice by courts in other common law jurisdictions particularly England. The extent of application of rules of corroboration in Zambia is examined by looking at existing case law and relating it to the prevailing practice in English courts. Further, the reforms which corroboration has undergone in Zambia are highlighted. Thereafter, an evaluation is made whether or not the law relating to corroboration, as applied in Zambia is good law to conform to the prevailing local circumstances.

Zambian courts' approach to corroboration can be analysed from two dimensions; namely, where corroboration is required by statute and where it is required as a matter of practice. These instances are elaborately discussed herein.

4.1 WHERE CORROBORATION IS REQUIRED BY STATUTE

Certain statutes make the requirement for corroboration in specified cases mandatory. If there is no corroboration, appellate courts have no discretion but to set aside a conviction on appeal.⁶¹ The nature of corroboration required by statute is the same as that at common law namely, evidence independent of the witness's testimony which implicates the

⁶¹ R. Cross, Evidence. Butterworths .London; 1967 P.162

accused in a material particular.⁶² Matters in which corroboration is required by statute includes the following;

4.1.1 Unsworn Testimony Of Children Of Tender Years.

The Juveniles Act, Chapter 53 of the laws of Zambia under section 122 requires the evidence of a child of tender years to be corroborated. The relevant section reads;

“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 the oath, his evidence may be received though not on oath, if the in the opinion of the court, he is in possession of sufficient intelligence to justify the reception of his evidence and he 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 requirement of any law in force for the time being and shall be deemed to be a disposition within the meaning of any law so in force”.⁶³

The proviso to this section states 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.

The phrase ‘some other material evidence’ similar to that used in the proviso above was judicially interpreted in *DPP v Hester*⁶⁴, where the accused was charged with indecently assaulting a 12 year old girl Valerie, who testified on oath. Her Sister June, aged 9 years gave unsworn evidence to the same effect. The court interpreted Section 38(1) of the Children and Young Persons 1933 of England Act’s use of the term ‘Some other material

⁶² Ibid P.667

⁶³ Section 122(1) Chapter 217 of the Laws of Zambia

⁶⁴ [1973] AC 296

evidence' to mean that later evidence must be other than evidence received by virtue of the section in question. Suffice to mention that Section 38(1) of the Children and Young Persons Act of England is similar to the proviso of Section 122 of the Juveniles Act of the laws of Zambia; hence this interpretation in *DPP v Hester* is applicable to Zambia as it is demonstrated later.

In applying Section 122 of the Juveniles Act, the court determines whether a child is of tender years by conducting what is known as a *voire dire*. This is a question and answer examination or inquiry which a trial court conducts in order to be satisfied whether the child's evidence can be received or not. Failure to conduct a proper *voire dire* results in discounting the testimony of the child if the matter is appealed against. In Zambia, a huge volume of convictions from lower courts were quashed on appeal between the period of 1965 and 1973 on grounds of defective *voire dire*s. In *Goba v The People*⁶⁵, the appellant was convicted of murder of his wife. In convicting him, the trial court placed great reliance on the evidence of a young girl who was the appellant's and the deceased's daughter. The appellate court discounted the evidence on the basis that the trial court conducted a defective *voire dire* when it received such evidence. Similarly, in *Sakala v The People*⁶⁶, the principal witness for the prosecution without whose evidence the conviction could not stand was a 11 years old boy. The record of case as regards a *voire dire* simply read;

“Juvenile of tender years does not know the oath but knows to tell the truth. Not sworn. Makes unsworn evidence”

⁶⁵ [1966] ZR 113

⁶⁶ [1972] ZR 35 at 36

In quashing the conviction, it was held that it is essential with regard to a juvenile of tender years that the trial court not only conduct a *voire dire* but also record the questions and answers and the trial courts conclusion to enable the appellate court to be satisfied that the trial court has carried out its duty. Further, in *Chibwe v The People*,⁶⁷ it was held that the record should show not only that a *voire dire* was conducted but also the actual questions put to the juvenile, the answers received and conclusions reached by the court. Apart from the few cases cited above, research has revealed that out of many cases reported in the Zambia law reports between 1965 and 1973, a huge volume of which were overruled on appeal because the trial courts failed to conduct a proper *voire dire*.⁶⁸ These cases include sexual and other offences in which corroboration is a requisite.

In order to minimize the number of decisions of lower courts which were overruled on appeal, the Supreme Court did intervene in 1973 by outlining the guide of approaching Section 122 of the Juveniles Act in Zambia. This was in the case of *Zulu v The People*⁶⁹, where the procedure of conducting a proper *voire dire* was outlined as follows;

- 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's evidence can be received is on oath.
- b) If the court decides that the 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

⁶⁷ [1972] ZR 239

⁶⁸ Some of the cases are; *Mazabuka v The People*[1973]ZR18, *Sakala v The People*[1972]ZR35, *The People v Banda* [1973]ZR 1.

⁶⁹ [1973] ZR 326 at 326

both these matters then the child's evidence may be received although not on oath, and in that event, in addition to any 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 procedure outlined above has been approved in many cases and in fact, judges are inclined to quash any conviction which is arrived at without compliance to it. In *Fred Mwewa v The People*,⁷⁰ a case decided after outlining the procedure above, a *voire dire* was held to be defective on the footing that the record only disclosed the sketch question and answers to them. The record simply indicated that;

'...understands the nature of telling the truth...'

It was held that the record plainly shows that the magistrate did not address his mind to the proper course when he had before him a child of tender years, the magistrate did not follow the laid down procedure. Therefore a conviction and sentence were set aside and retrial ordered. It is trite law in Zambia that a *voire dire* should be conducted and it must appear on the record in form of questions and answers and a conclusion by a trial court. It is regrettable that despite such innovations by superior courts, lower courts still continue to conduct defective *voire dire*s as evidenced by the case of *Mwewa v The People supra* and many other decisions.

The procedure recommended in the case of *Zulu supra* properly settled the law in Zambia as regards a *voire dire* until the unfortunate decision by the Supreme Court in *Chewe v*

⁷⁰ 1975] ZR 101

The People.⁷¹ In this case, the appellant was convicted of defilement of a girl aged 13, and nothing on the record suggested that a *voire dire* was conducted before accepting her testimony. Surprisingly, on appeal, a conviction was upheld, and the Supreme Court stated as follows:

“...in the present case, the record is completely silent on the point and we must assume on the basis of the standard presumption that procedural matters of this kind have been correctly carried out, that the court was satisfied, that the child was not of tender years.”

It was held that the child was duly sworn irrespective of the fact that there was no *voire dire* on the record as it was silent on that aspect. Surely, this decision is at variance with the settled law in relation to a *voire dire* in Zambia.

It is regrettable that the Supreme Court in the case of *Chewe supra*, departed from the settled law that a *voire dire* should appear on the record in form of questions and answers as established in the case of *Sakala supra* and other earlier cases. Although the Supreme Court is not absolutely bound by its previous decisions, such decisions bind lower courts, hence lower courts in future may find problems as to which position of the law to follow. Surely, the Supreme Court defeated the purpose for which section 122 of the Juveniles Act is intended. Therefore one would doubt the extent to which innocent people falsely implicated by children will be protected by the courts in Zambia.

Although the case of *Zulu v The People supra*, is a landmark decision in cases where a *voire dire* is required, long after this decision, some magistrates still conduct defective *voires dire*. This has rendered many decisions from lower courts to be frequently

⁷¹ [1974] ZR 18

overruled on appeal. Such frequent overruling of decisions from lower courts has really been a source of concern among the Zambian people in the face of increasing number of sexual offences in the country. Therefore, corroboration as approached by lower courts can not be said to serve the needs of the Zambian society.

It must be pointed out that there is no statutory definition of the phrase 'tender years' either in Zambia or England. The Juveniles Act, Chapter 53 of the Laws of Zambia only defines a 'child' as a person who has not attained the age of 16, but does not state who a 'child of tender years' is. English statutes on the other hand define a 'child' as a person under the age of 14 years.⁷² There is an apparent disparity between the Zambian and English Acts as regards the definition of a child. It must be stated that, although there is no statutory definition of a child of 'tender years' either in the Zambian or English Acts, courts have resorted to judicial creativity in approaching this matter. In *R v Campbell*⁷³, it was stated that whether a child is of tender years or not is the matter for the good sense of the court. Similarly, in *Chewe v The People*⁷⁴, the Supreme Court of Zambia held that the decision whether a child is of tender years is for the good sense of the court. However, the court noted in this case that it would have been far more satisfactory if the legislature was to lay a specific age below which the provision of Section 122 was to be applied. In *Chisha v The People*⁷⁵, the Supreme Court pointed out that courts will no doubt be guided by statutory definition of a child which in Zambia, means a person who has not attained the age of 16 years.

⁷² The Children and Young Persons Act 1933 of England, Section 38(1)

⁷³ [1957] 40 Cr. App. R 95 at 99

⁷⁴ [1974] ZR 18

⁷⁵ [1980] ZR 36

The Supreme Court failed to realize in the *Chisha case*, that within the statutory definition of a child, there may be children of tender years and those not of tender years. There must be realization that a child is not *ipso facto* a child of tender years. A good illustration of this point is the Age of Majority (Scotland) Act 1969 which divides persons under the age of majority into pupils (boys and girls under 12 years) and minors (young persons over the age of pupils but under the age of majority). Therefore, logic shows that in inventing the phrase 'tender years', common law judges may have contemplated two categories of children to exist namely; children of tender years and children not of tender years. Therefore, the Supreme Court in the case of *Chisha supra*, failed to direct itself properly when it stated that courts ought to resort to the statutory definition of a child when dealing with section 122 of the Juveniles Act because the statute only defines a child without classifications.

In Zambia, likewise in England, the unsworn child cannot corroborate another unsworn child. The Supreme Court in *Mwewa v The People*⁷⁶ held that children of tender years who give unsworn evidence cannot corroborate each other. In this case, the appellant walked free on appeal when he was initially convicted of indecent assault on a seven-year old girl and the principal witness for the prosecution, the victim and another girl aged twelve, both gave their evidence unsworn.

The conduct of a *voire dire* ought to be contextual in Zambia in order to derive the desired outcome. Questions during examination should be put to each individual child

⁷⁶ [1978] ZR 277

according to his social background. Currently, magistrates in Zambia do not appreciate the effect of socio-cultural background of each child on his conduct during a *voire dire*, hence they put questions to every child in a similar manner. Some children may come from a cultural background where they are not exposed or they believe that it is disrespectful of a child to talk in the presence of elderly people; hence even when a child understands the nature of an oath, he may fail to prove so in an open court.

Suffice to state that when a child is an accused, the court proceeds in camera and it inquires from the social welfare officers of the child's socio-cultural background. One would assume that the principle behind proceeding in camera is to ensure that a child is free to express himself during examination. If this approach is essential in establishing criminal liability, it must also be employed when a child is a prosecution witness so that evidence of children is not unnecessarily thrown out on basis of apparent failure to take oath. However, Professor Mvunga, a prominent Lusaka lawyer felt that courts are justified to proceed in camera only when a child is an accused because the purpose of the criminal justice system is to protect the juvenile accused and not juvenile witness as he has more to lose when convicted than when he is a mere witness⁷⁷ Furthermore, in the procedure outlined in the case of *Zulu supra*, courts place an oath-taking child in a superior position than the child who understands the duty of speaking the truth, yet it is the search of the truth that evidence is adduced in courts⁷⁸. Some children may take a proper oath yet tell lies.

⁷⁷ Interview held on 14th December, 2007 at 1330 Hrs at Law School of the University of Zambia

⁷⁸ Interview with Ms. Charity Masambo, a lawyer based at Zambia Police Service Headquarters (15th November 2007

The unjust part of the law relating to corroboration in Zambia is that a child is deemed criminally responsible immediately he is above the age of 12 years⁷⁹ even though he is below the age of 16. It is then illogical to hold a child aged, say 14 years criminally responsible but doubt his intelligence to testify as a prosecution witness. A 14 years old child may be convicted of a criminal offence yet he is subjected to a lengthy and unnecessary process of a *voire dire* when he is a prosecution witness. Additionally, the proviso to section 122 of the Juveniles Act only requires corroboration where the evidence of a child of tender years is given 'on behalf of the prosecution.' This implies that courts may attach weight to such evidence if it is given on 'behalf of the accused person' in his defence. This law therefore appears to protect accused persons more than the victims of crime. Hence it does not serve the needs of the Zambian society where there is a fight against crime due to the increase in sexual offences. The Zambian society need laws which can deal harshly with criminals, this is evidenced by the Penal Code (Amendment) Act 15 of 2005 which imports harsh punishment on offenders.

4.1.2 Procuration

This offence is created under Section 140 and Section 141 of the Penal code Chapter 87 as repealed and replaced by Act number 15 of 2005 of the Laws of Zambia. Section 141 provides that:

“Any person who by threats or intimidation procures or attempts to procure any child or other person to have any unlawful carnal knowledge either in Zambia or elsewhere commits a felony....

...provided that no one shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.”

⁷⁹ Section 8 of Penal code cap 88

Cases of procuration are not common in Zambia, but like any other sexual offence, it is easy to allege but difficult to refute, hence corroboration is mandatory. Surely, it is unfair to convict a person to a stiffer sentence on the mere testimony of an alleged victim alone. This view is supported by the remarks of the Minister of Justice Honorable George Kunda when he was contributing to the Penal Code (Amendment) bill who said that;

“...as a general rule, where we are going to sentence people to imprisonment, we will need cogent evidence”⁸⁰

4.1.3 Affiliation Proceedings

The Affiliation and Maintenance of Children Act Chapter 64 of the Laws of Zambia requires corroboration of the evidence of a mother of a non-marital child before the court declares the defendant as the putative father of a child. Section 6(2) of this Act provides that the court shall not make an affiliation order unless the evidence of the mother is corroborated in some material particular by other evidence.

The Bastardy Law Amendment Act 1872 of the United Kingdom in Section 4 provides that after the birth of a bastard child, the court will hear the evidence of the woman and also that of the putative 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. In *Reffel v Morton*⁸¹, 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

⁸⁰Official Report of the Daily Parliamentary Debates for the Fourth Session of the Ninth Assembly, Tuesday 9th August 2005

⁸¹ [1906] 70 J P347

summoned as being the father. In *Jeffrey v Johnson*,⁸² a man denied paternity of a bastard child and during the proceedings, a letter in his handwriting was produced and the court found a statement contained in that letter to be corroborative evidence of the complainant's claim. In Zambia, affiliation proceedings are commenced in the subordinate courts, hence it has been difficult to find Zambian cases in this area.

The practice in Zambia is similar to that of England in so far as affiliations proceedings are concerned, hence English cases are of a great persuasive value on this aspect. Suffice to state however, that the law need not be too rigorous on this aspect because affiliation proceedings are civil matters which only require proof on a balance of probabilities. If the Supreme Court convicted for rape on the basis of mere honesty of a woman in *Katebe v The People*⁸³, then affiliation matters ought not to require corroboration at all.

4.1.4 Perjury

Perjury is the false swearing or the making of oath by a witness or interpreter in judicial proceeding, a statement material in that proceeding, which he knows to be false or which he does not believe to be true.⁸⁴ The offence of perjury is created under section 104(1) and section 107 of the penal code of Zambia.⁸⁵ Section 107 of the same Act provides that;

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

⁸² [1952] 1 All 450

⁸³ [1975] ZR 13

⁸⁴ Bird, Roger. *Osborne's Concise Law Dictionary*. 1983, P.250

⁸⁵ Chapter 87 of the Laws of Zambia

Section 13 of the Perjury Act 1911 of England is similar to section 107 of the Zambian penal code hence; English cases are valuable on this topic. In *R v Shaw*⁸⁶, 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, deserves the name of corroboration. This is good law because it promotes peoples freedom to freely give evidence in courts of law without fear of facing criminal charges.

4.1.5 SEDITION

This offence is created under section 57 of the Zambian penal code chapter 87. Section 59 of this Act provides that no person shall be convicted of this offence on the uncorroborated testimony of one witness. In the case of *Chitambala and others v R*,⁸⁷ four accused persons were charged with conspiracy to publish a document with a seditious intention. The case was dismissed for lack of corroborative evidence.

4.1.6 SPEED LIMIT

The Roads and Road Traffic Act, Chapter 464 of the laws of Zambia under section 192(4) provides that no person shall be convicted of an offence of driving a vehicle on any road at a speed greater than the prescribed maximum merely on the evidence of one witness solely to the effect that, in the opinion of the witness he was driving at a speed greater than the prescribed speed.

⁸⁶ [1865] L & G 575, 15 Digest 830

⁸⁷ [1961] R& NLR 166

Corroborative evidence that the speed limit was exceeded must be from someone who observed the driver at the same time as the witness.⁸⁸ In *Birghtly v Pearson*,⁸⁹ appellant was charged with exceeding speed limit. Evidence was given by one police estimated at one point of the road and by a second police officer to the same effect estimated at a different place of the same road. Neither of the police officers relied on any speed measuring mechanical device. The court held this not to be corroboration because the vehicle had not been observed by the two police officers at the same moment. In *Penny v Nicholas*,⁹⁰ a police officer followed the appellant's car over a measured distance using a speedometer in the police car. The reading of the speedometer was held sufficient corroborative evidence. Though there has not been any Zambian case reported on this subject, these cases are of a great persuasive value in Zambia.

4.2 CORROBORATION REQUIRED AS A MATTER OF PRACTICE

Apart from statutory cases just mentioned, in no case at all is corroboration expressly required. However, some cases require corroboration as a rule of practice. In such cases, a judge may convict on the uncorroborated evidence provided he warns himself of the dangers of convicting on such evidence. Cases which require corroboration as a rule of practice include;

4.2.1 Accomplices

An accomplice is any party to the crime charged, whether he is a principal or someone who merely aids and abets its commission.⁹¹ Accomplices obviously have a motive in

⁸⁸ Sekaggya, M The Law of Corroboration With Specific Reference To Zambia. LL.M Thesis, 1990, P.145

⁸⁹ [1938] 4 All ER 127

⁹⁰ [1950] 2 All ER 89

⁹¹ Tapper Colin. Outline of the Law of Evidence. 1986

playing down their own part in a crime and consequently exaggerating the part played by their fellows.⁹² According to the House of Lords decision in *Davies v D.P.P.*,⁹³ it is now a rule of law that the judge must warn the jury of the dangers of convicting a man on the uncorroborated evidence of an accomplice called by the prosecution. If he does not, any conviction will be quashed, unless the proviso to section 2(1) of the Criminal Appeal Act 1968 is applied. The rule in *Davies v D.P.P.* is somewhat restrictive, because it purported to give an exhaustive list of accomplices and was not disposed to be extended in any direction. According to this case, the following persons, if called as witnesses for the prosecution, are accomplices; persons who are *participes criminis* in the actual crime charged (i.e. parties to the crime charged), receivers of stolen goods testifying against people alleged to have stolen the goods received by them, and parties to other crimes of which evidence is admitted under the 'similar facts' doctrine. This list fails to cover many persons who might loosely be described as implicated in the transaction for which the accused is being tried, and therefore as having a motive to falsify the relative parts played by the accused and themselves.⁹⁴

In *Musupi v The People*⁹⁵, the appellant was convicted of murder. The principal witnesses for the prosecution alleged that they watched the appellant beat the deceased. The trial judge convicted on the strength of this evidence. On appeal it was held that the possibility that the accused may have been implicated in the offence was self evident because the witnesses were present at the time of the beating but failed to report the matter to the

⁹² Phipson and Elliot. Manual of the Law of Evidence, 11th Ed. 1980, P.161

⁹³ [1954] AC 378

⁹⁴ Ibid P.162

⁹⁵ [1978] 271

police. Hence, they were accomplices and the court could not rely on their evidence without corroboration.

Zambian courts have enunciated another class of accomplices referred to as 'witness with possible interest to serve.' A witness with a motive of his own to serve is not an accomplice *stricto sensu* but has a motive to give false evidence to implicate the accused person for various reasons, for instance personal hatred. The term 'witness with possible interest to serve' firstly appeared in *Machobane v The People*⁹⁶ and was later applied in *Tembo v The People*,⁹⁷ where it was held that the witness in whose possession the stolen vehicle was found was an accomplice or a person with possible interest to exculpate himself hence his evidence needed corroboration. This shows that the law relating to corroboration is not static and restrictive in Zambia as courts are ready to expand the category of accomplices to suit the prevailing local circumstances. A witness with interest of his own to serve and an accomplice all fall under the category of suspect witness. However, although an accomplice may have an interest of his own to serve, a witness with an interest of his own to serve is not necessarily an accomplice.

Subsequent to the well celebrated Zambian case of *Phiri (E) and others v The People*⁹⁸, it is no longer law in Zambia for a judge to merely warn himself of the dangers of convicting on uncorroborated evidence of an accomplice but he has to look for 'something more'. In this case, the appellants were convicted of aggravated robbery on the strength of the evidence of two self-confessed accomplices both employees of the

⁹⁶ [1972] ZR 101

⁹⁷ [1978] ZR 402

⁹⁸ [1978] ZR 79

firm where the robbery took place. The trial judge warned himself of the dangers of convicting on the uncorroborated accomplice evidence. He said there was no corroboration or anything else to support their testimony but that from their demeanour and the fact that they had given detailed accounts of the offence, he was convinced that they were speaking the truth. On appeal, the Supreme Court stated that when the judge warns himself of the dangers of convicting on the uncorroborated evidence of an accomplice, the dangers he is guarding against must be spelt out in the record of judgment including circumstances which satisfy the judge that the dangers have been excluded. The Supreme Court further stated that as a matter of law, those reasons must consist in 'something more' than mere belief in the truth of the evidence of an accomplice based simply on his demeanour and the plausibility of his evidence. The Court recalled with approval the decision of the Court of Appeal in *Machobane v The People supra*, that the accused should not be convicted on the uncorroborated testimony of an accomplice or witness with a possible interest unless there are special and compelling grounds for such conviction. In this case, the Supreme Court for the first time explained the term 'special and compelling grounds' as used in and further replaced it with the new phrase 'Something more' which it said to be circumstances which, though not constituting corroboration strictly so called yet satisfy the court that the dangers of convicting without corroboration have been excluded and that it is safe to rely on the accomplice implicating the accused person. Although there was no corroboration *stricto sensu* in this case, the Supreme Court upheld the conviction on the grounds that there was 'something more' in form of old coincidences in that some accused persons were found with huge sums of money.

The 'something more' principle established in the case of *Phiri supra* is a departure from the practice by English courts which rely on the mere truth and plausibility of the witness's story⁹⁹. Zambian courts do not believe the mere honesty and plausibility of an accomplice. However, English courts may convict on the uncorroborated evidence of an accomplice if the judge is fully satisfied that the accomplice is speaking the truth evidenced by his demeanour and plausibility. Moreover, the English practice does not demand a judge to spell out the dangers involved in convicting on the uncorroborated accomplice evidence and to give circumstances which satisfy him that such dangers have been excluded in his judgment, it is sufficient that the judge warns himself of the dangers.

The principle established in the *Phiri case* has been described as having made courts in Zambia to adopt a less technical approach to corroboration. Zambian courts can now convict on the basis of accomplice evidence though there is no corroboration *stricto sensu* provided there is something more. Suffice to emphasise that both English courts and Zambian courts are inclined to quash a conviction based on uncorroborated accomplice evidence unless the appellate court considers that there was at trial, corroborative or supporting evidence of such weight that the conclusion is not to be resisted that any court behaving reasonably, moving from the undisputed facts and any finding of fact properly inane by the trial court, would, directing itself properly, certainly have arrived at the same conclusion. This proviso is in Section 2 (1) of the English Criminal Appeal Act 1968 and in Section 15(1) of the Supreme Court Act of Zambia.

⁹⁹ DPP v Kilbourne [1973] AC 729

Although it is admitted that the something more principle is less technical¹⁰⁰, it is difficult for some magistrates to arrive at the so-called 'something more' because the recommended procedure is lengthy, complex and technical. The procedure involves four stages; firstly, a judge must decide whether or not a proposed witness falls into the suspect category. Secondly, if he does, the judge must warn himself against the dangers of convicting on such uncorroborated evidence. Thirdly, the judge must spell out the dangers of convicting on the uncorroborated evidence of that particular witness. Finally, the judge must give circumstances which satisfy him that such dangers have been excluded by giving reasons for his conclusion. It is the technicality of rules of corroboration which renders a lot of decisions of lower courts to be overruled on appeal and guilty defendants walking to freedom. For instance, a huge volume of decisions of lower courts were attacked by the Supreme court on the point of corroboration in relation evidence of accomplices, some of such cases are; *Mwenya v The People*,¹⁰¹ *Musupi v The People*,¹⁰² *Shamwana and Others v The People*¹⁰³ and *Chimbo and Others v The People*.¹⁰⁴ Admittedly, the 'something more' principle protects the rights of both the accused persons and the victims of crimes when correctly applied. The accused person is protected because the judge is mandated to explain the circumstances which satisfy him that the dangers of deliberate false implication have been excluded. Likewise, the victim of crime is protected as his evidence is not unnecessarily thrown out for want of corroboration in a strict sense as any evidence in the form of something more suffices.

¹⁰⁰ Phiri (E) and others v The People [1978] ZR 79

¹⁰¹ [1990-92] ZR 24

¹⁰² [1978] ZR 271

¹⁰³ [1985] ZR 41 (SC)

¹⁰⁴ [1982] ZR 20 (SC)

4.2.2. Single Identifying Witness

The danger of an honest mistake or mistaken identification is the reason of requiring corroboration in cases of a single identifying witness. In *R v Turnbull*,¹⁰⁵ a case which has been recalled with approval by Zambian courts, it was stated that where the quality of identification is good, the jury can safely be left to assess the value of the identifying evidence even if there is no other evidence in support, provided always that an adequate warning has been given about the special need for caution. Similarly, in *Mkandawire and others v The People*,¹⁰⁶ it was stated that the possibility of an honest mistake can not be ruled out unless there is some connecting link between the accused and the offence which would render a mistaken identification too much of coincidence. Rules of corroboration on this aspect can be criticized for failing to distinguish witnesses who know the accused person even prior to the crime (recognition) from those who do not know the accused at all. The rules must not be so rigorous on cases of recognition where the identifying witness already knows the accused person. If witnesses who already know the accused person are subjected to strict scrutiny of their identification, like in the case of *Fawazi and Chelelwa supra*, then guilty people will be going unpunished in Zambia.

4.2.3 Complainants In Sexual Offences

Due to dangers inherent in sexual offences, it has long been a rule of practice for a judge to warn himself against dangers of convicting without corroboration of the prosecutrix's testimony. This rule of practice seems to have become, for all practical purposes, a rule of law, for it has been stated that the absence of any warning on corroboration is *prima facie*

¹⁰⁵ [1976] 3 All ER 549

¹⁰⁶ [1978] ZR46

fatal to a conviction.¹⁰⁷ Sexual offences include rape, incest, homosexual, defilement and indecent assault on either females or males. In *Tembo v The People*¹⁰⁸, it was held that corroboration is looked for, and the jury should be warned of the dangers of acting without it, in all sexual offences, irrespective of the age or sex of the complainant. The caution is now peremptory in sexual offences; hence failure to administer it is a misdirection which may lead to a conviction being quashed on appeal. For instance, in *R v Sabenzu*,¹⁰⁹ a case of defilement, there was nothing on the record to show that the magistrate reminded himself of the dangers of convicting on the uncorroborated evidence, hence a conviction was quashed and sentence set aside on appeal. Corroborative evidence required in sexual offences must confirm in some material particular that intercourse did take place without the woman's consent, and also that the defendant was the man who committed the crime.

Although Zambian courts have declined to convict on the basis of mere plausibility and honesty of an accomplice, it is startling to note that they did convict on the basis of uncorroborated evidence of a complainant in a sexual offence in *Katebe v The People*.¹¹⁰ In this case, it was stated that the court may convict in circumstances where there was no motive for the prosecutrix to deliberately and dishonestly make a false allegation against the accused person.

¹⁰⁷ R v Trigg [1963] 1 W.L.R 305 at 309

¹⁰⁸ 1965] ZR 126 at 128

¹⁰⁹ [1945] NRLR 45

¹¹⁰ [1975] ZR 13

The church, the civil society and women organisations in Zambia have condemned the requirement of corroboration in sexual offences pointing out that the law is discriminatory against women who are invariably victims of such offences. To echo the same sentiments, the Member of Parliament for Isoka East Catherine Namugala in contributing to the Penal Code (Amendment) bill had this to say;

“...in cases of defilement, it is very rare that there will be a witness. It is normally the victim and the perpetrator. So where will the witness come from apart from the victim herself.”¹¹¹

Furthermore, other Women groups claim that the victim of rape is subjected to rigorous and embarrassing personal questions in cross examination to try and discredit her social behavior hence she remains unprotected by the law.¹¹² The argument that the law is discriminatory against women is misconceived considering that corroboration applies to all sexual offences including those in which males are victims (indecent assault on boys).

Although the new legislation on sexual offences did not introduce any new rules of corroboration, parliamentary debates preceding this piece of legislation indicate that the Zambian Parliament did consider the importance of corroboration in sexual offences seriously. Illustratively, the former Member of Parliament for Ndola Central Constituency, Hon. Eric Silwamba contributing to the Penal Code (Amendment) Bill observed;

“...I think corroborative evidence is material where we are to sentence somebody to a stiff penalty and I would urge this House...we need corroboration in cases of such nature”¹¹³

¹¹¹ Daily Parliamentary Debates for the Fourth Session of the Ninth Assembly, Tuesday 9th August 2005

¹¹² Sekaggya, M The Law Relating To Corroboration With Specific Reference To Zambia, LLM Thesis, 1990. UNZA

¹¹³ Daily Parliamentary Debates for the Fourth Session of the Ninth Assembly, Tuesday, 9th August 2005

4.2.4. Sworn Testimony Of Child Of Tender Years.

Sworn evidence of children, unlike their unsworn evidence, requires corroboration as a matter of practice. Although corroboration of evidence of a child is not mandatory as a matter of law, a warning is peremptory as a rule of practice. In *Chisha v The People*¹¹⁴, Silungwe C.J, as he then was, stated that sworn evidence of a young child whether accomplice or not requires corroboration as a matter of practice and a judge should warn himself of the risk of acting on the uncorroborated evidence of such children. In *R v Baskerville*¹¹⁵, it was stated that this rule of practice applied when dealing with the sworn evidence of children has through use assumed the status of a rule of law.

Whereas unsworn children can not corroborate each other, children who give sworn evidence can corroborate each another. In *R v Campbell*,¹¹⁶ the House of Lords held that the sworn evidence of a child could be corroborated by evidence of another child, whether such evidence was given on oath or not. In Zambia, sworn evidence of a child of tender years is not accorded the same weight as that of adults. This was stated in *Chisha v The People supra*, where it was held that sworn evidence of children should not qualify to be ranked together with the evidence of any other witness because of immaturity of their mind. It is illogical to attach less weight to the sworn evidence of a child because the purpose of conducting a laborious procedure of a *voire dire* is to ensure that the child understands the duty of speaking the truth and the nature of an oath. Once the inherent

¹¹⁴ [1980] ZR 36

¹¹⁵ [1916] 2KB 658

¹¹⁶ [1979] CLR 173

dangers have been excluded by a *voire dire*, the evidence of a child should be placed on the same footing as that of adult witnesses.

4.2.5. Confessions

This is another area where corroboration is required as a matter of practice. The judge should warn the jury of the dangers of 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.¹¹⁷ Corroboration is only required where the voluntariness of a confession is brought in issue. In *Muwowo v The People*,¹¹⁸ it was held that where the accused person objects to the admission of the confession statement or if it appears from the evidence that it might have been involuntarily obtained, a trial within trial is mandatory.

It has been shown that the law relating to corroboration is complex and technical in Zambia. The innovations made to corroboration by the superior courts have made corroboration to appear more complex to many magistrates. Mainly, technicalities are in relation to the conduct of a *voire dire* and the procedure of arriving at the 'something more' recommended in the case of *Phiri (E) and Others v The People supra*. Failure by some magistrates to follow and apply the recommended principles of corroboration has been the cause of a huge volume of decisions from lower courts being frequently overruled on appeal.

¹¹⁷ Murphy, Peter. Murphy on Evidence. 2000, P.509

¹¹⁸[1965] ZR 91

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

This research has shown that the law relating to corroboration as applied by Zambian courts is substantially, but not wholly similar to that of England. This observation is based on the volume of English cases being cited by Zambian courts. There is very limited legislation in Zambia having a bearing on corroboration; hence common law principles are still very instrumental on this aspect.

It has further been shown that Zambian courts have made impressive innovations to the law relating to corroboration which shows a departure from the English practice. The significant point of departure is in relation to accomplice evidence in that Zambian courts, unlike English courts, decline to convict on the mere honest and plausibility of an accomplice without 'something more'. Further, unlike English courts, the Zambian practice requires that the trial judge outlines the dangers involved in convicting on the uncorroborated evidence of a particular accomplice and that the judge should explain the circumstances which satisfy him that such dangers have been excluded. This is a sound approach because a mere warning is not enough as a judge may just use it as a formality, knowing too well the implications of convicting without corroboration. Zambian courts have also extended the class of accomplices by introducing the 'witness with a possible interest of his own to serve' to enlarge the class of accomplices. However, the innovations made by the Supreme Court have contributed to the technicalities in the law relating to corroboration in Zambia. For instance, the 'something more' principle

enunciated in the case of *Phiri (E) and others v The People supra*, is too technical such that some magistrates fail to properly follow it thereby rendering a lot of decisions of lower courts being overruled on appeal and accused persons walking to freedom. It has therefore been established that technicalities inherent in the law relating to corroboration are a cause of many decisions from lower courts to be frequently overruled on appeal. The reason is that most magistrates are not well qualified to comprehend and apply such technical principles.

The research has revealed a number of misdirections by Zambian courts in their approach to corroboration. Admittedly, some misdirections result from inadequacies in legislation, for instance, the most evident inadequacy in the legislation relating to corroboration is that the term 'tender years' is not statutorily defined. This term is cardinal in that for a court to admit the evidence of a child, it must firstly determine whether the witness is a child of tender years or not. This has led to confusions because each judge use his own ways of determining 'tender years'. This confusion has been exacerbated by the fact that the Supreme Court itself has openly said that whether a child is of tender years or not is for the good sense of the court.¹¹⁹ Worst still, the Supreme Court has not been consistent in its approach to the conduct of a *voire dire*. This is evidenced by the unfortunate decision in the case of *Chewe supra*, where the court disturbed the established principle that the record of a case should show that a *voire dire* was conducted. To make the law serve the needs of the society, there must be a consistent approach to legal issues by superior courts.

¹¹⁹ *Chewe v The People supra*

The research has further shown that the procedure outlined in the case of *Zulu v The People supra*, does place a child who takes an oath on a superior position to that who understands the duty of speaking the truth and yet it is the search for the truth that evidence is adduced in courts. Furthermore, Zambian courts do not place the sworn evidence of a child on the same footing as that of an adult¹²⁰ and yet the purpose of undertaking a laborious procedure of a *voire dire* is to ensure that a particular child is reliable enough to give weighty evidence. Additionally, Zambian courts do not consider the varying socio-cultural backgrounds of children when conducting a *voire dire* such that they put questions all children in the similar manner. Courts fail to appreciate that the social-cultural background of any child may have an effect on the manner he can respond to questions in an open court. All these factors make the law relating to corroboration in Zambia to fail to truly serve the needs of the society, because the general public expects the law to punish offenders. People who well know the weight attached to the evidence of a child may take care to confine their criminal activities to children of tender years, knowing that their evidence will either be discredited or accorded less weight in court.

A further weakness of the law relating to corroboration can be attributed to the legislation and not necessarily the courts, in that the proviso to section 122(1) of the juveniles Act diverges from other principles of corroboration by using the phrase 'some other material evidence' as good corroboration in respect of this section, thereby importing that evidence to qualify as corroboration to satisfy this section ought to come from another class or source not another child. Hence a defiler who takes care to confine his attack on

¹²⁰ Chisha v The People supra

very young girls can go scot-free even though all of them give their unsworn testimonies against him.

The approach by Zambian courts to corroboration appears to be unfair to children. This assertion is supported by the fact that criminal responsibility of a child begins at 12 years, the age at which courts still doubt his intelligence to give admissible evidence on behalf of the prosecution. Surely, it is illogical to hold a child, say aged 14, criminally responsible but doubt his intelligence to testify.

It has further been observed that despite affiliation proceedings being civil matters, courts demand the same degree of corroborative evidence as in criminal matters, which is independent evidence tending to confirm in a material particular that the defendant is the father of a child. One would expect corroboration not to apply to affiliation proceedings because they are civil matters which only require a proof on a balance of probabilities and not proof beyond reasonable doubt.

This research has shown that the law relating to corroboration as applied by Zambian courts does not serve the interests of the Zambian society because it is too technical and complex thereby leading to many decisions of lower courts being upset on appeal. There is an increase in the number of sexual and other offences in Zambia currently, hence the law must be less technical to ensure that lower courts comprehends it to avoid guilty persons walking to freedom on appeal on mere technical reasons. Corroboration is too

technical that most guilty defendants do walk to freedom on appeal on grounds that the trial court has erred procedurally rendering the whole decision irregular.

5.2 RECOMMENDATIONS

This author has suggested a number of changes and improvements in the courts approach to issues where corroboration is a requirement. Alive to the fact that some misdirection in the approach to corroboration by courts might result from the inadequacies in statutory laws, the author has also recommended changes in legislation relating to corroboration.

The first recommendation is as regards the conduct of a *voire dire* when receiving the evidence of a child. It is recommended that trial courts should consider the socio-cultural background of each child when conducting a *voire dire*. Children have different socio-cultural backgrounds which may affect their response to questions in open courts. Therefore courts should formulate the questions relative to the social background of each child. In this regard, courts should engage the services of the social welfare department to ascertain the social background of a particular child witness. Furthermore, courts ought to proceed in camera even where a child is a mere witness to ensure that he is free to express himself. If courts proceed in camera where a child is an accused, it logically follows that even where he is a prosecution witness, he must be accorded the same standard of privacy and freedom. Furthermore, the sworn evidence of a child should be accorded the same weight as that of adults because the very essence of embarking on the laborious procedure of a *voire dire* is to get reliable evidence.

The second recommendation is as regards affiliation proceedings. It is suggested that courts should relax the rules of corroboration in affiliation proceedings because they are civil matters which ought not to demand proof beyond a reasonable doubt.

The third recommendation is as regards the complexity of the 'something more' principle established in the case *Phiri(E) and Others supra*. In as much as the 'something more' requirement has simplified the law of corroboration in relation to accomplices, the procedure of arriving at it is too technical for magistrates thereby rendering a lot of decisions from lower courts being upset on appeal, hence it is suggested that magistrates should continuously be involved in periodical seminars and workshops where they can meet and up-date each other on the approach to technical issues. Additionally, Superior courts should be disseminating routine guidelines to subordinate courts on matters of technical nature leading to frequent appeals. It is regrettable that long after landmark decisions like that of *Zulu v The People* in 1972, some magistrates still conduct defective *voire dices*.

Lastly, considering the fact that statutes have a bearing on the manner in which courts approach issues, it is suggested that the legislature should enact laws to provide a statutory definition of the term 'tender years'. Furthermore, the legislature should enact a single statute specifically covering corroboration which ought to codify the existing common law principles which are spread in different books and law reports. Presently, it is by no stretch of imagination to claim that the law relating to corroboration is good law

to serve the *Zambian* society because there is no single legal material which one would consult to avail himself of all principles relating to corroboration.

Zambian lawyers should understand the current legal principles and trends in order that they help lower courts to apply the law which can serve the needs of the *Zambian* society. Lawyers should help the church, the civil society and the general public understands and appreciates the judgments of superior courts. It suffices to emphasise that courts are not just there at the behest of the victims of crimes but also to protect the rights of the people alleged to have committed crimes. This assertion in line with the remarks of His Lordship Ernest Sakala, the Chief Justice of *Zambia* when he was addressing female lawyers and judges on the impact of Act Number 15 of 2005 on the increase of sexual offences, who stated that;

“...while people accepted the penalties put in place, it was time to look into the other aspects of lives of both the victims and the offenders”

WORD COUNT: 14,668

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