THE ZAMBIAN JUDICIAL SYSTEM: A REVIEW OF THE JURISDICTIONAL LAW

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Local courts

The Zambian judicial system comprises approximately 460 courts, arrayed, basically, in a hierarchy with four primary levels. At the base, stand 415 local courts, presided over by 8 senior presiding justices, and 407 presiding justices, assisted by 428 ordinary justices.[1] Under the Local Courts Act, the judicial service commission appoints the local court justices,[2] a local courts' adviser, and as many local courts officers as it sees fit.[3] The Local Courts' Adviser, officers and other officers authorized by the chief justice by authority of s 2(1) of chapter 45 of the Laws of Zambia generally act as supervisors of the local courts.

The local courts are divided into Grade A and Grade B courts, and their jurisdiction is limited according to the grade which the court warrant assigns to them.[4] As to civil jurisdiction, a Grade A court may exercise jurisdiction to determine claims not exceeding K200, a Grade B court may hear claims up to K100 in value.[5] These limits as to civil claims do not appear to apply to inheritance or matrimonial claims under customary law.[6] A local court may not hear matrimonial or inheritance claims not based on customary law.[7] The law provides that a local court may not exercise jurisdiction over administration or distribution of an intestate deceased's estate and must transfer such a case to the High Court if a party or the administrator general has claimed that customary law should not apply.[8] The High Court in a case in which these matters arose, explained that this rule only in effect suspended the power of the local court, precluding it from exercising jurisdiction until the High Court has ruled on the application.[9] Thus, this section does not prohibit the High Court from ordering that the estate be handled according to customary law in a local court.[10] To rule otherwise, of course, would allow a party to oust jurisdiction from the local court by simply filing an application with the High Court. The High Court, or the local court, may however, transfer such a case on its own initiative to the High Court if it deems it is appropriate.[11] Legislative restrictions on the laws which the local courts may enforce and apply further define and limit the jurisdiction of these courts. Local courts are primarily authorized to apply and enforce customary law, and by-laws and regulations promulgated under the Local Government Act. In addition, they may apply and enforce such written laws as are specified by relevant statutory instruments.[12]

As to criminal jurisdiction, local courts may try specified offences under written laws, but not crimes under customary laws, although similar offences may exist under the Penal Code.[13] No local court may try an offence in consequence of which death is alleged to have occurred, or which may be punished upon conviction with death.[14] As to sentencing in general, a grade A court may not impose a fine exceeding K100, an imprisonment sentence of more than one year, or corporal punishment of more

than 12 strokes of the cane. For Grade B courts, the limits are: fines must not exceed K50, imprisonment may be no more than 6 months, and only six strokes of the cane may be given.[15] Foreign written laws, in general, are not enforceable by Zambian local courts,[16] but interpretation of the provisions allowing enforcement of "African customary law" has allowed application by Zambian local courts of customary laws of tribes native to foreign countries where the court has found that a Zambian resident before the court has retained, and continued to live by, such a foreign customary law after migrating to Zambia.[17]

The Local Courts Act also specifies limits on the territorial jurisdiction of a local court. As to most civil matters, the court may hear a case if the defendant resided within the court's jurisdiction, or if the cause of action arose within the court's jurisdiction. A court may only hold proceedings adjudicating rights over real property, however, if the court has territorial jurisdiction over the *situs* itself.[18] For exercise of criminal jurisdiction the charge must claim the accused committed the offence, or was an accessory to an offence "wholly or in part" within the court's jurisdiction.[19] It seems, according to this section, that an accessory may be tried only where his own acts, which give rise to the charge of accessory, were carried out, not necessarily where the principal offence occurred. This, if true, could give rise to the anomalous and inefficient situation where a principal is tried in one court, but accessories assisting in carrying out the same crime would have to be tried in a different court. No reported cases considering this problem have appeared, and the provision conflicts with, and perhaps thus is overriden by, provisions in the Criminal Procedure Code outlining division of jurisdiction and venue preference and suggesting different results from the clauses of the Local Courts Act.[20]

Recognition of the extensive problem of scarcity of legal training and experience has shaped certain aspects of the administration of justice in local courts. For example, the Local Courts Act discards strict adherence to separation of powers at the local level. A member of the bench in a local court may sit and try an offence arising from a by-law or rule in the making of which he or his colleagues participated.[21] Moreover, serving diverse ends of maintaining efficient, inexpensive, and somewhat traditional judicial processes, and again perhaps reflecting the scarcity of legal training, the Act prohibits use of legal representation, except in specified circumstances, especially for defending against criminal charges.[22]

Subordinate Courts

At the next higher level, Zambia has 42 subordinate courts, presided over by 7 senior resident magistrates, 12 resident magistrates, 22 Class I magistrates, 30 Class II and 25 class III magistrates, appointed by the judicial service commission.[23] The jurisdiction of a subordinate court depends on its class rating, and the type of magistrate sitting. For example, a subordinate court designated class I, with a resident magistrate or Class I magistrate sitting, may hear claims in personal suits arising from tort, contract, or both, where the amount in controversy does not exceed four hundred kwacha.[24] If, however, a senior resident magistrate sits, the limit rises to eight hundred kwacha.[25] The jurisdiction varies between classes, not only in amount, but as to types of action triable as well. Only a first or second class subordinate court may entertain an application

for an ejectment order; enforcement of attachments is reserved to first and second class courts; and while all subordinate courts may hear certain actions grounded in marriage and family law, certain other types of cases in those areas are restricted to the higher subordinate courts.[26] Somewhat unexpectedly, the Criminal Procedure Code also grants to subordinate courts a limited type of civil jurisdiction for awarding a (non-appealable but apparently reviewable under revisory jurisdiction) judgement for the value of property illegally obtained by a public service employee.[27] This grant has been read narrowly, however, to allow only the award itself; an order enforcing the award, by attachment, for example, cannot be made under this particular grant of authority.[28]

Provisos elsewhere in the laws make other grants of civil jurisdiction. The Landlord and Tenant (Business Premises) Act, Number 34 of 1971, for example, provides for subordinate courts to adjudicate in certain commercial rental cases where the annual rent of the premises does not exceed K3,600. A close reading of this Act, however, shows that the types of action and orders envisaged are distinguishable from the civil powers granted in the Subordinate Courts Act regarding personal suits and recovery of land. It has been held, thus, that the K3,600 limit in the Landlord and Tenant (Business Premises) Act does not enhance the jurisdiction granted in the Subordinate Courts Act, regarding the types of suits allowed there, beyond the limits imposed by the latter Act.[29] The Rent Act, No. 10 of 1972, also gives subordinate courts jurisdiction in certain actions regarding rent payments (again limited to premises for which the annual rent does not exceed K3,600). The permissive language in Cap. 1, article 29 permitting transfer of fundamental rights cases to the High Court implies, by its permissiveness, that such cases may be heard in a subordinate court as well, although it may be that such suits would still be governed by the monetary limits in Cap. 45.[30] Subordinate courts may not issue writs of habeas corpus,[31] nor does the jurisdiction extend to include a suit in which a title to office, validity of a will and related matters, nor validity of a marriage other than a customary law marriage, is in question.[32] Moreover, if title to land is in dispute, a subordinate court may only adjudicate the matter with the consent of all parties.[33] These restrictions, however, may be superseded by orders issued by the chief justice, increasing the jurisdiction of a subordinate court.[34]

Criminal jurisdiction also varies according to the type of magistrate and class of court. The primary restrictions are stated in terms of sentencing limits. For example, a Class I magistrate may impose sentences of imprisonment up to five years in length while lower ranking magistrates may impose no more than three years imprisonment.[35] These sections not only limit the sentencing power of the courts, they restrict as well the types of offence which the court may try. Where a minimum sentence imposed by statute exceeds the maximum sentencing power of a court, it has been held that the court lacks jurisdiction to try the offence.[36] The Criminal Procedure Code also prescribes limits beyond which, even though the magistrate has power to sentence an offender, a sentence given must be referred to the High Court for confirmation.[37] Similar provisions appear regarding imposition of fines.[38] These provisions do not affect the jurisdictional power of the court to hear the offence, they merely affect sentencing and execution of the sentence. The Criminal Procedure Code provides for the chief justice, by designating particular offences, to exclude them from a subordinate court's jurisdiction, or reserve them for trial only by a senior resident magistrate.[39] Murder and treason are statutorily

barred from trial before a subordinate court, unless special authority is given by the High Court for such a trial.[40]

Even where the law permits a subordinate court to exercise jurisdiction, the court may decline to do so and commit the accused for trial before the High Court,[41] subject to the High Court's approval.[42] Where it appears, in spite of such a committal, that a subordinate court could suitably dispose of the case, the director of public prosecutions may order that case returned to a subordinate court.[43] A subordinate court may hold other criminal related proceedings and render appropriate decisions as well. For example, a subordinate court may, if it deems it appropriate, require a bond, with or without sureties, for keeping the peace and ensuring good behaviour, and may imprison a person failing to give security as ordered.[44]

A subordinate court is empowered to hold a preliminary enquiry, whether it could ultimately have tried the case or not, before committing the accused to trial before the High Court.[45] In general, these preliminary inquiries normally obtain evidence for review, and determine if the accused should, in fact, be committed to the High Court for trial, in the light of evidence adduced.[46] In addition, however, the subordinate court has power to dispose of a case summarily (without commital to the High Court) if, after the preliminary inquiry, it appears the offence with which the accused should properly be charged is within the court's jurisdiction, and the magistrate deems it appropriate so to act.[47] The summary adjudication is, according to this law, subject to the provisions of Part VI of the Criminal Procedure Code, which outlines rights to call witnesses, cross-examine the opposite party's witnesses, etc.[48] Section 232 of the Code, however, seems to imply a different set of rights in a summary adjudication procedure. According to section 232, if, at the close of evidence the court proposes to deal with the case summarily, the accused may still cross-examine any prosecution witnesses he has not already examined.[49] The specific inclusion of this particular right would seem, notwithstanding the reference to Part VI's rights, to exclude other related rights.[50] At the least, it would seem to exclude recalling of a prosecution witness already cross-examined in part. Thus, if the accused wishes to cross-examine a prosecution witness as to any point in the preliminary inquiry, he must examine that witness completely as to every point, and reveal any possible defences arising from that witness's testimony, or risk being barred from raising those points later, should the court choose to adjudicate the matter summarily.[51]

The Subordinate Courts Act says that each court may normally exercise its jurisdiction only in the area for which it is constituted.[52] The High Court Act, notwithstanding that restriction in the Subordinate Courts Act, allows the High Court to transfer a case to a subordinate court, regardless of its district, from the High Court or another subordinate court, and for that purpose its transferee court's jurisdiction is considered as extending throughout Zambia.[53] The same section of the High Court Act, however, also says that such a transfer does not enlarge the civil jurisdiction limits placed on subordinate courts by Part III of the Subordinate Courts Act, which speaks of subject matter, and territorial jurisdiction.[54] These restrictions do not seem to apply to transfer of criminal cases across district lines. As to civil cases, the High Court must have

intended to retain only the subject matter restrictions in Part III of the Subordinate Courts Act; although the language is not clear, because the retention of the territorial restrictions would defeat the entire transfer provision. This interpretation, that the reference to Part III only means the subject matter provisions, is consistent as well with the liberality of Order XIV of the Subordinate Courts (Civil Jurisdiction) Rules, which allows for trials conducted in the non-preferred venue under certain circumstances.[55]

These rules suggest, generally, that a civil case should be brought where the defendant or one of the defendants resides or carries on business, or, if the case arises from a contract, where the contract ought to have been performed. A suit commenced in the wrong district, however, may continue and be tried unless either the magistrate directs that it cease, or a defendant objects, in which case the High Court may order a transfer.[56]

Presumably, as it contains no exclusory clause to the contrary, section 4 of the Subordinate Courts Act [57] also applies to criminal jurisdiction in subordinate courts. The Criminal Procedure Code, also controlling exercise of criminal jurisdiction,[58] expresses further preferences for the district in which trial should be held. In most circumstances, the law prefers a district in which the offence was wholly or partly committed, in which the consequences of the offence ensued, through which the accused passed if the offence occurred on a train, or in which the accused is apprehended, is in custody, or answers a summons.[59] Rules regarding transfer of cases between subordinate courts and enlargement of jurisdiction authorized by the High Court, also imply that these rules are more than mere venue preference, and amount to normal jurisdictional limits. A magistrate may not transfer a case to another subordinate court lacking jurisdiction under these rules, and must send an accused found in his district to a court in whose district the offence is alleged to have occurred.[60] The fact that the High Court is specifically empowered to authorize a court to try a case otherwise outside its territorial limits[61] also suggests that these restrictions amount to normal jurisdictional limits. A later section of the Code, however, in effect seems to reduce the district limitations to no more than suggested preferences. Section 352, gives considerable discretion to courts to overlook inept or erring prosecutors, it is stated that no "finding, sentence or order" can be set aside merely on the ground that the proceeding took place or the decision was reached in the wrong district, "unless it appears that such error has in fact occasioned a substantial miscarriage of justice".[62]

High Court

The Constitution and the High Court Act provide for the existence of a High Court of Judicature in Zambia.[63] This court has an establishment of 12 puisne judges in addition to the chief justice who sits *ex officio*.[64] In addition, commissioners may act temporarily with the powers of a puisne judge.[65] The president, acting in accordance with the advice of the judicial service commission, appoints the puisne judges and any commissioners of the High Court.[66] The Constitution gives the High Court, except for matters reserved to the Industrial Relations Court, "unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law, and such jurisdiction and powers as may be conferred on it by this Constitution or any other law".[67] The High Court Act, adds that, within specified limits, the High Court may also exercise "all the jurisdiction, powers

and authorities vested in the High Court of Justice in England".[68] Presumably this means with such modifications as would be required to apply in Zambia.[69]

In addition to these broadly stated powers, various other laws, and provisions in the Constitution specify particular types of actions the High Court may hear. The High Court Act states that the court has jurisdiction for "judicial hearing and determination of matters in difference, the administration or control or property or persons . . ." and appointing or controlling guardians or keepers of the persons or estates of infants, idiots, lunatics and others "unable to govern themselves or their estates".[70] The court is also given broad jurisdiction in the areas of probate and marriage law.[71] The High Court may hear claims involving alleged past, present and future violations of civil rights; even if such issues arise before a subordinate court, the matter will likely be transferred to the High Court.[72] The court may also determine challenges to national assembly elections, from which determination no appeal lies.[73] The Criminal Procedure Code provides the High Court with original jurisdiction to grant an award in favour of the attorney-general for the value of property illegally obtained by a public service employee, although enforcement must be ordered under other authority.[74] Numerous other acts refer to the High Courts' original jurisdiction.[75] The criminal jurisdiction of the High Court is also stated in broad terms. The Criminal Procedure Code says, subject to other provisions therein, (of which none appears to significantly limit the court's powers to hold trials), the court may try any offence under the Penal Code and any other written law.[76] Normally, a preliminary inquiry in a subordinate court may precede a High Court trial, but the chief justice, by issuing a statutory order,[77] or the director of public prosecutions by issuing a certificate,[78] may bring a class of cases or a particular case before the High Court for summary adjudication without a preliminary inquiry. Certain offences, generally more serious ones, are triable only in the High Court.[79] Even if a particular case is triable in a subordinate court, that court may commit the accused for trial before the High Court[80] or the High Court may direct that a case before a subordinate court be transferred to the High Court.[81]

The broad jurisdiction thus enjoyed by the High Court could easily lead to overcrowding in that court, and "forum shopping" by clever litigants—selecting one of the courts which appears more likely to render a favourable judgement. Possibly to counteract this and ensure more efficient use of the higher courts resources, the High Court is also given extensive powers allowing it to decline jurisdiction and remit a case to a subordinate court,[82] or a local court,[83] with appropriate jurisdiction to try the matter. The High Court, and subject to other limitations provided by law, Zambian courts in general, have no jurisdiction to try crimes committed outside Zambia. The case of *The People v Roxburgh*,[84] provides an interesting consideration of this problem in the context of a bigamy trial. The accused contracted a legal marriage inside Zambia, then contracted a second, bigamous, marriage outside Zambia, there was no crime committed either wholly or partly within Zambia as contemplated by the law. Rather, the entire crime was contained in the Act of contracting the second marriage, which occurred outside Zambia.[85] But Cap. 160, s. 65 refers ambiguously to territorial jurisdiction in that it states that any court may make an order in a case brought before it where a person is charged with an offence committed within Zambia, or treated as such, if the person is found within the court's jurisdiction.[86]

Supreme Court

The Supreme Court of Zambia, created by article 107 of the Constitution and the Supreme Court Act, has an establishment of 5 judges, including the chief justice and the deputy chief justice.[87] The president may appoint these judges, unlike the lower court judges, without consultation with the judicial service commission.[88]

The Supreme Court of Zambia Act, No. 41 of 1973, provides for grants of appellate and original jurisdiction to the Supreme Court: "[the] court shall have jurisdiction, to hear and determine appeals in civil and criminal matters as provided in this Act and such other appellate or original jurisdiction as may be conferred upon it by or under the Constitution or any other law".[89] While this section allows granting of original jurisdiction, the Supreme Court, replacing the Court of Appeal, acts under present law primarily as an appeal court—the final court of appeal in Zambia for most matters.[90] Therefore the Supreme Court will be discussed further below in terms of its appellate jurisdiction.

Appellate Jurisdiction

Local courts and jurisdiction

Even the local courts, at the base of the judicial hierarchy, possess certain supervisory powers; a local court may hear appeals from the decision of an adjudication committee under the Reserve and Trust Land (Adjudication and Titles) Act, Cap. 295, section 9. In general, however, the first forms of appellate and supervisory jurisdiction lie in the hands of "authorized officers" (local courts officers or subordinate court magistrates so designated by the chief justice)[91] and the Local Courts' Adviser. If no valid appeal has been entered, and no application for leave to appeal out of time has been made, one of these supervisory officers may normally order records from a court within his jurisdiction, require production of evidence and hear submissions, then reverse the decision of the lower court, quash a conviction and order a trial *de novo* before the same or another local court, re-hear the case himself in some instances, or refer the case to a subordinate court for sentencing beyond the local court's powers. Before varying an order to a party's prejudice however, the officer must give that party an opportunity to be heard.[92] Moreover, general transfer powers allows an authorized officer to transfer a case to a local court of a different venue or to a subordinate court, after commencement of the case but before judgement (but such a decision itself is subject to appeal).[93] A local court may order a transfer, also subject to appeal and to statutory limitations.[94] To ensure adequate opportunity for supervision, the Local Courts Act requires a local court to comply with requests by an authorized officer asking the court to submit appropriate reports and records in such form as the officer requires.[95]

As to normal appellate procedure, any party aggrieved by a local court decision, judgement or order not already reviewed, or if the case has been reviewed by a local court officer or a third class magistrate, may appeal to a first or second class subordinate court. If the decision has been reviewed by any other authorized officer, the appeal lies instead to the High Court.[96] A party may further appeal a decision rendered by an appellate court under these provisions. If the appellate decision was rendered by a subordinate

court, the second appeal lies to the High Court, if the first appeal was to the High Court, the second goes to the Supreme Court.[97]

The Act prohibits an authorized officer from revising a decision if application to appeal the decision out of time has been made, or if a valid appeal has been entered, unless that appeal has been "withdrawn by reversing, amending or varying in any manner such judgement, order or decision".[98] This section does not speak of revision of an appeal dismissed by the appellate body. The High Court in *Kudakwashe v The Attorney-General*,[99] considered such a situation. There a magistrate had dismissed an appeal from a custody order made by a local court. Some five weeks later, after apparently interviewing the appellant in the same case, the magistrate attempted to exercise review jurisdiction under section 54 of the Local Courts Act, and ordered the appellant to prison for contempt. The High Court, declared this review and consequent committal order a nullity. Unfortunately, the clarity of this declaration, and the true status of the lower court's decision, were cast into some doubt, as the High Court then proceeded to "set aside" the committal order, which it need not have done if the order was indeed a nullity, and which therefore suggests that the High Court in fact exercised its revisory power to set aside an erroneous judgement within the subordinate court's powers.

Due perhaps to the esoteric nature of customary law and judicial proceedings in the Western Province, no appeal lies from a local court adjudication of customary law rights to land in that province, unless the *Saa-Sikalo Kuta* (a local court so designated) allows that appeal.[100]

Regarding appeals from a local court decision, the Local Courts Act specifies the standard an appellate court should use for determining whether or not to modify the decision. It says that no proceeding warrant, process, order, or decree may be varied or declared void "solely by reason of defect of procedure or want of form, but every appellate court or person exercising power of revision shall decide all matters without undue regard to technicalities".[101]

Finally, it should be noted that the law states every justice in a local court is subject to orders and directions promulgated by the High Court.[102]

The High Court

The subordinate courts, in general, are subject to the supervision and control of the High Court as to most matters.[103] The basic appeal provisions in the Subordinate Courts Act provides for appeal to the High Court of any "judgement, order or decision" of a subordinate court whether interlocutory or final. If the order is *ex parte*, by consent, or as to costs only, appeal may only be taken with the leave of the subordinate court or the High Court.[104] The "judgement, order or decision" referred to includes a decision of the subordinate court in its appellate jurisdiction.[105]

Normally one judge hears an appeal to the High Court; the chief justice may direct, however, that two judges sit, in which case they must dismiss the appeal unless they each agree to allow it.[106] The High Court may waive procedural requirements as to time, etc. that otherwise might bar an appeal.[107] A subordinate court may reserve a question of law for determination by the High Court on a case stated, and the lower

court may render its own judgement subject to the higher court's ruling on the point of law reserved for it.[108] From the wording of Cap. 45, section 30, it would appear that the reservation of a question under this authority does not affect appeal rights as allowed by the Subordinate Courts Act. This read literally might suggest that an aggrieved party could appeal to the High Court after a subordinate court judgement, perhaps even raising the point of law already decided by the High Court.

Section 10 of the High Court Act regulates the exercise of jurisdiction in the High Court, (not necessarily the granting of jurisdiction). Section 10 reads in part: "[the] jurisdiction vested in the court shall, as regards practice and procedure, be exercised in the manner provided by . . . [various laws etc. are listed here] . . . and in default thereof in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice." In the case of *Kausa v The Registrar of Societies*[109] the court relied on this provision, and various British authorities, to suggest the right and the manner in which such right should be exercised, by the High Court to grant an order of *certiorari*, and review the decision of the Registrar. (The court concluded, however, that *certiorari* would not lie in this particular case on other grounds—primarily because the person in question acted without colour of legal authority).[110] This case dealt with supervision, not of a subordinate court, but of an administrative tribunal. An earlier case, *Mulenga v Mumbi, ex parte Mhango*,[111] the High Court issued a writ of *certiorari* to call up and quash a subordinate court order. The applicant in that case, was ordered by the subordinate court to pay K450 compensation to one of the parties in the case, although he had not been a party in the case himself, and had been given no opportunity to attend and protect his rights at a hearing. The court, relying primarily on *Halsbury's Laws of England*, ruled for the High Court that *certiorari* would lie. The court noted that no alternative remedy was available to the applicant, but added that "where there has been a denial of natural justice the appellant would be entitled to an order of *certiorari* even though another remedy may be available to him".[112] The High Court has power to issue writs of *mandamus*.[113] Presumably, the jurisdiction for such matters as *mandamus* and *certiorari*, not specifically mentioned in the statutes, derives from section 9 of the High Court Act, (not section 10 which refers to procedure).[114]

Certain laws give the High Court supervisory jurisdiction on other specific areas. For example, a provision in the Constitution allows a party to bring a question of fundamental rights, originally raised in a subordinate court, to the High Court for adjudication.[115] The transfer powers of the High Court, to bring a case before it or to move the case from one subordinate court to another, also give the High Court considerable control over the lower courts.[116]

According to a recent case, there are four ways the High Court may come to review a criminal case from a subordinate court. In *Mwanza v the People*,[117] these are as follows:

1. initiation of review by one of the parties, either by right of appeal, or by the "case stated" method, both in Cap. 160.
2. transmission of the case to the High Court for sentencing.
3. review of the case initiated by the High Court under section 337–8 of the Criminal Procedure Code.

4. transmission of a sentence for confirmation by the High Court.

The means listed in the first category, appeal and case stated, actually differ in several important respects. Under section 321 of the Criminal Procedure Code, a person convicted and sentenced in a subordinate court may appeal against the conviction on any ground of fact, law or mixed law and fact.[118] This includes the right to appeal against a conviction rendered under the admission of guilt procedures provided by the Code.[119] Such a person may also appeal against his sentence, unless it is fixed by law.[120] The Code has now also been amended to allow the director of public prosecutions to appeal to the High Court if he is dissatisfied with what he believes is an erroneous decision in law or in excess of the court's jurisdiction.[121]

The case stated provisions of the Code allow either party before a subordinate court to apply to the subordinate court, requesting it to prepare and send to the High Court and to the opposing party "a case setting forth the facts and the grounds" upon which the court made its determination. The challenge here, like that in section 321A, must be based on a claim that the court's determination was erroneous in law or in excess of jurisdiction. The subordinate court may refuse to state the case if it thinks an application is frivolous or vexatious,[122] but such a refusal itself may be appealed to the High Court.[123] The subordinate court may not refuse to submit a case if requested to do so by the director of public prosecutions.[124] The constitution of the court, when reviewing a case by either method remains the same.[125] Resort to either appeal or the case stated provisions precludes that party from seeking review by the alternative method.[126]

Thus, it seems that the appeal procedures favour the defendant somewhat more than the case stated approach. As mentioned, the subordinate court may refuse to state a case in some instances, but this does not apply to appeals. Moreover, the appeal procedure allows a far broader range of questions (fact, law, or mixed law and fact) than the case stated approach, which allows only questions of law and jurisdiction. These differences do not arise for the director of public prosecutions—he may only appeal questions of law or jurisdiction under section 321A, and a subordinate court may not refuse his request for a case stated. This gives rise to the question why section 321A was deemed necessary. The only possible explanation seems to lie in the difference in powers of the appellate court[127] and in the effect of the appellate court's decision[128] in each of the situations. The wording of the statutes, however, do not make such distinctions clear.

The second category, committal for sentencing, refers to those provisions allowing a subordinate court to commit a person, convicted in the subordinate court, to the High Court for sentencing beyond the lower court's powers. These provisions do not apply to juveniles.[129] A committal under this section does not abrogate appeal rights, and if the accused appeals, the sentencing must await the outcome of the appeal.[130]

The High Court also has jurisdiction and power to "review" a subordinate court decision, under sections 337 and 338 of the Criminal Procedure Code. These sections ostensibly allow the High Court to call for and examine records of a criminal proceeding before a subordinate court "for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court".[131] At the time of Mr. Justice

Care's opinion, there remained some question regarding the power of the High Court to hear certain cases in its revisory jurisdiction, as the Supreme Court Act had provided for direct appeals to the Supreme Court from subordinate court decisions regarding specified offences. It was suggested that the provision for direct appeals, by-passing the High Court, might also preclude revisory jurisdiction over the same types of cases.[132] This question appears to have been resolved by a subsequent amendment to the Supreme Court Act, so that now no such barrier to revision appears.[133] Of course, review of non-specified offences is unaffected. Cases may come for review before the High Court, among other ways, by the High Court calling for the record under section 337. The court's notice may be drawn to a case by such diverse means as a newspaper article,[134] or a record forwarded for sentencing confirmation.[135]

Section 9 of the Criminal Procedure Code requires confirmation by the High Court of certain subordinate court sentences. Upon receiving the sentence for confirmation, the High Court may exercise all the powers it is given under review provisions in the Code.[136] In addition, related to the criminal appellate jurisdiction, the High Court may exercise supervisory powers over a subordinate court's decision and action regarding security for peace keeping—the High Court may cancel bond requirements and release an imprisoned person on bail.[137] The High Court also exercises supervisory powers over other bodies and tribunals. The *certiorari* powers extending to quasi-judicial and administrative bodies have already been discussed.[138] *Mandamus*, it would appear, may also lie to direct actions of public authorities outside the judicial system as such.[139] The High Court may hear appeals from the Local Government Service Commission.[140] Certain local court matters may come before the High Court, as suggested earlier.[141] In addition, matters brought before the legal practitioners disciplinary committee, may in appropriate circumstances be brought to the High Court for review.[142]

The Supreme Court

The basis for jurisdiction in the Supreme Court have been mentioned.[143] Provisions in various laws spell out specific areas in which the Supreme Court may exercise supervisory or appellate jurisdiction. The Supreme Court Act states, in broad terms, that "an appeal in any civil matter shall lie" from a decision of the High Court to the Supreme Court, with a few enumerated exceptions.[144] These exceptions include—orders granting extension of time for appeals, orders giving unconditional leave to defend an action, an order dissolving or nullifying a marriage if the party failed to exercise his rights to appeal against the original decree preceding the order. Moreover, no right of appeal lies, but the High Court or Supreme Court may grant leave to appeal, from a revisory or appellate judgment of the High Court, from an order as to costs or an order made with the consent of the parties, from an order made in chambers, or from certain interlocutory judgments.[145] The Constitution specifically bars appeals from High Court decisions regarding national assembly elections and prohibits an appeal from a High Court decision dismissing a claim involving alleged violations of fundamental rights for being vexatious or frivolous.[146]

Other laws also speak of Supreme Court appellate jurisdiction, in a variety of areas. The court may hear appeals of fundamental rights cases in the High Court.[147] Appeals

from High Court decisions (and certain subordinate court decisions regarding rent and tenancy rights lie to the Supreme Court.[148] Bankruptcy matters adjudicated in the High Court may come to the Supreme Court on appeal,[149] as may certain contempt of court cases.[150] The court may also hear appeals, for example, from decisions of a tribunal adjudicating matters arising under the leadership code.[151]

The powers of the court when hearing a civil appeal are commensurately broad. The court may order production of documents and exhibits, call and examine witnesses, remit the case to the High Court for re-hearing, or order a new trial.[152] After its hearing it may "confirm, vary, amend or set aside the judgment appealed from or give such judgment as the case may require".[153]

The jurisdiction and powers of the Supreme Court regarding supervision of criminal cases appears at least equally broad. Any person convicted in the High Court, or convicted in a subordinate court and sentenced in the High Court after committal under the Criminal Procedure Code, has the right to appeal against any question of fact and any question of law to the Supreme Court.[154] The director of public prosecutions may also appeal against a judgment of the High Court in its original jurisdiction on a point of law.[155] Contrary to the previous law a successful appeal under the latter provision does affect the finality of the lower court's decision, and could result in the conviction of a previously acquitted respondent.[156] Imposition of a fixed sentence may not be appealed.[157] An appeal against sentence abates on the death of the accused, but an appeal against fine may continue; even where the accused died before the High Court rendered a decision on first appeal, a representative of the deceased may continue the second appeal against a fine to the Supreme Court.[158] Either the High Court, or the Supreme Court [159] may grant to a party leave to appeal from an appellate judgment, a revisory judgment, or a judgment on a case stated, or a refusal to extend time to appeal.[160] The court has extensive power on appeals in criminal cases. It can order production of documents or exhibits, call witnesses, remit matters for further hearing, refer certain questions to a special commissioner, take advice of an assessor, issue appropriate enforcing warrants, and make decisions regarding bail. To protect an accused from potential prejudice stemming from newly admitted evidence, the Supreme Court Act requires the court to allow examination by the accused of any witness called before the appellate court, and further prohibits any increase of sentence based on new evidence.[161]

The Court, on appeal against conviction, may dismiss the appeal, quash the conviction and order a new trial or direct a verdict of acquittal, or substitute a judgement of guilty of any other offence the trial court might have entered. On appeal from an appellate judgment of the High Court, the Supreme Court may in addition restore the trial court's conviction. On an appeal, the Court may "increase or reduce the sentence, or make such other order or sentence as the trial court might have imposed or made".[162]

The Supreme Court Act sets out, in some detail, the standards the court should use in considering an appeal. The Act is for the most part fairly self-explanatory on this point, but for comparison, it is worth noting that it provides that the court must set aside a conviction, on any of a number of listed grounds, unless it considers "that no miscarriage of justice has actually occurred".[163] This appears to give the Supreme Court somewhat greater discretion to overturn lower court decisions than that granted to the High Court, which can overturn a decision on appeal if it has "in fact occasioned

a substantial miscarriage of justice". Standards for appeal against sentence have been elaborate in numerous cases. Basically, the court suggests that it (or the High Court) may set aside a sentence if it finds that the sentence was wrong for any of the following reasons: (i) it was wrong in principle, or (ii) it was manifestly excessive or so totally inadequate that it induces a state of shock, or (iii) there are exceptional circumstances which would render it an injustice if the sentence was not reduced.[164]

Conclusion

Consideration of the jurisdiction as outlined here, and the use that has been and can be made of it, suggests several points of interest. One noticeable aspect of the jurisdictional division and grants is that something of dual legal and judicial system remains—while higher courts may, and do, apply customary law, their jurisdiction and the needs of practice allow a greater portion of their time to be taken up in written law (and common law) while the bulk of customary law is left to the local courts. The prohibition of legal representation in local courts also seems to tie the local courts nearer to the "traditional" customary society and to distinguish proceedings in the local courts from those in the higher courts. Of course, the shortage and high cost of trained lawyers does to some extent create a *de facto* prohibition for many litigants in the higher courts.

This apparent dichotomy is neither new nor accidental. It stems at least in part from the pre-independence legacy. As it has been observed elsewhere, from its inception, the system of judicial administration introduced by the British in Northern Rhodesia differentiated between Europeans and Native Africans.[165] Today of course, the distinction is no longer so clearly ethnic. The customary law sector remains comprised of Africans, but now indigenous Zambians make up the largest part of the population participating in the non-customary society and legal system as well.

The continued existence of this somewhat blurred dichotomy does suggest certain conclusions about the legal system and the society in general. To some extent, it reflects, the more important socio-economic and cultural divisions of the country at large. The situation today reflects some of the same conditions noted in much of newly independent Africa: a dichotomous society, sharply split between the subsistence economy with its associated culture and law and the commercial-industrial, private, Westernized sector; a pluralistic legal order; demands upon the society that implied fundamentally irreconcilable jural postulates—status; contract, etc.[166] The question whether the dual judicial system, and the dual legal system, fosters retention of the dichotomy and retention of the subsistence economy in the face of development in urban centres, lies beyond the scope of this discussion. It is sufficient here to note that the split in one reflects the split in the other.

Moreover, until such time as broader social reform (in terms of development in educational, economic, and other spheres) can be realized, reliance on the pre-existing and largely self-enforcing customary law, and on procedural forms and a social context adapted to easy local acceptance, may be the most efficient, perhaps the only effective way of serving the legal needs of a large portion of the society. Where application of sanctions to coerce compliance seems too costly, where the social conditions inhibit mass internalization of new law, and where the government is unwilling or unable to undergo

the costs and burdens of disrupting the stable social base of communities, recognition of existing substantive norms and adaptation of a judicial system to local needs (i.e. differentiation of local courts and their law) may present the only viable means of administering justice.[167]

Broad powers in the hands of a strong judiciary can provide an effective shield against concentration of arbitrarily exercised executive power, and can augment law reform. The courts, perhaps, in some instances are the most effective medium for such action. As it has been said: ". . . [it] is in the courts and not in the legislature that our citizens primarily feel the keen cutting edge of the law. If they have respect for the work of the courts, their respect for law will survive the shortcomings of every other branch of government; but if they lose respect for the work of the courts, their respect for law and order will vanish with it to the great detriment of society".[168]

The jurisdictional legislation in Zambia affords the courts sufficient room for an activist judiciary. Of course, important restrictions remain, especially in areas of redressing individual grievance against the state. In the area of fundamental rights, for example, a perusal of the constitutional provisions providing these rights also will reveal serious exceptions and provisos, qualifying the rights to the point where little remains for challenging executive or legislative action.[169] Moreover, the detention laws, under which many fundamental rights issues might arise, grant such unfettered discretion to the executive that, again, precious little remains for litigation apart from adherence to procedural requirements.[170] An African jurist has said, "it would seem that on the whole governments in the newly independent countries hanker after the simplicity of the colonial arrangement, with the primary aim of the courts being to uphold the power of the state, enforce its laws and provide stability. The courts' function of protection of the individual from the abuse of power is relatively new and less well appreciated."[171]

Noticeably restrictive as well, is the absence of an expressed or implied jurisdictional grant allowing the courts to review the constitutionality of legislation. With reliance on a written constitution, it might seem logical for such powers to follow, or even to be assumed by the courts in the absence of a specific grant; this has not occurred in Zambia. Without this type of power, especially in a state where the legislature and executive are often closely allied, the impact of judicial assertion is more easily blunted.[172]

Nevertheless, the Zambian courts retain sufficient breadth and depth of jurisdiction and power to assume an active and creative role, and they have from time to time demonstrated a willingness to do so. The courts have exercised jurisdiction to at least hear numerous potentially politically explosive cases.[173] At times they have ruled against the executive, although not wholly without repercussion.[174] The courts have also demonstrated a readiness to speak out, even where their power to act is restricted, and to comment on policy and criticize the government—actively asserting and protecting their existing domain and power. In a recent case [175] involving an unreturned writ of habeas corpus, where the applicant had apparently been surrendered to foreign forces, the chief justice quickly and in no uncertain terms rejected the government's attempt to take the matter out of the court's jurisdiction. The respondent had apparently refused the return, relying on political arguments. The chief justice replied: ". . . [no] litigant, whether the government or a private litigant, can be heard to say to this court—

and what is more, in the very proceedings in which the decision was made—that the decision is not in the best interest of the liberation struggle and that he cannot do something with which he disagrees, or that high state policies are involved which are extremely sensitive and are not matters falling within the legal ambit".[176] When, after time was extended for return of the writ, and the applicant still did not appear before the court, the chief justice spoke out again, strongly criticizing the executive for apparent involvement in removing the applicant from the court's jurisdiction.[177]

The courts, in the assertion discussed earlier of power to issue writs of *certiorari* and *mandamus*, have also demonstrated a tendency to extend their jurisdiction and power and not simply to rest with the already broad reach allotted them. The Supreme Court has, through open criticism of legislative policy, lobbied for further delegation of discretion to the judicial branch.[178] Parliament has assisted, in some instances, in the expansion of judicial power.[179] In a one-party state, and especially in an executive dominated system, these are healthy signs for a relatively new judicial system.

The courts, of course, also possess considerable power in their use of the interpretive function, both as to legislation and as to the common law. There are a number of ways and means a court might use to creatively apply legislation.[180] Creative use of the common law also offers judicial means for reform.[181] Zambian courts have demonstrated that they will deviate, not only from previous British precedents,[182] but from their own precedents as well, when they deem it justified.[183] Thus the court may continue to assert an aggressive reformative role.

As to supervisory jurisdiction, the sweeping grants reflect concern for ensuring adequate means of reviewing lower court decisions. This, of course, is not unique to Zambia, but the diverse means available (including such examples as mandatory confirmation of sentencing, mandatory transfer of certain cases, etc.), the extensive use made of these powers (consider the exercise of *certiorari*, the extensive use of revisory jurisdiction, etc.) and the nature of the powers on review, all suggest a strong concern for the problem of justice in lower courts. A perusal of any random volume of appellate decisions will reveal embarrasing errors in lower court trials. The acute scarcity of legal training in Zambia, with resultant high cost of acquiring advocates, precludes many parties from obtaining adequate representation. Moreover, the same problem often results in a relatively unexperienced or poorly trained bench. Of course, other factors exacerbate the recruitment problem; salaries and work conditions seldom attract trained lawyers from the more lucrative private or government positions into the courts.[184]

The broad supervisory and revisory powers in the High Court and the Supreme Court do provide, often, a means of correcting lower court error. This does not however, provide an ultimate solution, it can only act as an occasional corrective measure. Not all cases are appealed—without benefit of counsel many parties may not know of, or may decline to take advantage of avenues of appellate review. The cases which come to a higher court's attention by other means can only represent a sampling of the activity of lower courts. Many cases, therefore, never obtain review at all. Indeed, if all cases were reviewed, the work load on higher courts would become unmanageable. Moreover, relying heavily on the higher courts for correction provides, at best, qualified justice: by the time appropriate review is obtained, much of the damage of a lower court error may already be felt and cannot wholly be corrected by reversal in the higher court.[185]

Thus, the existence and use of broad supervisory powers, while useful, cannot replace continued improvement of the judicial process in the lower courts.

Finally, perhaps a word on the legislation itself may be in order. Inclusion of grants of original and appellate jurisdiction in separate sections spread throughout the law seems convenient to the draftsman of one of these sections, and perhaps to the fortunate person knowing just which section he should read. This drafting style, however must be confusing to most users. Moreover, the fact that long after repeal of the Court of Appeals Act, and substitution with the Supreme Court Act, various references to the Court of Appeal remain in diverse acts suggests that this system also handicaps the amending draftsmen. (This also seems borne out by the apparent conflicts between various Acts as mentioned earlier). This would seem to suggest the utility of gathering all the jurisdictional provisions regarding a court into one Act referring to that court, or providing a cross-referencing system between the main court Acts and each of the other Acts, or both, or at least creating a comprehensive, usable index for general use.

Notes

1. These, the most recent statistics available, derive from a public lecture delivered by Hon. Chief Justice Annel M. Silungwe, on "Administration of Justice in Zambia" 22nd November, 1979, at the University of Zambia.
2. Revised Laws of Zambia (hereafter cited by chapter and section only), Cap. 54, s 6(2); see also Cap. 54, s 2(2).
3. Cap. 54, s 3(1).
4. Cap. 54, s 68 (subsidiary) Part II, Ss. 3, 4.
5. Compare Cap. 54, s 5 with Cap. 54, s 68 (subsidiary) Rule 4.
6. Cap. 54, s 5(1)(i), see also Cap. 54, s 68 (subsidiary) Rule 4 (a)(1).
7. Cap. 54, s 68 (subsidiary)Rule 4 (a)(i).
8. Cap. 54, s 38 (a)–(b).
9. *Munalo v Vengesai*, [1974] Z.R. 91.
10. *Id.* at 95.
11. Cap. 54, s 38 (c)–(d).
12. Cap. 54, s 12(b). This does not allow local courts to enforce written laws of foreign countries. *Banda v Banda & Another*, [1975] Z.R. 123.
13. See Cap. 1, art. 20(8) contra see Cap. 54, s 12(2), s 13.
14. Cap. 54, s 11.
15. Cap. 54, s 68 (subsidiary) s 4.
16. See *Banda v Banda & Another*, [1975] Z.R. 123.
17. *Munalo v Vengesai*, [1974] Z.R. 191.
18. Cap. 54, s 8.
19. Cap. 54, s 9.
20. Compare Cap. 54, s 9 with Cap. 160, Ss 69–75. See also footnotes, *infra*, and accompanying text.
21. Cap. 54, s 10.

22. Cap. 54, s 15. Of course, this section does allow a legal practitioner to appear if he is a party to the proceedings. A representative, though not a legal practitioner, may appear on behalf of a company or other corporate body.
23. Silungwe, C. J., "Administration of Justice in Zambia", *supra.*
24. Cap. 45, s 20(1)(a).
25. Cap. 45, s 20(2). For a second class subordinate court, the limit is K200 (s 21), for third class courts—K50 (s 22(a)).
26. Compare Cap. 54, s 20 with Cap. 54, Ss 21, 22.
27. Cap. 160, s 171, as amended by Act 34 of 1973. The High Court has, however, exercised its revisory jurisdiction to alter such a judgment. See *Kumoyo v the People*, [1974] Z.R. 50, 51.
28. *Kumoyo v the People, supra.*
29. In re: *Atlas Transport Ltd. v Consolidated Farm Fertilizers Ltd.*, [1977] Z.R. 155.
30. Compare Cap. 1, art. 29 with Cap. 45, Ss 22–23.
31. Cap. 45, s 18.
32. See Cap. 45, s 20 Proviso subsections (i)–(iv), as read with Cap. 45, s 21; and Cap. 45, s 22 Proviso subsections (i)–(iv).
33. Cap. 45, s 23.
34. Cap. 45, s 24. First class subordinate courts, moreover, possess jurisdiction in certain extradition matters under Cap. 161; subordinate courts may hear certain offences and matters under the Prisons Act: Cap. 134, and suicide matters under Cap. 148. Subordinate courts have jurisdiction to hear inquests under Cap. 216; juveniles under Cap. 317 (see esp. s 63); adoption under Cap. 218; debtors in default under Cap. 87, offences under the Preservation of Public Security Act under Cap. 106; and certain matters under Cap. 480 (see especially section 101).
35. Cap. 160, s 7, as apparently amended by Act No. 6 of 1972. ("Apparently" amended, as Act No. 6 purports to amend Cap. 7, the old Penal Code, although the contents of the section referred to are now embodied in Cap. 160, s 7, of the Revised Laws. The amendments included in the Revised Laws vary; some chapters only including amendments up to 1969, while the Acts continued to refer to the numbering system under the old laws up until 1972. This leaves a hiatus of a number of years, depending on the last amendment included in a particular chapter. Thus, the Criminal Procedure Code, for example, only includes amendments in the Revised Laws up to 1969, although amendments up until 1972 still refer to the old unrevised laws and numbering). Also under the Code, a senior resident magistrate may impose imprisonment sentences up to 9 years in length, and a Resident Magistrate up to 5 years.
36. See, e.g. *Mapowa v the People*, S.C.Z. Judgment No. 10 of 1979.
37. Cap. 160, s 9 as apparently amended by Act No. 6 of 1972.,
38. Cap. 160, s 9(2). See Cap. 160, s 9 generally for further details.
39. Cap. 160, s 11.
40. Cap. 160, s 11(2). The provision in Cap. 160, s 197(1), speaking of trials before a subordinate court for murder and treason, therefore, must have in contemplation the granting of special authority under the exception to Cap. 160, s 11(2).
41. See Cap. 160, s 222.

42. See Cap. 50, s. 23(2), which allows the High Court to transfer a case before it to a subordinate court. This provision notes that such a transfer does not enlarge the civil jurisdiction of a subordinate court. No mention is made, however, of criminal jurisdictional limits in the lower court. Either a transfer under this section may only be made in a civil case, (this interpretation may gain some strength from the fact that criminal jurisdiction is generally controlled by Cap. 160, not Cap. 150), or it is assumed that a transfer of a criminal case under this section would carry with it the special authority contemplated by Cap. 160, s 11, if necessary.
43. See Cap. 160, s 10.
44. See, generally, Cap. 160, Ss 40–60.
45. See, generally, Cap. 160, Ss 222–232, 10.
46. See, generally, Cap. 160, Ss 223, *et. seq.*
47. Cap. 160, s 232.
48. *Id.*
49. *Id.*
50. "*Inclusion unius est exclusion alterius*". This maxim, of course, only serves as an aid to construction. Other principles may suggest alternative outcomes. The fact that the statute allows for this interpretation, however, suggests a need for amendment.
51. This all-or-nothing cross-examination rule requires the defence to make a very difficult choice. Worse, it is not inconceivable that this provision in section 232 could be read, under the same implied exclusion, to bar the defence from calling new witnesses after the court decides to adjudicate summarily. In view of the relative hardship this approach would impose on the defendant, and the radical departure from British traditions, it seems unlikely that parliament intended such a result. See also Cap. 1, art. 20(2)(e).
52. Cap. 45, s 4. See also Cap. 45, Ss. 20(1), 22, 21.
53. Cap. 50, s 22 (2)–(3).
54. *Id.* see also Cap. 45, Ss. 20(1), 21, 22.
55. Cap. 45, s 57 (subsidiary), Subordinate Courts (Civil jurisdiction) Rules, Order XIV.
56. *Id.*
57. Each court "shall ordinarily exercise such jurisdiction only within the limits of the District for which each such court is constituted". Cap. 45, s 4.
58. Compare Cap. 45, s 4 with Cap. 45, s 12 and Cap. 160, Ss. 65–80.
59. See generally Cap. 160, Ss. 69–72, and Ss. 73–80, where further rules for venue choice are elaborated.
60. See Cap. 160, Ss. 66, 77–79. Note that requiring the transmission of an apprehended accused to a court in whose district the offence is alleged to have occurred (Cap. 160, s 66) takes a much narrower view of venue than does sections 69–80 of the Code.
61. Cap. 160, s 80.
62. Cap. 160, s 352.
63. Cap. 1, art. 109(1). Cap. 50, s 3.

64. See Supreme Court and High Court Number of Judges Act, No. 22 of 1976, as amended by Act No. 20 of 1977, and Cap. 1, art. 109 (2) (a)–(b).
65. Cap. 1 art. 109(2).
66. Cap. 1, art. 110 (1)–(2).
67. Cap. 1, art. 101.
68. Cap. 50, s 9.
69. *Cf.* Cap. 50, s 12.
70. Cap. 50, s 9(2).
71. Cap. 50, s 11.
72. Cap. 1, art. 29.
73. Cap. 1, art. 77. This same provision, however, gives parliament nearly complete control over who may apply for such a determination, under what conditions to apply, and the power, practices and procedures of the High Court when considering such an application. It seems peculiar for members of a body to exert such vast control over challenges to the validity of their own membership.
74. Cap. 160, Ss. 4, 5.
75. See, Landlord and Tenant (Business Premises) Act, No. 34 of 1971, and Rent Act, No. 10 of 1972. Various other laws also grant High Court original jurisdiction. Cap. 162 grants jurisdiction over certain matters regarding extradition and fugitive offenders; Cap. 180–regarding arbitration; Cap. 214—custody orders; Cap. 190—bankruptcy; Cap. 218—adoption matters; Cap. 289—land succession matters; matters dealing with local Government elections see Cap. 482, s 27; Registration (and in some cases altering or setting aside) of foreign judgments under Cap. 86; matters concerning defaulting debtors—see Cap. 87 (also note relevant attachment procedures provided for in Cap. 88); matters arising under the Organizations Control of Assistance Act, Cap. 109; etc.
76. Cap. 160, Ss. 4, 5.
77. Cap. 160, s 68.
78. Cap. 160, s 254.
79. Capl 160, s 11. See also subsidiary legislation under this section.
80. Cap. 160, s 222.
81. Cpa. 160, s 10.
82. Cap. 50, s 23(2)–(3).
83. Cap. 50, s 24.
84. See Cap. 160, s 6, as apparently amended by Act 39 of 1970. See also *People v Roxburgh*, [1972] Z.R. 31. It is interesting to compare this section (section 6 of the Penal Code as apparently amended by Act 39 of 1970) with section 5 which was apparently not modified or repealed when section 6 was amended. Perhaps adding a bit more confusion, Cap. 110 allows that a Zambian court may try an accused under that Act if the accused is found within the court's jurisdiction, for "any act omission or other conduct" constituting an offence under that Act, "wherever such conduct took place, whether within or outside the Republic". This provision refers only to crimes under Cap. 110 however, and thus does not conflict with the Penal Code which concerns other crimes. The wording of Cap. 160, s 65 probably does not conflict either, in spite of first appearances, as it

speaks of a crime committed in Zambia, or "which may be dealt with as if it had been committed in Zambia". Presumably a crime under Cap. 110 would be such a crime which could be dealt with "as if it had been committed in Zambia". Reconciling Cap. 110 with limits of venue and jurisdiction under the Subordinate Courts Act, however, may be more problematic, as they seem directly in conflict. (Compare Cap. 110, s 18, with Cap. 45, s 4).

85. *People v Roxburgh*, [1972] Z.R. 31.
86. Cap. 160, s 65. Compare this with Cap. 146, Ss. 5, 6, as discussed in footnote *supra*. s 65 suggests affirmation of the position that district limits to jurisdiction of lower courts remain in spite of s 5.
87. Cap. 1, art. 107. Supreme Court and High Court Number of Judges Act, No. 22 of 1976 (as amended by Act No. 20 of 1977), and Supreme Court of Zambia Act, No. 41 of 1973.
88. Cap. 1, art. 108.
89. Supreme Court Act, s 7.
90. Cap. 1, art. 107(1). Of course, some matters are not subject to appeal to the Supreme Court. See, e.g. Cap. 1, art. 77(1), which precludes appeal of High Court decisions regarding national assembly elections.
91. See Cap. 54, Ss. 52–65 (s 55 gives the Adviser powers equivalent to those of an authorized officer).
92. Cap. 54, s 54(1)(a).
93. Cap. 54, s 53(1)–(4).
94. Cap. 54, s 53.
95. *Id.*
96. Cap. 54, Ss. 56 (1), (2).
97. *Id.*
98. Cap. 54, s 54.
99. *Kudakwashe v Attorney-General*, [1976] Z.R. 45, 48.
100. Cap. 54, s 57.
101. Cap. 54, s 62. Compare this with standards discussed below in footnotes and accompanying text.
102. Cap. 54, s 66.
103. Cap. 45, s 54. See also Cap. 1, art. 109(5).
104. Cap. 45, s 28.
105. See, e.g. *Madube v Kashimbaya*, [1977] Z.R. 212.
106. Cap. 45, s 28(2), (3).
107. Cap. 45, Ss. 31–32.
108. Cap. 45, s 30. This section also supplies the jurisdictional grant for the High Court to adjudicate such a matter.
109. High Court Act, Cap. 50, s 10. This was interpreted in *Kausa v The Registrar of Societies*, [1977] Z.R. 195, 198 to mean that in default of any rules relating to practice and procedure in our own laws, the procedure to be adopted should be in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice.

110. [1977] Z.R. 195, 108. Id. at 208. See also *Albert Sachipango v The Road Traffic Commissioner*, HP/1137/76.
111. *Mulenga v Mumbi; ex parte Mhango*, [1975] Z.R. 78, 80.
112. *Id.*, citing with approval R v Wadsworth JJ., *ex parte* Read, [1942] 1 All E.R. 65.
113. See, generally, *Konoso v Regina*, [1957] R & N 285, cited with approval in *ex parte Mhango*, *op. cit.* at 198.
114. Cap. 50, s 9(1).
115. Cap. 1, art. 29.
116. Cap. 50, s 23 (2)–(4).
117. *Mwanza v the People*, [1976] Z.R. 155.
118. Cap. 160, s 321 (1) (a)–(b).
119. See *Mukebesa v the People*, [1976] Z.R. 78.
120. See Cap. 160, a. 321(c); and Act No. 12 of 1973. See also *Peter Mulowa v the People*, SCZ Judgment No. 12 of 1979.
121. Act No. 30 of 1976, s 4.
122. Cap. 160, s 343.
123. Cap. 160, s 344.
124. Cap. 160, s 343.
125. Compare Cap. 160, s 334 with Cap. 160, s 345.
126. Cap. 160, s 349.
127. Section 346, for example, allows the High Court, after hearing a case stated, to reverse, affirm or amend the lower court's decision or remit the matter to the subordinate court with the High Court's opinion. The use of the alternative "or" in this context suggests that in some instances reversal or amendment would be complete in itself, and the case need not be remitted. Moreover, the same section also allows the High Court to make "such other order in relation to the matter . . . as to the court may seem fit, and all such orders shall be final and conclusive on all parties." This also suggests that a High Court order is such a case which need not return to the subordinate court for further proceedings.
128. In the British tradition, a successful appeal affects the lower court's judgement, while a ruling on a case stated does not. As to Zambian courts, see—*Director of Public Prosecutions v Ngoma*, [1976] Z.R. 184.
129. Cap. 160, s 217.
130. See Cap. 160, s 218(4)–(6). See also s 217(3).
131. See Cap. 160, s 337.
132. See Supreme Court Act, s 12(1)–(4), and s 14. Compare *Mwanza v the People*, [1976] Z.R. 154 with *The People v Chikuta*, [1975] Z.R. 36.
133. See Act No. 31 of 1976.
134. See *People v Massissani*, [1977] Z.R. 234.
135. *Mwanza v the People*, *supra* at 156.
136. Cap. 160, s 13(3).
137. Cap. 160, s 51 *et. seq.*
138. See footnotes 111–116, *supra*, and accompanying text.
139. See *Konoso v Regina*, [1957] R & N 285 (quoting two unreported cases cited with approval in *Mulenga v Mumbi, ex parte Mhango*, [1975] Z.R. 78, 80.

140. e.g. *Lusaka City Council v Mumba and Others*, [1976] Z.R. 53.
141. e.g. Cap. 54, s 58, Cap. 54, s 53, etc. See footnote *supra* and accompanying text.
142. See Legal Practitioners Act, s 22 as amended by Act No. 22 of 1973. Numerous other Acts refer to High Court appellate jurisdiction. See e.g. Cap. 668 which allows appeals from the Tax Review Board; Cap. 693 (s 67) allowing appeals from the Patents Tribunal; Cap. 432–from the levy assessment appeals committee; Cap. 312 (s. 29)—from Water Board decisions; Cap. 287 (s. 87)—from the Registrar of the Registry of Lands; Cap. 53 (s 5)—from a subordinate court regarding contempt of court cases; and Act No. 37 of 1976, s 28 on a point of law from the Rating Tribunal.
143. See footnote 91, *supra*, and accompanying text.
144. Supreme Court Act, s 23.
145. *Id.* Ss. 23-24. In a most confusing use of an exception to an exception, this Act appears to allow appeal regarding certain interlocutory judgments or orders made in chambers. See s 24(e).
146. Cap. 1, arts. 77, 29(4).
147. Cap. 1, art. 29(4).
148. See Landlord and Tenant (Business Premises) Act No. 34 of 1971, s. 25; Rent Act No. 10 of 1972, s. 7.
149. See Cap. 190, s 100.
150. Cap. 53, s 5(2)(b).
151. Cap. 1, art. 35(2).
152. Supreme Court Act, s 25(2).
153. *Id.*, s 25(1).
154. *Id.*, s 12 (as amended by Act 31 of 1976).
155. *Id.*
156. See *Director of Public Prosecutions v Ngoma*, [1976] Z.R. 189. In that case, an appeal against acquittal was allowed. The court still found the defendant not guilty of murder as charged. Noting, however, that the court possessed "all the powers of the trial court" (page 192), the court suggested that it might have found the accused guilty of manslaughter, but instead found him not guilty by reason of insanity and ordered him detained "during the president's pleasure" (at page 192).
157. Supreme Court Act, s 12(4) as amended by Act 31 of 1975.
158. Cap. 160, s 335. See *Sensenta v the People*, [1976] Z.R. 184.
159. See, e.g. *Haamenda v the People*, [1977] Z.R. 184.
160. Supreme Court Act, s 14, as amended by Act No. 26 of 1974; See also *Attorney-General v Zambian Sugar Company Ltd. and Nakambula Estate Ltd.*, [1977] Z.R. 273 in which an appeal against a High Court Declaratory judgment was heard.
161. Supreme Court Act, s 14, as amended by Act No. 26 of 1974.
162. *Id.* s 15, as amended by Act No. 17 of 1976. See also *Director of Public Prosecutions v Ngoma, supra* (note 158). See also *Zowa v The People*, [1975] Z.R. 210. Act No. 17 of 1976 seems to remove this restriction.
163. Supreme Court Act, s 15(1), as amended by Act No. 17 of 1976.

164. See, e.g. *Alubisho v The People*, [1976] Z.R. 11.
165. Spalding, Francis O., Earl Hoover and John C. Piper, "One Zambia, One Judiciary; The Lower Courts of Zambia", Vol. 12, *Zambia Law Journal*, 1970, p. 1, 4.
166. Seidman, Robert. "Law and Economic Development in Independent English-Speaking Sub-Saharan African", in Hutchinson, J. *et al*, editors, *Africa and Law* University Wisconsin Press, Madison.
167. For comparison of these problems and the concept of internationalization in a different African State, see Mundt, Robert J. "The Internalization of Law in a Developing Country", Vol. 12, *African Law Studies*, 1975, 60.
168. Vanderbilt, Mr. Justice Arthur. *The Challenge of Law Reform.* Princeton University Press, Princeton, 1955, p. 45, as quoted in Abraham, Henry J., *The Judicial Process*, 1968, p. 3. 2nd edition, Oxford University Press, New York,
169. See Cap. 1, arts. 13–27.
170. See: In the matter of *Kapwepwe and Kaenga*, [1972] Z.R. 248, 260. See also *Munalula v the People* SCZ Judgment No. 2 of 1979, quoting with approval from Mr. Justice Baron's opinion.
171. Amissah, Ann, E.: "The Role of the Judiciary in the Governmental Process: Ghana's experience", Vol. 13, *African Law Studies*, 1976, p. 4.
172. See generally, Amissah, *supra*, and Palley, Claire: "Rethinking the Judicial Role", Vol. 1, *Zambia Law Journal*, 1969, p. 1.
173. See, e.g. *Nkumbula and Kapwepwe and the Attorney-General*, S.C.Z. Judgment No. 15 of 1979.
174. The Skinner Evans matter, for example, in which the former chief justice was eventually led to resign in protest against alleged executive and party interference and reaction to an unpopular decision, is well-known and need not be exhumed here. This and similar matters, are discussed in *The International Commission of Jurists Review*, No. 4, 1966.
175. *Shipanga v The Attorney-General*, [1977] Z.R. 53.
176. *Id.* at 54.
177. See *Shipanga v The Attorney-General*, (1978) Z.R. 71, 72.
178. See, e.g. *Simamba v the People*, SCZ Judgment No. 3 of 1979.
179. See Act 17 of 1976. Comparing this, for example, with the previous legislation shows growth in the court's power.
180. Church, W.L. "Courts, Legislature and the Application of Zambia's Stock Theft Law", Vol. 5 *Zambia Law Journal*, 1973, p. 7.
181. *Peter Mwape v the People*, SCZ Judgment No. 20 of 1979, in which the court apparently makes a sharp departure from previous law regarding recklessness.
182. e.g. *Mullan v the People*, (1971) SJZ 78.
183. *Mwanza v the People*, discussed at length, *supra* note.
184. The conditions of the physical plants in which justice is administered also handicaps recruitment of personnel, maintenance of morale, and creation of the aura of respectability and dignity essential to the judicial role. In the past, it seems, rural areas have especially suffered in this regard. See: The Annual Report of the Judiciary and Magistracy for 1969. Today, however, according to the chief justice, the problem is slightly altered. "Whereas, rural Zambia is by and large fairly well

catered for, the situation in the urban centres is not a happy one but there are plans to make good the shortfall when there is an improvement in the performance of the national economy." (Silungwe, C.J., Annel M., "Administration of Justice in Zambia", *supra*, note 1.)

185. See, e.g. *Bwalya v the People*, SCZ Judgment No. 6 of 1979 where the defendant had already served 5 years in prison by the time the appeal reached the Supreme Court. The court found the conviction defective and quashed it, but did not order a re-trial as the defendant had already served most of the potential sentence. See also *Maketo v the People*, SCZ Judgment No. 5 of 1979, where the court suggested it might have increased the sentence, except for the delay before the appeal was heard.