

# SOUTHERN AFRICA LITIGATION CENTRE

## SUMMARY OF THE TRIAL OF TWO MEN ACCUSED OF SODOMY IN KAPIRI MPOSHI, ZAMBIA

SALC is supporting the defence of two Zambian men who have been charged under section 155 of the Zambian Penal Code. In terms of section 155 of the Penal Code, any person who (a) has carnal knowledge of any person against the order of nature; or (c) permits a male person to have carnal knowledge of him against the order of nature; commits a felony and is liable, upon conviction, to imprisonment for at least fifteen years to life. This section was amended by Act 15 of 2005.

The two men have been in custody since 5 May 2013. The men pleaded not guilty to the charges against them on 8 May 2013 in the Kapiri Mposhi Magistrates' Court and the case was then postponed to 22 May 2013. The accused's lawyers from SBN Legal Practitioners made a bail application on 22 May 2013, which the Magistrate John Mbuji refused. On the same date, the accused's lawyers argued that the prosecution's failure to provide the defence with evidence prior to the trial violated the accused's right to a fair trial and basically amounted to a trial by ambush. Whilst the right of an accused to have knowledge of the nature of the State's case against him or her is respected in other jurisdictions, that right is not currently recognised in subordinate courts in Zambia. Throughout the trial, the defence's lawyers were not able to access evidence held by the prosecution, including witness statements and medical reports.

The defence counsel [applied](#) for bail in the High Court. The High Court eventually heard the bail application in November 2013, but failed to make a ruling on whether it will grant bail. A complaint on the delayed decision in the bail application has been submitted to the Chief Justice.

The trial commenced on 10 June 2013 and the prosecution eventually concluded its case on 24 January 2014 after numerous postponements. The prosecution called eight witnesses, none of whom had any direct or indirect knowledge of sexual relations between the two accused. The police officers who testified relied on hearsay evidence without having conducted investigations. The medical doctors who testified could not show that anal penetration took place between the two accused. The evidence revealed that the medical doctors who examined the accused did not comply with procedures, were not trained in forensic medical examinations and were not qualified to make a conclusion that anal penetration had occurred. The remainder of the witnesses had known the first accused but not the second accused and gave contradictory evidence about the events leading up to the arrest of the accused. Essentially, the defence argues that the circumstantial evidence on which the prosecution relies was based on erroneous inferences, bias and inherent fatal contradictions.

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On 4 March 2014, Magistrate Mbuze ruled that the defence had a case to answer. On 13 March 2014 the defence called a medical specialist to provide expert evidence to address the inherent problems in the State's medical evidence. The defence closed its case on 4 April 2014 and judgment is expected on 30 May 2014.

The public interest in this case has been significant. At every appearance in this small town in Zambia, the courtroom was packed with local onlookers who were keen to see the accused and hear the arguments. In addition, the media has been reporting on this case since the two men were arrested in May 2013. Unfortunately the media reports in the matter have often been inaccurate fabricating stories about the two men having been engaged or found "in the act".

## **For more information**

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For more information on the case, visit

<http://www.southernafricalitigationcentre.org/cases/ongoing-cases/zambia-two-men-accused-of-carnal-knowledge-against-the-order-of-nature/>

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