

- 1. Claimant: All Claimants
- 2. Name of Witness: S. Maik
- 3. No of Statement: 4
- 4. Exhibits: 4
- 5. Date: 12 July 2010

IN THE HIGH COURT OF JUSTICE

Claim No: HQ08X01180
HQ08X01416
HQ08X03220
HQ08X01686

QUEEN'S BENCH DIVISION

BETWEEN

- (1) BISHER AL RAWI
- (2) JAMIL EL BANNA
- (3) RICHARD BELMAR
- (4) OMAR DEGHAYES
- (5) BINYAM MOHAMMED
- (6) MARTIN MUBANGA

Claimants

- and -

- (1) THE SECURITY SERVICE
- (2) THE SECRET INTELLIGENCE SERVICE
- (3) THE ATTORNEY GENERAL
- (4) THE FOREIGN AND COMMONWEALTH OFFICE
- (5) THE HOME OFFICE

Defendants

Exhibit 'SM20'

This is the exhibit marked 'SM20' referred to in my fourth witness statement.

Signed



Dated12/07/10.....

From: [REDACTED]
 Sent: 15 August 2002 10:24
 To: [REDACTED]
 Cc: [REDACTED]
 Subject: [REDACTED] : FW: Martin Mubanga - request for Mutual Legal Assistance

Please see e-mail below from the DHM in Lusaka.

We have been asked to arrange co-operation with the Zambians over prosecuting/investigating Mubanga. We need to think carefully about how we handle it, I would have thought a prosecution in the UK is going to be hampered by technicalities. I wonder if should consider flagging these potential problems up to the appropriate authorities.

- Mubanga is a British passport holder and has British Nationality. His family are in Britain and we are treating him as British at G-Bay.
- As an apparent 'dual national' Mubanga was entitled for us to try and get consular access (as was his sister arrested at the same time and then released) in accordance with our stated policy. We didn't seek consular access in Zambia, which meant we broke our policy despite us knowing there was a significant question mark over the Zambian aspect of his nationality. Zambia is not a signatory to VCCR though and there is no bi-lateral consular convention.
- [REDACTED]
- [REDACTED] we are going to be open to charges of a concealed extradition.
- This isn't to appear negative. [REDACTED]
- Out of interest Mubanga's sister who also holds the same nationality as him, (British with a Zambian nationality which appears doubtful) was deported from Zambia after his transfer. You can't deport your own national so it follows the Zambians are going to say Mubanga is also British and has no Zambian nationality.

regards,

[REDACTED]
 Desk Officer
 Special Cases, Consular Division

-----Original Message-----

From: [REDACTED]
 Sent: 14 August 2002 15:51
 To: [REDACTED] (London); [REDACTED]
 Subject: FW: Martin Mubanga - request for Mutual Legal Assistance

[REDACTED]
 I would be grateful for your advice on a response to Lusaka. From a registry search I note that you have both been involved in the Guantanamo Bay case in which case you might be better placed to respond than me.

Thanks for your help.

[REDACTED]
 Desk Officer Angola, Zambia, Sao Tome and Principe
 Foreign and Commonwealth Office
 Telephone (direct) [REDACTED]
 Fax [REDACTED]

19-AUG-2002 16:43 FROM [REDACTED]

TO

P. 04

-----Original Message-----

From: [REDACTED] usaka -Conf
 Sent: 13 August 2002 10:47
 To: [REDACTED]
 Subject: Martin Mubanga - request for Mutual Legal Assistance

I first tried to send this to you last week, but looking back at my records, I don't think you received it - we had a temporary e-mail glitch.

Apologies for writing to you on this in the first instance, but to be quite honest I was not quite sure to whom I should send it. I suspect it may fall somewhere between CTPD and Consular Division.

I am not sure how much you know about Martin Mubanga - a dual Zambian/UK national who was detained in Zambia earlier this year and then removed by the Americans to Guantanamo Bay.

Mubanga entered Zambia on his Zambian passport, and we were clearly instructed by London to take no responsibility for him, though Consular Division wanted us to seek Consular access. Had we done so, the Zambians, who do not recognise dual nationality, would have promptly handed him over to us. I did a telegram (our 123) to [REDACTED] in Consular Div outlining the difficulties under which we had been placed by contradictory instructions from FCO. The case also put the Zambians in a difficult position.

I have now received (by DHL) a request from the CPS, via the UK Central Authority in the Home Office, for Mutual Legal Assistance from the Zambians in pulling together the case to prosecute Mubanga in the UK for treason.

The High Commissioner is concerned there might be some contradictions in our position. Eg: here we treated Mubanga as a Zambian national, and we are now treating him as a UK national. I suspect the answer is that he has been treated in the same way that any dual national would be treated in these circumstances - as a national of that country in the country of his second nationality, and as a UK national for the purposes of trying him in the UK (though what is he being treated as at Guantanamo Bay?)

[REDACTED] also wondered if the UK should ask that he be tried in the US rather than in the UK. I have been at least partly following this issue in the media, and thought there had been some sort of US court ruling which effectively meant that Guantanamo Bay inmates could only be tried by a US military tribunal or in the country of their nationality (I could easily be wrong). But grateful if someone could clarify this.

And one further point concerns us. The MLA request assumes Mubanga was arrested here - he was not, he was only detained (we made this clear throughout).

But despite all the questions/reservations, we are assuming we should do as the CPS ask. I propose to execute the request as we would normally do - via the MFA. But it will cause the Zambians some difficulties, and may be a thorn in our relationship - especially if they come in for any criticism eg in the media.

There may be something we can do to encourage co-operation - eg in permitting Anti-terrorist squad officers to be present at interviews here with some of Mubanga's associates (also part of the request). But we need to be aware this will not necessarily be easy.

If you would like me to send you a copy of the MLA request, I will airtel it

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[REDACTED] Lusaka -Conf

From: [REDACTED] (London)
Sent: 16 May 2002 19:48
To: [REDACTED] Lusaka -Conf
Subject: High profile consular case.

Thanks for your message. I'm sorry if we appear to be misinterpreting your messages: we really don't understand what has been going on, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] We potentially had a responsibility for his welfare.
[REDACTED]

[REDACTED]
[REDACTED] Neither CTPD or Thames House can understand why security considerations would prevent you from explaining this. Content for you to send me a personal secret telegram explaining this if you would prefer. We will then at least be able to formulate a response to any further questions about this. Even better, of course, we all hope that interest in it will die away completely.

[REDACTED]
16/5/02

[Redacted] Lusaka -Conf

From: [Redacted] Lusaka -Conf
Sent: 17 May 2002 08:33
To: [Redacted] (London)
Subject: RE: High profile consular case.

This is getting ridiculous. What disturbs us most here is the determination to blame us for the schizophrenic way in which policy on this whole case was handled in London. I will gladly send you a personal secret telegram - spelling out exactly the constraints under which were placed by edicts from London [Redacted] - of which you, or at least CTPD, must surely be aware. These placed us in an impossible position. But it will not be today, as I have several other pressing priorities and will not be in the office much.

[Redacted]

[Redacted]. I repeat, yet again, that the person concerned at no time requested any consular assistance from us.

[Redacted]

-----Original Message-----

From: [Redacted] (London)
Sent: 16 May 2002 19:48
To: [Redacted] Lusaka -Conf
Subject: High profile consular case.

Thanks for your message. I'm sorry if we appear to be misinterpreting your messages: we really don't understand what has been going on, [Redacted]

[Redacted] We potentially had a responsibility for his welfare. [Redacted]

[Redacted]

[Redacted] Neither CTPD or Thames House can understand why security considerations would prevent you from explaining this. Content for you to send me a personal secret telegram explaining this if you would prefer. We will then at least be able to formulate a response to any further questions about this. Even better, of course, we all hope that interest in it will die away completely.

[Redacted]
16/5/02

PRIOR MUBANGA / ECG 12210722 2012
PERU... MUBANGA

SUMMARY

1. Conflicting instructions and expectations on this case placed us in an impossible situation. We cannot always have our cake and eat it.

DETAIL

2. Our exchange of e-mails refers. The following is a summary of the Mubanga case.

3. Mubanga is a dual national, who entered Zambia on his Zambian passport.

[REDACTED] But instructions from London were unequivocal. We should not accept responsibility for, or take custody of him. This was subsequently reinforced by the message from No 10 that under no circumstances should Mubanga be allowed to return to the UK.

[REDACTED] And it became clear that if we requested consular access [REDACTED] thereby de facto acknowledging him as a UK national, he would have been handed over to us. This would have gone against all other instructions from London.

4. [REDACTED] We had also decided we should speak to the Permanent Secretary of the MFA (the Head of Consular Department was not an appropriate contact in this case - [REDACTED] But before the PS was available to see me, Mubanga was removed from Zambia. We could not in any case have requested formal consular access. Chapter 1.3 of the Consular handbook refers.

5. [REDACTED]

COMMENT

6. On the face of it, I am sure Consular Division might like to interpret this story to mean we did not do enough to seek access to Mubanga. But apart from the fact that Mubanga was a dual national in the country of his second nationality, our hands were tied by policy directed from London.

[REDACTED] Different action by us would in all likelihood have resulted in Mubanga being delivered to our doorstep.

7. We fully agree with the basic tenet that any UK national, no matter what they are alleged to have done, has a right to Consular assistance. But the handling of the Mubanga case placed us in an

impossible to [redacted] One half of the FCO said we should not take responsibility for [redacted] and the other half said we should. We need to realise what is attractive as it may seem, we cannot always play things all ways. We need co-ordinated thinking to avoid such dilemmas arising again, other posts having to face the difficulties we have had to face, and any UK national having to go without the consular protection to which they are entitled.

8. You may wish to show this to CTPD.

[redacted]

YYYY
MAIN 0
SINGLE COPIES
CONSULAR D// [redacted] 0
CTPD// [redacted] 0
[JC] 0

SVMDAN 0294

[redacted]