

**IN THE HIGH COURT FOR ZAMBIA**

**2018/HP/1203**

**AT THE PRINCIPAL REGISTRY**

**HOLDEN AT LUSAKA**

*(Civil Jurisdiction)*



**IN THE MATTER OF: ORDER 54 RULES 1, 2 AND 4 OF THE  
RULES OF THE SUPREME COURT OF  
ENGLAND (WHITE BOOK) 1999  
EDITION**

**IN THE MATTER OF: ARTICLES 13(3) OF PART III FOR THE  
PROTECTION OF THE FUNDAMENTAL  
RIGHTS AND FREEDOMS OF THE  
INDIVIDUAL THE CONSTITUTION OF  
ZAMBIA CHAPTER 1 OF THE LAWS OF  
ZAMBIA**

**IN THE MATTER OF: SECTION 33 OF THE CRIMINAL  
PROCEDURE CODE CHAPTER 88 OF  
THE LAWS OF ZAMBIA**

**IN THE MATTER OF: ARTICLE 18 FOR PROVISIONS TO  
SECURE PROTECTION OF THE LAW  
CHAPTER 1 OF THE LAWS OF ZAMBIA**

**IN THE MATTER OF: AN APPLICATION FOR A WRIT OF  
*HABEAS CORPUS AD SUBJICIENDUM***

**BETWEEN:**

SEHJAD KAMTHI

**APPLICANT**

**AND**

THE ATTORNEY GENERAL

**1<sup>ST</sup> RESPONDENT**

**BEFORE THE HONOURABLE MADAM JUSTICE P. K. YANGAILO  
ON 1<sup>ST</sup> DAY OF AUGUST, 2018.**

For the Applicant: Mr. O. Hatimbula - Mesdames. Mushipe & Associates

For Respondent: Ms. N. S. Nchito - Attorney General's Chambers

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**JUDGMENT**

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**CASES REFERRED TO:**

1. *Mario Satumbu Malyo vs. Attorney General* (1988 - 1989) Z.R. 36 (SC);
2. *Grace Stuart Ibingira and Others vs. Uganda* (1966) EA 445;
3. *Masoud Salim Hemed vs. D.P.P. and 2 Others - Petition No.7 of 2014 EA*;
4. *In The Matter of Kapwepwe and in The Matter of Kaenga and an Application For a Writ of Habeas Corpus And Subjiciendum* (1972) Z.R. 321 (C.A.);
5. *The Attorney-General vs. Valentine Shula Musakanya* (1981) Z.R. 1 (S.C.);
6. *Eleftheriadis vs. Attorney-General* (1975) Z.R. 89;
7. *John Chisata and Faustinos Lombe vs. Attorney General* (1981) Z.R. 35 (SC); and
8. *R vs. Bowen* (1973) S. T. R 156 at 158.

**LEGISLATION AND OTHER WORKS REFERRED TO:**

1. *The Rules of the Supreme Court (White Book) 1999 Edition*;
2. *The Constitution, Chapter 1 of the Laws of Zambia*;
3. *The Criminal Procedure Code, Chapter 88 of the Laws of Zambia*
4. *The Penal Code, Chapter 87 of the Laws of Zambia*;
5. *The Citizenship Act No. 33 of 2016*;
6. *Introduction to Administrative Law, David Foulkes, Butterworths (1972)*

This is an application for Writ of *Habeas Corpus* by the Applicant Sehjad Kamthi. The application is supported by an Affidavit sworn by Sehjad Kamthi, the Applicant herein. The Applicant was represented at the hearing by his Learned Counsel Mr. Hatimbula.

On 17<sup>th</sup> July 2018, the Applicant was granted leave to issue a Writ of *Habeas Corpus Ad Subjiciendum* and the matter adjourned to 21<sup>st</sup> July 2018 for the hearing of the substantive application for Writ of *Habeas Corpus*.

The circumstances leading to this application, as set out in the Applicant's Affidavit, are that the Applicant was arrested from his residence in Lusaka by Zambia Immigration Officers, who alleged that he was in Zambia illegally and was taken to Ridgeway Police Station where he was detained for a period of two (2) days. That from the time of his arrest and detention, he has not been charged and/or presented before a Court of law to answer to any charge. It is averred that he has been incarcerated for over twenty (20) days and that there is no apparent justification for his detention.

The Application was accompanied by List of Authorities filed herein on 13<sup>th</sup> July, 2018. Learned Counsel for the Applicant drew the Court's attention to **Order 54 Rule 1** of **The Rules of the Supreme Court**<sup>1</sup>, which provides as follows: -

***"Application for writ of habeas corpus ad subjiciendum***

- 1. Subject to rule 11, an application for a writ of habeas corpus ad subjiciendum shall be made to a judge in Court, except that -**
  - (a) it shall be made to a Divisional Court of the Queen's Bench Division if the Court so directs;**
  - (b) it may be made to a judge otherwise than in court at any time when no judge is sitting in court; and**
  - (c) any application on behalf of a minor must be made in the first instance to a judge otherwise than in court.**

2. *An application for such writ may be made ex parte and, subject to paragraph (3) must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.*
3. *Where the person restrained is unable for any reason to make the affidavit required by paragraph (2) the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason."*

My attention was further drawn to **Order 54 Rule 2** of **The Rules of the Supreme Court**<sup>1</sup>, which states as follows: -

- "(1) The Court or judge to whom an application under rule 1 is made ex parte may make an order forthwith for the writ to issue, or may -*
- (a) where the application is made to a judge otherwise than in court, direct that an originating summons for the writ be issued, or that an application thereof be made by originating motion to a Divisional Court or to a judge in court;..."*

The Court's attention was also drawn to **Article 13 (3)** of **The Constitution**<sup>2</sup>, which is couched as follows: -

- "(3) Any person who is arrested or detained-*
- (a) for the purpose of bringing him before a court in execution of an order of a court; or*
  - (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;*
- and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained*

