

**THE PEOPLE v EVERISTO BUNDA, ZEBRON MUMBA AND EVERINE KAMWATA  
(1990 - 1992) Z.R. 194 (H.C.)**

HIGH COURT  
M. E. MWABA, COMMISSIONER  
27TH JANUARY, 1992  
(H.N./17/91)

**Flynote**

Criminal law and procedure - Murder - Common design - Motive - Proof of malice aforethought - When applicable.

Criminal law and procedure - Sentence - Extenuating circumstances - When available.

**Headnote**

The accused were charged with the murder of a fellow villager in Ndola rural. The basic facts were that a day before the incident, a fight took place between the deceased and one of the accused. As a result the following day the accused in the company of the co-accused went in search of the deceased and, having found him at his home, chased him into the nearby bush uttering threats to inflict fatal injuries. Shortly afterwards the deceased was found dead and the accused attempted to run away and had to be physically apprehended. They denied killing the deceased or acting in pursuance of a common design.

**Held:**

- (i) The facts of the case indicated the existence of motive as proof of malice aforethought of motive and the killing of the deceased as part of a common design, therefore all three accused were guilty of murder.
- (ii) Evidence of the deceased having started a fight may be regarded as extenuating circumstance for purposes of sentencing under s.201(1) of Act 3 of 1990.

**Cases referred to:**

- (1) R. v Ball [1911] A.C. 47.
- (2) Ernest Mwaba and Others v The People (1987) Z.R. 19.
- (3) Mohan and Another v R. [1967] 2 All E.R. 58.

**Legislation referred to:**

Act 3 of 1990, s.201(1).

For the State:

K. Lwali, Assistant. Senior State Advocate.

For first and second accused:

P. Mutale, Legal Aid Counsel.

For the third accused:

J. M. Kapasa, Messrs Kapasa and Co.

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**Judgment**