

IN THE HIGH COURT FOR ZAMBIA
AT THE KITWE DISTRICT REGISTRY
(CRIMINAL JURISDICTION)

HK/59/2011

BETWEEN:

THE PEOPLE
V
JAMES KAWANDA

Before the Hon. Mr. Justice I.C.T. Chali in Open Court on the **29th** day of **August**,
2011

For the State: Mr. M.C. Hamachila – State Advocate

For the Accused: Mr. Chali – LAZ

RULING

Cases referred to:

1. Mwewa Munoro v. The People (2004) Z.R. 207

The Accused was charged with two Counts of vandalism contrary to Section 314D(1) and (2) (a) of the Penal Code Chapter 87 of the Laws of Zambia.

The particulars of the offence in the first Count were that the Accused, on a date unknown but between the 9th day of December, 2010 and 10th December, 2010 at Kitwe in the Kitwe District of the Copperbelt Province of the Republic of Zambia, jointly and whilst acting together with other persons unknown, did vandalize and steal an electric cable at William Substation number 473 9th Street Nkana West Kitwe by way of cutting valued at K6,309,216 the property of Zambia Electricity Supply Corporation Limited.

In the second Count the particulars of the offence were that the Accused, on the 21st December, 2010 at Kitwe in the Kitwe District of the Copperbelt Province of the Republic of Zambia jointly and whilst acting together with other persons unknown, did vandalise and did steal an electric cable at Substation number N38 Lantana Street Nkana East Kitwe by way of cutting valued at K2,103,072 the property of Zambia Electricity Corporation Limited.

When called upon to plead to charges, the Accused denied the charges.

At the close of the case for the prosecution during which I heard eight witnesses, Mr. Chali applied for time to file a written submission of no case to answer. But, up to the time of delivering this Ruling I had not seen any such submission. However, I proceeded to consider the evidence on the record and to decide whether the prosecution had made out a case sufficiently to require the Accused to make defence.

On the Supreme Court authority in the case of **Mwewa Munoro v. The People (2004) Z.R. 207**, the court can make a finding of no case to answer if there is no evidence to prove the essential elements of the offence alleged and therefore the accused's guilt, or when the evidence adduced by the prosecution has been so discredited that no reasonable tribunal can safely convict on it.

It is essential in every criminal case for the prosecution to prove first and foremost and beyond reasonable doubt that the Accused was the perpetrator of the alleged offence. There is no onus on the Accused to prove his innocence.

On the evidence before me I have no doubt on the dates mentioned, ZESCO lost electric take off cables at the two substations through acts of vandalism.

In respect of Count 1, the evidence came from PW2 ABEL BANDA a ZESCO Senior Electrician and PW4 a ZESCO Security Inspector both of whom visited the scene at William Street shortly after the incident and confirmed the theft and power outage in the area. In respect of Count 2, PW1 HECTORATE KACHENGO a ZESCO Regional Security Inspector and PW3 DENNIS SICHILONGO an Electrical Technician also visited the scene at Lantana Street very shortly after the incident and confirmed the theft. In respect of both substations, arrangements were made by ZESCO personnel to replace the cables and to restore power to the consumers in the affected areas.

The problem became one of identifying the perpetrators of the crime. From the evidence of PW5 Detective Sergeant MOSES NKANDU of Kalulushi Police Station, it appears that police had suspicions that the Accused was involved in those acts of vandalism. Police seemed to have had information about Accused's involvement in acts of vandalism in the Chambishi and Chibuluma Township areas. Hence upon receiving information of the suspect's whereabouts on 21st December, 2010 around 21:00 hours PW5 and other officers proceeded to apprehend the Accused from Chibuluma Township and to detain him in connection with the two acts of vandalism the subject of this case.

The prosecution evidence is that when Accused was interviewed in connection with those acts of vandalism, he owned up and mentioned other people with whom he was involved.

Firstly, the circumstances of his alleged confessions were not revealed. Secondly, his alleged accomplices denied any involvement in those acts in Kitwe.

Further PW7 Detective Inspector SIMON CHUSHI the Scenes of Crime Officer and PW8 Detective Constable JORDAN MUBIANA the arresting officer both alleged that the Accused led them to the two Substations after he had confessed to having vandalized them. However, PW7 and PW8 did not show under what circumstances he led them there. My view is that it was not the Accused who led them to the two affected substations. The officers already had information as to where the vandalism they were investigating had been committed. They simply wanted to "**paste**" the Accused's face to those acts.

It is worth noting in this regard that at the time the Accused allegedly led PW7 and PW8 to the two scenes of vandalism, his face was swollen and his shirt was torn. This is evident from the photographic evidence Exhibit P2 produced by PW7. Further, the condition of the Accused as stated was confirmed by PW7 and PW8 in their evidence. But none of them gave any explanation as to how the Accused had sustained the swollen face and torn shirt. In the circumstances,

I must reject the evidence that it was the Accused who led the Police officers to where he had committed the acts of vandalism.

Police also received information that Accused had sold the copper wires from the vandalism cables to Central Recycling. However, according to PW6 MBITA SITANZYE who worked for Central Recycling, the company bought some scrap metal from the Accused on 10th December, 2010 which was a mixture of copper and other metals. That scrap had been delivered in a small sack and included wires and weighed about 15 kg.

My view of this evidence is that it could not have been the copper from the cables stolen on 21st December, 2010 the subject of the second count. Further, PW6 was not emphatic as to the quality of product Accused sold on 10th December, 2010 so as to have a reasonable connection to the cables stolen in Count 1 of the indictment.

Lastly but not the least, the prosecution witnesses said the Accused was not found with any copper cables or wires that could be linked to the acts of vandalism at the two substations.

At the end of the evidence for the prosecution, I do not find that a reasonable tribunal can safely convict on the evidence on the record. I accordingly find the Accused with no case to answer. The two charges against the Accused are both dismissed and he is acquitted forthwith.

Delivered at Kitwe in Open Court this **29th** day of **August**, 2011

I.C.T. Chali
JUDGE

