

Private prosecutions in Zanzibar

Jamil Ddamulira Mujuzi

Abstract

In this article, the author deals with the question of private prosecutions in Zanzibar. The following issues are discussed: locus standi to institute a private prosecution; appeals in cases of private prosecution; the need for the private prosecutor to have a prima facie case before instituting a private prosecution; whether the DPP has to decline to prosecute before a private prosecution is instituted; the costs for conducting a private prosecution; the costs in the event of a successful or unsuccessful private prosecution; and the DPP's intervention in private prosecutions.

I. Introduction

In Zanzibar, private prosecutions are governed by several laws.¹ These are the constitution,² the Criminal Procedure Act,³ the Office of the Director of Public Prosecutions Act, and the Prosecutions Act.⁴ Research shows that there is no reported or unreported case of a private prosecution in Zanzibar.⁵ The laws on private prosecutions in Zanzibar raise interesting issues that in practice are likely to provide challenges for the Director of Public Prosecutions (DPP) and the courts. These issues are discussed in this article and proposals are made on how some of the challenges could be dealt with should they arise in practice. In the light of the fact that some of the issues which are yet to be dealt with in practice in Zanzibar have been dealt with in other countries or jurisdictions, this article is enriched by referring to legislation or jurisprudence from these jurisdictions, inter alia, to suggest ways through which the private prosecution regime in Zanzibar could be strengthened.

In this article, the author deals with the following issues relating to private prosecutions in Zanzibar: locus standi to institute a private prosecution; appeals in cases of private prosecution; the need for the private prosecutor to have a *prima facie* case before instituting a private prosecution; whether the DPP has to decline to prosecute before a

¹ Article 2(1) of the Constitution of the United Republic of Tanzania provides that 'The territory of the United Republic consists of the whole of the area of Mainland Tanzania and the whole of the area of Tanzania Zanzibar, and includes the territorial waters.' The Constitution of Zanzibar also draws a distinction between Tanzania Zanzibar and Mainland Tanzania. See Articles 69(1)(d), 101(1)(a) and 101(3).

² The Constitution of Zanzibar, 1984.

³ The Criminal Procedure Act, Act No.7 of 2004.

⁴ Office of the Director of Public Prosecutions Act, Act No. 2 of 2010.

⁵ In an email dated 21 February 2017 (on file with the author), The Office of the Registrar, High Court Zanzibar, informed the author that no private prosecution case had ever been instituted in Zanzibar since the enactment of the 2004 Criminal Procedure Act.

The DPP's powers under the Criminal Procedure Act on the issue of private prosecutions are less intrusive compared to his powers under the Prosecutions Act. This creates some ambiguity with regards to which law actually governs private prosecutions in Zanzibar. It is now up to the courts, should the issue arise, to determine which of the laws should govern private prosecutions. In resolving this issue, the courts could invoke the 'later in time' rule of statutory interpretation.¹⁴³ The legislature may also have to repeal section 102 so that private prosecutions are governed by the Prosecutions Act.

IV. Conclusion

In this article, the author deals with the question of private prosecutions in Zanzibar. The following issues are discussed: *locus standi* to institute a private prosecution; appeals in cases of private prosecution; the need for the private prosecutor to have a *prima facie* case before instituting a private prosecution; whether the DPP has to decline to prosecute before a private prosecution is instituted; the costs for conducting a private prosecution; the costs in the event of a successful or unsuccessful private prosecution; and the DPP's intervention in private prosecutions. It is recommended, inter alia, that section 102 of the Criminal Procedure Act may have to be repealed so that private prosecutions are exclusively governed by section 15 of the Prosecutions Act.

¹⁴³ This rule has been invoked by courts in some African countries. See for example, *Nhlapo v. S* 2012 (2) SACR 358 (GSJ) para. 23 (South African High Court); *Hodoul v. Kannu's Shopping Centre* [2007] SCSC 126 (Supreme Court of Seychelles); *Transnamib Limited v. Poolman and Others* (SA 6/99) [1999] NASC 4 (17 November 1999) (Supreme Court of Namibia); *NIMR and Chapman (Pvt) Ltd and Others v. Zimbabwe Electricity Supply Authority* (Case No. HC 31/05) [2005] ZWBHC 8 (27 January 2005) (High Court of Zimbabwe).