Editorial Note

O’Brien Kaaba
University of Zambia

Kafumu Kalyalya
Southern African Institute for Policy and Research

Follow this and additional works at: https://scholarship.law.cornell.edu/scr

Part of the African Studies Commons, Courts Commons, and the Jurisprudence Commons

Recommended Citation
Kaaba, O’Brien and Kalyalya, Kafumu (2023) "Editorial Note," SAIPAR Case Review. Vol. 6: Iss. 1, Article 3. Available at: https://scholarship.law.cornell.edu/scr/vol6/iss1/3

This Prefatory Matter is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in SAIPAR Case Review by an authorized editor of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.
Editorial Note

We are glad to present Volume 6 Issue 1 of the Saipar Case Review (SCR). This edition of the SCR involves discussion of 4 cases.

First, Digashu and Another v GRN and Others; Seiler-Lilles and Another v GRN and Others: Digashu marks the first time the Namibian Supreme Court recognized same-sex relationships, even if it restricted that recognition to cases where the parties contracted a same-sex marriage outside Namibia. This landmark decision, therefore, sought to shift how Namibians should understand equality. To a certain extent, it validates and protects these relationships, in any event laying the foundation bricks, albeit shaky, on which future courts could advance LGBTQ+ rights in Namibia.

Second, Sinyolo Muchiya v The People: The decision by the Court of Appeal is progressive and must be celebrated as it shows sensitivity towards women, who are often the victims of sexual assault. It represents a remarkable appreciation of the Golden Triangle in the criminal justice system. The Golden Triangle emphasizes the need for fairness on all the three facets of the criminal justice: the accused, the victim, and the public. That is, the Court must triangulate the accused’s right to a fair trial; the need to protect victims from re-victimisation; and the public interest to ensure fair trial and protection of victims. It is a recognition that while the rights of the accused are paramount to secure a fair trial, it is also crucial that the rules of evidence operate to protect and support victims of crime from secondary victimization.

Third, James Kapembwa v The People Appeal: This is a case which implores judges from the traditional and mechanical application of the law and critically engage with the purpose for which the law against sexual offences such as defilement was created. However, this engagement should not be done in isolation but must be at idem with the social structure. By doing this, judges will remain cognizant of the fact that their judgments have the power to reconstruct the entrenched conceptions around the nature of sexual offences and deter would be perpetrators of sexual offences.

Fourth, Liebherr Zambia Limited v. Cleopatra Ng’andu Mandandi: This is a case in which the Court of Appeal missed a golden opportunity to provide critical guidance on an aspect of employment law, particularly in terms of the recently enacted Employment Code Act which in my view transforms the common law normal measure of damages due to the abolishment of the common law right to terminate with notice and for no reason.

We hope you enjoy this edition of SCR.

O’Brien Kaaba and Kafumu Kalyalya
Editors

---

1 ibid [134].
2 John Hatchard and O’Brien Kaaba, Principles of the Law of Evidence in Zambia (Juta, 2022) 14