

Case summary

Introduction

Zambian human rights defenders (HRDs) continue to suffer risk of being arrested or intimidated into silence. This is partly due to the ever-changing political dynamics and the hostile environment towards those who speak out against the government. Harassment and threats against HRDs are rampant and HRD's facing most harassment, are those engaged in governance and rule of law related advocacy. Authorities continue suppressing the right to freedom of expression and media freedom through arbitrary regulation, intimidation, harassment, violence and use of oppressive laws.

Background to the case

On Saturday, 21 December 2019, Fumba Chama, popularly known as Pilato, a Zambian human rights defender and musician, was arrested for unlawful assembly in violation of the Public Order Act, due to his hosting of a youth forum which aimed to raise awareness about governance, corruption and civic responsibility.

Upon hearing the news of Pilato's arrest, fellow HRDs, Laura Miti and Bornwell Mwewa, from the Alliance for Community Action (ACA), travelled from Lusaka to Livingstone to visit Pilato and to obtain information from the Zambian Police on the reasons for his arrest. On arrival at the police station, Laura Miti was accused of using her cell phone to document footage of the police and her phone was forcibly removed from her. She made immediate enquiries as to why her phone was removed and the police proceeded to arrest and charge her with assault on a police officer and disorderly conduct. Bornwell Mwewa was present and witnessed the situation and proceeded to question why Miti was being arrested. This resulted in him also being arrested and charged with assault of a police officer and disorderly conduct.

On Monday, 23 December 2019 all three HRD's were brought to Livingstone Magistrates Court and released on bond. On Monday, 13 January 2020, Miti and Mwewa appeared in court where several police witnesses gave testimony. Subsequently, on the 11th and 13th March, Miti and Mwewa appeared in Livingstone Magistrates Court, where several other witnesses gave testimony. At this time Pilato had not been formally charged and he continued to travel to Livingstone to extend his bail. On 20 July 2020 Miti and Mwewa appeared in court to give testimony in their defence. Judgement was handed down on 7 September 2020.

Parties to the Case

The accused are human rights defenders, Laura Miti and Bornwell Mwewa who were charged by the State with the assault of a police officer and disorderly conduct.

Legal arguments before the court

The accused persons Laura Miti and Bornwell Mwewa were charged with three counts.

In the first count, the accused were both charged with disorderly conduct at the polies station contrary to section 60(1) of Zambia Police Act, Cap 107 of the laws of Zambia. In the second count Laura Miti was charged with assault on a police officer contrary to Section 250 (b) of the Penal Code, Cap 87 of the laws of Zambia. In the third count Bornwell Mwewa is charged with assault on a police officer contrary to section 250 (b) of the Penal Code, Cap 87 of the laws of Zambia.

Laura Miti and Bornwell Mwewa both pleaded not guilty in all three counts.

The onus was on the prosecution to prove the guilt of the accused persons beyond reasonable doubt. The state was required to prove that the accused person's conduct at the police station was inappropriate, and that Laura Miti assaulted a police officer.

The state called six witnesses. The witnesses all gave contradictory statements. Honourable Mulalelo stated the following:

“The dissimilarities of the prosecution witness testimonies make it unsafe to convict the accused persons and leaves doubt with regards to what they perceived. The prosecution has failed to prove their case against the accused beyond a reasonable doubt.”

Status of the case

On 7 September 2020, the two accused were acquitted of all charges against them. The charges against Pilato were also dropped.