

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

HKS/44/2012

B E T W E E N:

THE PEOPLE

VS.

BEDINIGAL KAPESHI (ACCUSED 1)

BEST KANYAKULA (ACCUSED 2)

**Before the Honourable Mrs. Justice Judy Z. Mulongoti in Open
Court on the 12th November, 2012**

**For the People : Mr. K.I. Waluzimba, State Advocate, DPP's
Chambers**

For the Accused: Mr. E. Mazyopa, Legal Aid Board

J U D G M E N T

CASES REFERRED TO;

1. *R VS. TUBERE OCHEN* [1945] 12 EACA 63
2. *DICKSON SEMBAUKE AND ANOTHER VS. THE PEOPLE* [1988-89] ZR 144 [SC]
3. *KAMBARAGE MPUNDU KAUNDA VS. THE PEOPLE* [1990-92] ZR 215 [SC]
4. *GEORGE WAMUNDILA VS. THE PEOPLE* [1978] ZR 151
5. *MOOLA VS. THE PEOPLE* SCZ JUDGMENT NO. 35 OF 2000

LEGISLATION REFERRED TO:

1. *Section 200 of the Penal Code, Chapter 87 of Laws of Zambia*

The accused **BEDINIGAL KAPESHI** aged 28 and **BEST KANYAKULA** aged 20, were indicted on two counts of **MURDER** contrary to Section 200 of the Penal Code.

In relation to count one, the particulars of the offence were that the accused, on the 30th day of October, 2011 at Kasempa in the North Western Province of Zambia, jointly and whilst acting together with others unknown murdered **PARDON MUNANGA**.

In count two, the particulars of offence were that the accused, on the 30th day of October, 2011, at Kasempa jointly and whilst acting together with others unknown, murdered **EDSON MASONDE**.

When the charges were read and explained to the accused, they pled not guilty. Thus, it is encumbered upon the prosecution to prove all the essential ingredients of the offence of murder, beyond all reasonable doubt. An accused does not bear the burden to prove his innocence and should be convicted on the strength of the prosecution's evidence. Arising from section 200 of the Penal Code, the following are the ingredients:

- (1) That there was death*
- (2) The cause of such death was an unlawful act or omission*
- (3) The death was caused with malice aforethought*
- (4) The accused are responsible directly or indirectly in causing the death of the deceased.*

In support of its case, the prosecution led evidence from six witnesses hereafter referred to as PW1, PW2 etc.

PW1 **EDWARD MASONDE** 54, of Solwezi, testified that on 31st October, 2011, he received a phone call from Bonnie Munanga who informed him that Edson Masonde, (PW1's father) and Pardon Munanga, (Bonnie's father), had been murdered in Mukunashi area of Kasempa. PW1

travelled to Kasempa and confirmed the news. On 1st November, he identified the bodies of his father and uncle. He also attended the postmortem. He observed that his father's body had an injury on the back of the head, collar bone and lips. He had burn wounds on the chest and the whole body appeared swollen.

He informed the court that his father stayed with him in Solwezi and had travelled to Kasempa for medical review and to visit his cousin, Pardon Munanga

PW2 EVELYN MUNANGA 55, of Mukunashi area of Kasempa, testified that on 29th October, 2011, there was a funeral for one Kabinga at Mukunashi. Then a Mr. Kamukwamba decided that some traditional medicine, locally known as "*Mumone*" be administered on the coffin of Kabinga. Some of the people present at the meeting were Accused 1, Danny Kanyakula, Nephers Sakambwela and Jebo Kawisha. After administering "*mumone*" on the coffin, it was picked up by Jebo Kawisha and Saddam Kanyakula. They moved with the coffin and headed to Pardon Munanga's place.

According to PW2, pall bearers were exchanged along the way and these included Bauleni, Kazubo, Yossie Kipuluka and both the accused, Bednigal Kapeshi and Saddam Kanyakula. She identified Accused 1, as Bedinigal Kapeshi and Accused 2 as Saddam Kanyakula. The court was told that there were many people following the procession and she was in that group. She informed the court that the late Kabinga and Pardon Munanga were neighbours and Pardon Munanga was her elder brother.

She further testified that when the group got to Munanga's house, they assaulted him with sticks. They broke his bones and plucked out his eyes. They killed him with everyone watching. When his relatives tried to stop the beatings, they too were threatened with death. The group left Munanga lying dead on the ground and went to the next village to kill Edson Masonde. PW2 and others found Masonde buried halfway with his head facing the ditch. His lips were broken.

According to PW2, the same people who had killed Munanga killed Masonde. PW2 also informed the court that Mr. Edson Masonde was her uncle. She also testified that she had known both the accused for many years.

In cross examination, she informed the court that there were lots of people at Kabinga's house. She said Nephers Sakambwela, Kazubo, Jebo Kawisha and Daifon Kamukwamba were the first pall bearers. When they reached the road, the first and second accused, Bauleni and others took over. And that she found Mr. Masonde lying dead with his face/head in a hole. She never witnessed Masonde's beating or assault.

Under further cross examination, it was her testimony that only the relatives of the deceased normally participate in "*Mumone*" ceremony and that Accused 1 was the deceased's (Kabinga) young brother. She said Munanga was killed because the "*Mumone*" revealed that he had bewitched Kabinga.

When re-examined, PW2 testified that she did not witness Masonde's killing but she saw his assailants coming from where he was.

PW3 MWABA MUSONDA 22, the grandson to the deceased Pardon Munanga testified that on 27th October, 2011, he was in Mukunashi area when he learnt of Kabinga's demise. He last saw Kabinga on 26th October, 2011, when they had some drinks together. His grandfather had arrived from Kasempa town that day and had joined him and Kabinga in having drinks at Shapewa's village. Kabinga had said to Munanga that people did not like him in the village and planned to kill him. He advised him to settle in Kasempa town.

The following morning, PW3 learnt of Kabinga's death. He went to the funeral gathering at Kabinga's house where he found the body in the shelter. Later the body was moved into the house. On the third day, they prepared for burial. PW3, together with Best Kanyakula who is Accused 2, Mayonde, Sakambwela, Sepetana and Daifon went to make the coffin.

They were later joined by Bedinigal Kapeshi who is Accused 1. Then Daifon Kamukwamba decided to put medicine on the coffin saying it would find or locate Pardon Munanga since he had just returned to the village and was therefore responsible for Kabinga's death. The identical twins Best and Saddam Kanyakula lifted the coffin and the group returned to the late Kabinga's house where his body was placed in the coffin.

Robbie Sandala, Jebo Kawisha and others started searching for Pardon Munanga. They had the coffin and pall bearers were also exchanged along the way. These included Best, and Daifon Kamukwamba, etc. They ran to Munanga's house with the coffin. When they got there, they pushed the door which was locked and it was opened. PW3 had

followed the group. When they entered the house, they searched for charms but found nothing. Then they followed Mr Munanga who stood outside by the roadside. Then the group said to the coffin *"it was Munanga who killed you"*. The pall bearers at this point included Bedinigal Kapeshi, Jebo Kawisha etc. Mr. Munanga refused bewitching the deceased but the group did not listen to him. Robbie Sandala stripped him of his shirt and leather jacket. They took him to his house and made him sit on the mortar. The ones who did this were both the accused, Kamukwamba, Sandala etc.

PW3 tried to intervene and pleaded with the group to ask his grandfather if he had killed Kabinga. The group was annoyed and attacked him accusing him of supporting his grandfather. They beat him with sticks but he managed to run away.

When he returned, he found that his grandfather had been killed. They had burnt him, his eyes were gouged, he sustained a deep injury on the head, all his ribs were broken except for two on the right, his collar bone was also broken. He had burn wounds on the thighs and arms.

The court heard that PW3's other grandfather Edson Masonde, who lived about seventy five metres from Munanga, was also killed. When PW3 returned from hiding, he found the other relatives had gone to collect Masonde's body. When the body was brought, he noticed that he was hyperventilating, blood was oozing from the nose, a deep injury on the head and some chest injury.

PW3 identified the accused by touching. The first accused was identified as Bedinigal Kapeshi and Best Kanyakula Accused 2. He clarified that

Saddam who is the second accused's identical twin brother was not before court. He said he had known the accused for three years and in response to a question from the court, he said he could tell the twins apart because Saddam looked slightly older than Best.

In cross examination, PW3 testified that he saw both the accused together with Saddam, Daifon Kamukwamba and others beat up the deceased Pardon Munanga. This is why they chased and beat him also when he tried to intervene.

Under further cross examination, he testified that he could not state how many people were present that day but it was an angry mob and the people whose names he mentioned were in the forefront. He confirmed that the group suspected his grandfather Munanga of bewitching the late Kabinga.

When he re-examined, he reiterated that he saw Kamukwamba, Sandala, Kanyanga, both the accused, Saddam, and Kawisha assault his grandfather before he was chased.

PW4 BONIFACE KAKEZA, 58, of Mukunashi in Kasempa testified that on 29th October, 2011, which was a Sunday, some of the villagers were involved in digging of the grave for the late Kabinga. Then there was also the "*Kikondo*" (literally translated to mean moving coffin in Kaonde language). The "*kikondo*" would point out who had killed the deceased in the coffin. The "*kikondo*" was being done by the first accused, Nephers Sakambwela, Robbie Sandala, Jebo Kawisha, Kazubo, Jikoma Webby, Kanyanga and Best Kanyakula who is the second accused.

The court heard that first medicine was put on the coffin by the first accused. The late Kabinga's father was against the "*kikondo*". However, Sakambwela, the grandfather had insisted. He poured medicine on the coffin, saying "*my grandson, don't sleep, tell us the one who has killed you*". He then hit the stick on the coffin. He summoned the first accused, Sandala, Kawisha and an unknown person to lift the coffin. They ran to Munanga's house where they forced their way into the house after damaging the door. They went to where Munanga was, saying "*we've seen, we will kill*". They said to Munanga, "*say something and say it well*". Munanga said to the coffin "*my nephew, if I have bewitched you, beat me, if not go and rest*".

Then the coffin pushed him a bit. At that moment, the pall bearers were first accused, Sandala, Kawisha and the unknown person. The coffin continued pushing him. The mob said let him sit on the mortar. After he sat, the bearers moved about fifty metres away from Munanga then came charging at him and hit him with the coffin which had nails. He fell to the ground. It hit him about four times. The pall bearers were exchanged but PW4 couldn't recall the others because there were too many people. Other people started kicking Munanga, others hit him with sticks and stones. They took him behind the house and continued assaulting him. The people mentioned were in the fore front and they took plastic bags which they lit and burnt him. After realizing that Munanga had died, they left.

PW4 checked on Munanga and confirmed that he was dead. He stretched his legs and arms. He then decided to go and inform Edson Masonde, their cousin. He said as he was walking to Masonde's, he saw the pall bearers with their coffin coming from where he was headed.

When they met him, they made him stop and one of the women said to him *“confess well, or you shall also die”*. PW4 said to the coffin *“if you came to say bye to me, because we used to chat, go and rest”*. Then the coffin left him.

According to PW4, the group attacked Masonde and he heard them saying *“there goes Masonde, running away”*. Then the young men and the pall bearers followed Masonde and beat him with sticks and stones. It was PW4’s testimony that he was about 100 metres from them but he saw them chasing Masonde. After they left, he checked on Masonde and found him lying with his head leaning on a ditch with a deep head injury. He collected the body and put it together with Munanga’s and alerted the police.

On 1st November 2011, a postmortem was conducted and he identified the body of Munanga. He observed burn wounds, broken jaws and front teeth etc.

He identified the first accused as Bedinigal Kapeshi and the Accused 2 as Best Kanyakula. He said they participated in beating Munanga.

In cross examination, PW4 testified that the group that came from Munanga’s chased Masonde. He confirmed not witnessing the assault of Masonde. He confirmed the group had assaulted the duo because they said they had bewitched Kabinga.

PW5 ONNIE KANYENDA 71, Munanga’s elder sister testified that on 29th October 2011, after Kabinga’s death, medicine was put on his coffin. After that, the second accused and Jebo lifted the coffin to where

Munanga was standing. They followed Munanga with the coffin and made him sit on the mortar. They hit him with the coffin but he was not injured. Then they removed his shirt and Daifon hit him with a stick. Then the first accused's sister hit him with a stick. Then both the accused also picked up some sticks and hit him. They went to the toilet where they fetched black plastic bags which they lit and burnt him.

PW5 was assaulted on the head with a stick by the first accused's sister as she embraced Munanga's body, crying. The court heard that later PW5 saw the accused coming from Masonde's place saying they had killed a hare.

In cross examination, PW5 testified that the group that killed Munanga also killed Masonde because she heard them saying we have killed a hare which wanted to run away. This proved to her that they had killed him moreso that they were running from the bush. She said not so many people had gone to Masonde's place. Among those who went were the accused, Sandala, Jebo etc. She confirmed the duo were assaulted because they were wizards who had killed Kabinga.

PW6 DETECTIVE INSPECTOR MELELE MUSONDA testified that on 30th October, 2011, he received a report of the murders of Pardon Munanga and Edson Masonde who had been killed by a mob after being suspected of being wizards. When he visited the scene, he found the two bodies lying in the house.

After investigations, the two accused were apprehended and jointly charged with others unknown for the offence of Murder.

In cross examination, PW6 testified that when they visited the scene, they found the village deserted except for the close relatives of the two deceased persons.

The accused were apprehended after a tip off. The second accused was apprehended first from Natsave in Kasempa about a month after the incident. The first accused was apprehended by the neighbourhood officers from another area where he had relocated to.

In a nutshell, that was the case for the prosecution. At the close of which I found the accused with a case to answer.

They opted to give evidence on oath and called no witnesses.

BEDINIGAL KAPESHI, (the first accused), hereafter also referred to as DW1, when called upon to defend himself, denied beating up Pardon Munanga and Edson Masonde. He testified that on 29th October, 2011, his elder brother Winnie Kabinga passed on after being sick for a day. He had complained of abdominal pains. The following day, DW1 in the company of Nephers Sakambwela, Accused 2, and Golden's father went to prepare a coffin. After it was ready they took it to the village where the body was placed inside. Then it was lifted by Sumili and Solo and carried across the road to the late Munanga's place. Then Jebo and Daifon got the coffin and the pall bearers exchanged every so often. When they got to Munanga's the coffin started beating him. According to DW1, Saddam Kanyakula and himself were just watching what was going on. He said he never saw the second accused at Munanga's place.

After that they headed to the grave yard for burial. However, the coffin u-turned and headed to Masonde's place. Before it could reach Masonde's, DW1 saw some people running towards the road and the coffin was taken back to the grave yard.

In cross examination, DW1 testified that both the second accused and Saddam were present at the place where the coffin was prepared. He said PW3 was not there but he was at the village when they took the coffin.

BEST KANYAKULA, hereinafter DW2 also denied participating in the beatings of the two deceased persons. He testified that on 29th October, 2011, after the death of Kabinga, he had gone to the place where the coffin was being made where he met PW3 and Sakambwela. Then Saddam, Jebo and Sakambwela carried the coffin.

At the village Daifon Kamukwamba and Bauleni put the body in the coffin. Jebo Kawisha and Robbie Sandala came to where he was standing with the first accused. Kawisha and Robbie Sandala lifted the coffin and were headed for the grave but the coffin went across the road. It went to his uncle Pardon Munanga's place. They called Munanga and started beating him up. Earlier, they forced open the door to the house by hitting it with the coffin. Mr. Munanga was asked to confess. PW3 tried to intervene to stop the group from attacking his grandfather, but he too was beaten and chased.

The group continued beating Munanga. PW5, his aunt also tried to intervene but was hit on the head with a stick by a woman in the mob.

It was DW2's testimony that he saw people burn and beat up his uncle but he did not know who they were. Later the procession headed to the grave yard but it u-turned. Then suddenly, DW2 saw some people shouting "*a hare' a hare*", unbeknownst to him they had killed Masonde. He said PW4 told him that the group had killed Masonde.

In cross examination, DW2 testified that some of the pall bearers were Sandala, Jebo, Daifon and Bauleni. He said he was with the first accused when Munanga was assaulted but not when he saw a group of people coming from the bush where Masonde was assaulted.

That was the case for the defence.

The learned State Advocate Mr. Waluzimba submitted, *viva voce*, that the prosecution has proved its case beyond reasonable doubt on both counts. Both Munanga and Masonde died and the murders were witnessed by PW2 to PW4. Malice aforethought had been proved as required by section 204 of the Penal Code as the people who attacked the deceased intended to cause them grievous harm or death.

The testimony of PW2 to PW4 proved that the accused were among the assailants.

The events occurred in broad daylight and the prosecution witnesses were close by and saw everything. The issue of mistaken identity was thus ruled out.

Mr. Waluzimba argued that witchcraft, which was been raised amounts to an extenuating circumstance, which can only serve the accused from

the gallows. He urged the court to convict the accused of murder with extenuating circumstances and set a precedent in this jurisdiction that the courts will not tolerate the practice of kikondo.

The Defence Counsel, Mr. Mazyopa, opted to rely on the evidence on record.

The issue for determination is whether the accused before me, jointly and whilst acting together with others unknown murdered the two deceased persons.

It is indisputable that the two Pardon Munanga and Edson Masendo are dead. This is confirmed by the testimony of both the prosecution witnesses and the accused themselves. The postmortem reports 'P1' and 'P2' also confirm this. Undoubtedly, the first ingredient has been proved beyond all reasonable doubt.

The second ingredient is whether the deaths were caused unlawfully. It is settled law that all homicide is unlawful unless excused by law. The evidence before me reveals that the deceased died as a result of assaults and burn wounds. The postmortem reports 'P1' revealed the cause of death for Pardon Munanga was burning of the body with smoke inhalation. The abnormal findings at examination were burning of approximately 90% of body surface area, moderate bruising of the scalp, extensive bruising of the chest wall, fractures left collar bone plus left ribs and bruising of the left lung. This corroborates the testimony of PW2, PW3, PW4 and PW5 that the late Munanga was assaulted with sticks and burnt with plastics. These witnesses testified that they noticed

head injuries, broken ribs and broken collar bone on Munanga's body as reported in the postmortem report.

There was no other evidence adduced that the deceased died accidentally. Accordingly, the presumption that he died unlawfully has not been rebutted. It is therefore my conclusion that Pardon Munanga died unlawfully and the prosecution had proved this ingredient beyond all reasonable doubt.

The Postmortem Report 'P2' revealed that the cause of death for Edson Masonde was due to injury to the head. The abnormal findings at examination were traumatic subarachnoid intracranial bleeding, extensive bruising under the scalp, 2 x 2cm full thickness wounds to left back of scalp, 2cm full thickness laceration to left side of the mouth, burns on right elbow and left shoulder and fractured ribs 2.9 right side.

This corroborates the testimony of PW2, PW3, PW4 and PW5 that they observed Masonde's body with broken lips as stated by PW2. His head was partially buried in a ditch. According to the witnesses, Masonde was assaulted by the same group that had assaulted Munanga. No other evidence was adduced that his death was accidental. As noted in relation to Munanga, I thus conclude that his death was unlawful.

The third ingredient is that of malice aforethought. To establish it, the prosecution must prove, either that the accused had the actual intention to kill, or to cause grievous harm to the deceased, or that the accused knew that his actions would be likely to cause death or grievous harm to someone.

It is well established that malice aforethought being a mental element is difficult to prove. However, it can be inferred from the surrounding circumstances such as the nature of the weapon used, the part of the body targeted, the manner in which the weapon was used and the conduct of the assailants before, during and after the attack. This was elucidated in the East African case of **R VS. TUBERE OCHEN [1]**. In that case, the appellant was convicted for murder after assaulting the deceased seriously with a walking stick and causing severe injuries from which the deceased died shortly afterwards.

The evidence before me revealed that the assailants were armed with sticks, stones and had hit the deceased with the coffin. As already noted both deceased had burn wounds and there was evidence that they were burnt with plastics. From the conduct of the group that attacked the deceased persons and the group's belief in witchcraft, it is clear that they had malice aforethought.

In the case of **DICKSON SEMBAUKE AND ANOTHER VS. THE PEOPLE [2]**, the Supreme Court observed that **“it is a question of fact whether a reasonable person must know or foresee that serious harm is a natural consequence of throwing someone out of a moving train. If armed with this realisation and foresight, knowing that serious harm could result, an intent founded on knowledge of the probable consequences will be sufficient to satisfy section 204 of the Penal Code”**.

I do concur with Mr. Waluzimba that the people who assaulted the duo intended to cause death or grievous harm as provided in section 204 of the Penal Code.

With their belief in witchcraft, they intended to kill and harm the duo as they did. They ought to have known or foreseen that death or grievous harm would result in their actions of hitting the duo with sticks on sensitive parts of the body. I find that the third ingredient was proved beyond reasonable doubt.

The last ingredient which is the most critical is whether the accused jointly and whilst acting together with others unknown caused the deaths of the duo. The evidence connecting the accused is from PW2, PW3, PW4 and PW5.

Let me state that I found the prosecution witnesses to be consistent and articulate especially PW3, PW4 and PW5. These witnesses did not contradict themselves and accepted, some short comings like the fact that none of them witnessed the beating or killing of Edson Masonde. PW2, PW3, PW4 and PW5 corroborated each other. Their testimony was corroborative to the extent that Accused 1 and Accused 2 were present at Munanga's on the 29th of October 2011 when Pardon Munanga was assaulted. They stated that the accused were among the group leaders. Both were pall bearers together with others like Jebo Kawisha, Daifon Kamukwamba, Nephers Sakambwela, Saddam Kanyakula who is the second accused's twin brother, Kanyanga, Bauleni and others. All of these names were also mentioned by the accused in defending themselves. I therefore, accept the testimony of these witnesses.

PW3, PW4, and PW5 identified both the accused persons in court while PW2 identified the first accused and mistook the second accused for his

twin brother Saddam Kanyakula. This was an honest mistake which is acceptable considering the two are identical twins.

It is trite that identification is aided by factors like visibility, lighting, opportunity for observation prior knowledge of the accused etc. PW2, PW3, PW4 and PW5 all testified that they knew the accused prior to the incident. The accused also confirmed this with the second accused saying the prosecution witnesses were actually his relatives. These prosecution witnesses had also testified that the incident happened during daytime in the morning. Therefore, visibility was good although there were too many people. Thus, I concur with Mr. Waluzimba that the question of mistaken identity does not arise.

I am alive to the fact that PW2, PW3, PW4 and PW5 were all related to the two deceased persons. They are therefore witnesses with a possible interest of their own to serve as elucidated in **KAMBARAGE MPUNDU KAUNDA VS. THE PEOPLE [3]**. However, it is trite law that the evidence of such witnesses can be relied upon where there are special and compelling reasons to do so such as corroboration and lack of motive to falsely implicate the accused.

In **GEORGE WAMUNDILA VS. THE PEOPLE [4]**, it was held that where there is no corroboration of the evidence of a witness with an interest to serve, it is not safe to convict on that evidence.

In casu, I have already noted that the testimony of PW2, PW3, PW4 and PW5 was corroborated by the postmortem reports 'P1' and 'P2'.

It is my considered view that even though they are witnesses with a possible interest of their own to serve, their testimony was corroborated and it is safe to rely on it. Even the testimony of the accused does corroborate these witnesses to some extent. Both accused admitted being present at Munanga's house and witnessing the assault except their implicated others. The second accused's testimony is so identical to the prosecution witnesses except he denied assaulting anyone.

I found the accused's version of what transpired to be an afterthought. I noted the contradictions in their testimony and refuse to accept their versions of what transpired.

I opine that though none of the prosecution witnesses, witnessed the assault of Edson Masonde, there is strong circumstantial evidence to link the accused to his murder. PW4 saw them chasing Masonde while PW5 heard them saying "*we ve killed a hare which wanted to get away*", as they were walking away from the direction of Masonde's place. Then moments later, Masonde was found dead facing a ditch. PW2 also testified that after Munanga's place the accused and others headed to Masonde's place which was a few kilometers away. The second accused also admitted to hearing some people chanting "*we ve killed a hare*".

It is also settled law that, the fact that others may have assaulted the deceased can not relieve the accused of liability. See **ERNEST MWABA AND OTHERS VS. THE PEOPLE [5]**. Thus, in casu, there is circumstantial evidence that the group that assaulted Munanga was seen near Masonde's place. Moments later, Masonde was found dead,

still breathing as testified by PW3 that he was hyperventilating. It is immaterial that no one witnessed the assault or saw the accused assault him. The fact that the accused were part of the group is sufficient to make them liable as canvassed in the Mwaba case, supra.

On the facts and evidence before me, I am inclined to find that the accused jointly and whilst acting together with others unknown, did cause the deaths of Pardon Munanga and Edson Masonde by assaulting them with sticks, inflicting burn wounds and hitting them with a coffin.

It is my considered view that the prosecution has proved its case beyond all reasonable doubt as submitted by Mr. Waluzimba.

The facts revealed a belief in witchcraft. As argued by Mr. Waluzimba, this amounts to an extenuating circumstance. The Supreme Court has elucidated in many cases like **MOOLA VS. THE PEOPLE [5]**, that belief in witchcraft by many communities in Zambia is very prevalent and is held to be an extenuating circumstance.

Accordingly, I find the two accused persons guilty of murder with extenuating circumstances and convict them accordingly.

Delivered in Open Court this **12th** day of **November**, 2012

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Judy Z. Mulongoti
HIGH COURT JUDGE

