

IN THE HIGH COURT FOR ZAMBIA
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

HP/71/2014

BETWEEN:

THE PEOPLE

V

KENNEDY PHIRI



Before the Hon. Justice F.M. Chisanga this.....day of.....2014

For the State: Mr. R. Masempele, State Advocate
For the Accused: Mr. M. Kalela, Legal Aid Board

JUDGMENT

Cases Referred to:

1. George Musupi vs The People Z.R. 291.
2. Libuku vs The People 1973 ZLR P. 345.
3. Banda (Bezaliel) vs The People 1973 ZLR 111.
4. Chibeka vs Regina R & N Law Reports (1959) 1 & 2 P. 476.
5. Kalinda vs The People 1966 ZLR Report P. 33.

The accused stands charged with the offence of Murder contrary to Section 200 of the Penal Code Chapter 87 of the Laws of Zambia.

The particulars of offence are that Kennedy Phiri, on the 25th day of July, 2011 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, did murder one Kennedy Mulenga. The accused has denied the charge and it behoves the prosecution to prove the charge to the required standard.

Five witnesses were called in support of the charge. PW1 was Michael Mulenga, brother of the deceased and a teacher by profession. He testified that on the

25th of July, 2011, he met with his brother, the deceased at around 18:00 hours for about 10 minutes. The deceased thereafter left for Kalingalinga and he left for his home. PW1 was not certain where the deceased was going but suspected that he was going to visit Sabina, his girlfriend.

An hour after PW1 got home, he received a call from his parents asking him where he was. A while later, he received another phone call from a nurse requesting him to go and identify a body. He then went to UTH with his cousin and identified the body of Kennedy Mulenga. It was at the waiting bay awaiting to be taken to the Mortuary. He noticed a deep wound on top of the deceased's head but did not see the rest of the body as it was covered. PW1's sister later joined the duo. The nurse informed them that the body was brought in by a lady and a man and further that they had found the phone of the deceased and contacted PW1 and his parents.

A day later, postmortem was conducted in the presence of PW1 and his cousin who again identified the body of the deceased, Kennedy Mulenga, to the Doctor. He told the court that there were three cuts on the deceased's body; one on the head, one on the Stomach and another on the left thigh. The doctor did not explain the cause of death to the duo.

In cross examination, PW1 said that the deceased did not indicate who he was going to visit in Kalingalinga. PW1 however thought he had gone to visit Sabina, whom he suspected was his girlfriend. He told the court that he did not know who attacked his brother. The deceased's body was taken to the hospital

by unknown persons. He went on to say that when shown the body the first time, he only noticed the wound in the head as only the head was uncovered. He noticed the other wounds on the day the postmortem was conducted.

PW2 was Sabi Phiri of Ngombe Compound in Lusaka. She testified that on the 25th of July 2011 at around 16:00 hours Kennedy Mulenga, her boyfriend, visited her at her home in Kalingalinga. He had come from Ndola where he had gone to visit his parents. She said that the deceased did not stay long as he was going to see his brother, Mike Mulenga. He however later came back at around 19:30 hours. PW2 was at home with her young brother, Alfred Phiri and her son Joshua Phiri.

She told the court that she had been in a relationship with the accused which ended in 2010. They had a child together named Joshua Phiri. The two were not married. No lobola was ever paid but they cohabited in Kalingalinga for about a year or so. After ending their relationship, she moved from Kalingalinga, and the accused stayed with his Aunt in Kabwata. She did not know whether or not the accused was aware that their relationship had ended, but she had ended it as he used to beat her. The accused had followed PW2 a number of times with the hope of reconciling. PW2 never told the accused that she had another boyfriend.

The deceased resided in Chikankanta so he told PW2 that he could either spend the night at her house or her brother's house. PW2 testified that when the deceased returned, at around 19:30 hours, they were in a self contained

bedroom. The deceased went into the toilet and PW2 waited for him in the bedroom. When he came out of the bedroom, he sat on the bed while PW2 got something from the wardrobe. She suddenly heard the door open and Kennedy Phiri entered with an iron bar saying 'what are you doing with my wife?' PW2 was able to see the accused as the light bulb was on and the room was bright.

The accused was holding an iron bar which was about a metre long and about 16mm thick, the width of a door. The accused began beating the deceased with the iron bar on the back and on the head about two to three times. The deceased then stood up and tried to defend himself when Kennedy Phiri produced a knife and stabbed him on the back. PW2 then ran out to the neighbour's bedroom. The accused followed her after a minute or so, dragged her out of the bedroom, took her outside and threatened to kill her as well. She shouted for help but people were afraid to help her as the accused was holding a knife and threatened to stab whoever came near. PW2 then grabbed the knife from the accused which left her with a cut on her hand. PW2 described the knife as not very big, with a silver handle.

PW2 narrated further that she noticed blood on the veranda and then saw the deceased on the ground. She touched him but he did not move. He was bleeding heavily and had lost strength. Kennedy Phiri then rushed to get a taxi, while PW2 remained behind crying. PW2 and the accused later took the deceased to UTH. When questioned at the reception, the accused said the deceased was attacked. A phone and hat dropped from the deceased and PW2

got them. At this point, the accused had the knife in his pocket. The deceased was then taken to the ward, PW2 went in with him but the accused followed her and pulled her out. He took her to the vehicle and they went to a place in Kabwata. While in Kabwata, the accused called someone to bring him some clothes and he changed. The iron bar and the knife were thrown away.

PW2 stated that she was afraid to tell the authorities at the hospital what had happened as the accused still had the knife. When she tried to inform people about what had transpired, the accused would follow her.

PW2 and the accused parted company in Kamwala. She then went to Intercity. She testified that she was confused and did not know how she got there. A man then paid her taxi fare and she went to her sister's place in Chawama. At around 04:00 to 05:00 hours, PW2 went to Chawama Police Station and reported the matter. She was apprehended and taken to Kalingalinga Police Station that evening. She was kept in police custody for two weeks. She was then released and gave her statement. PW2 identified Kennedy Phiri as the accused in the accused dock.

In cross examination, PW2 testified that when deceased visited her, her parents were not home. She repeated that Kennedy Phiri, the father of her child, used to support the child. He communicated with her through her mother. She did not know whether or not the accused and her mother got along well. She told the court the accused was not supposed to spend the night of the 25th July, 2011 at PW2's house and neither did he visit her that morning nor take her

any money. She reiterated that she was not in a relationship with the accused. She further stated that the accused did not find her and the deceased in a compromising situation. The fight began because the accused found the deceased and PW2 in the bedroom. She did not know whether the accused was drunk.

She went on to testify that the accused and herself had discussed ending the relationship and that he was aware that it was over. She however did not inform him that she was in a relationship with the deceased. In the accused's mind, PW2 was still his girlfriend.

PW2 stated that she witnessed the accused hit the deceased on the head and on the back then she ran out. The two did not struggle for long. When the deceased got up to defend himself, PW2 was still in the room. She also said that she did not stay long at the hospital as the accused got her. She told the court that her experience in custody was not a pleasant one and she wanted to come out as she did not do anything wrong. She waited for the Police officers to release her at their own time.

PW3 was Charity Mwanza Zulu of Kalingalinga. She testified that on the 25th of July, 2011, at around 18:30 hours, she was at home when she suddenly saw six to seven children who were playing outside run inside the house. They informed her that some people outside were fighting. As she was going to check, she met Sabi, PW2, who came from the landlord's house. PW3 then locked the door after PW2 had entered her house the door but the accused hit

the door and entered. He had a knife in his hands and asked where PW2 was. The accused then went to the bedroom and dragged PW2 out. PW3 then ran outside to ask for help but could not get any. She then heard PW2 calling her. As she was heading back inside, she met the accused and PW2 at the gate. The accused ran out and later came back with a taxi. PW3 was surprised when she saw the accused and PW2 carrying a body from the door way into the taxi and driving off. PW3 then asked one of the children to call Patricia, a relative to PW2 who stayed nearby. She explained to Patricia what had happened.

PW3 told the court that she did not take a close look at the person who was carried into the taxi. She heard the following day from PW2's mother that the person had died. She was later called by a Police officer to give her statement. PW3 identified the accused as the person who was chasing Sabi.

In cross examination, PW3 testified that on the 25th of July 2011 when the fight started, she was inside her house. Sabi ran into her house because she was being chased by the accused. PW3 testified that she did not see the accused person beat the deceased. She said that it was the accused who went out to look for a taxi to pick up the deceased.

PW4 was Inspector Mboloma Kashias, Service number 11915 stationed at Malambo Police Post, Chikankanta District in Southern Province. He testified that in February, 2011, on a date he could not recall, he was in Malambo area in Chikankanta District when the Kennedy Mulenga and Zulu visited him. At around 16:00 hours, they went to Big five Bottle Store and began drinking

beer. Whilst there, a man he was seeing for the first time came to the Bottle Store. PW4 described him as a bit tall and light in complexion. He began using abusive language and saying the deceased was going out with his wife and that he would sort him out. PW4 later advised deceased and Zulu to leave the bar and they did.

PW4 was informed by the barman that this man was the ex husband to PW2 and told him his name was Ken. The witness knew PW2 from before. She had gone to Chikankanta to visit her relatives and was related to the owner of the Bottle Store. PW4 testified that according to the deceased Sabi Phiri was his girlfriend and that they had been dating for about six to eight months.

PW4 further testified that on the 13th of July, 2011, Kennedy Mulenga left Chikankanta for Lusaka and on the 26th July, 2011 he received a phone call that he had been murdered in Lusaka. PW4 then travelled to Lusaka. He went to Kalingalinga Police Post to find out what had happened. He found PW2 in Police Custody. She narrated to him what had happened. He then gave a statement and traveled back to chikankanta. PW4 identified Kennedy Phiri as the one in the accused dock.

In cross examination, PW4 testified that when the accused entered the bar, he suspected that he was the husband to Sabi Phiri. He was later informed that indeed he was PW2's husband and that they had 2 children together. When he said he would sort out whoever was going out with his wife, he did not mention any name nor direct those words to the deceased.

PW5 was Zacheus Zuma Mutambo, Service Number 11663, Detective Inspector at Woodlands Police Station. He testified that on the 25th of July 2011, Michael Mulenga, brother of the deceased, reported a murder at Kalingalinga Police Post. Acting on this report, PW5 took over investigations and made enquiries. Efforts were made to find PW2. He was later informed by some officers at Chawama Police Post that PW2 was in their custody. She was then taken to Kalingalinga Police Post where she was interviewed and narrated what had transpired. They visited the crime scene but found the scene had been cleaned up and arranged. The knife and iron bar which were allegedly used were not recovered. Police investigators then intensified and information was circulated to find the accused.

On the 9th of December, 2013, PW5 was informed by his counterparts in Livingstone that the accused had been found. Arrangements were made and the accused was transferred from Livingstone to Woodlands Police Post. He was warned and cautioned and then interviewed in connection with the murder. On the 23rd of December, 2013 after warn and caution, a voluntary statement was recorded from the accused. The accused then took PW5 to the scene where the incident occurred and demonstrated what had happened.

PW5 told the court that he then made up his mind to charge the accused with the offence of murder. Under warn and caution in Nyanja, he gave a free response denying the charge. PW5 also told the court that a postmortem was conducted by Dr. Musonda and attended by Detective Chela.

In cross examination, PW5 told the court that his testimony was truthful and further testified that no murder weapon was recovered.

The accused was found with a case to answer and put on his defence. He gave evidence under oath. He told the court that on the 25th of July 2011, he left home at around 06:00 hours for work. He took maize by truck to Rufunsa. He told his wife, PW2, that he would return in the evening. The accused told the court that he used to live in Kalingalinga with his mother-in-law and PW2. When he got back home around 17:30 hours, he found his two children, his mother-in-law and PW2. The accused then went to park a vehicle at a car park but left instructions with his wife that he should find his food and bath ready.

The accused narrated further that after parking the vehicle, he went to a bar with his two lorry boys; they had two beers each. One of the lorry boys, called Simon, then escorted him home, around 18:00 hours. At home, he told his wife that he had come with his friend who was now leaving. The wife went to the gate and bade farewell to Simon. While at the gate, the accused was surprised when his wife told him, for the first time, not to spend the night at home but to sleep at his mother's place in Kabwata because her aunt had come from Kafue. He told her that he would like to meet her aunt because all her relatives were aware that they were married.

The accused then left for a nearby bar and bought four beers. At around 19:00 hours, he went back home and found his two children, his brother-in-law and their friend playing. He went to his bedroom, switched on the light but found

no one, only soft music playing. He enquired from the children where his wife was and they pointed to the other bedroom door indicating to him that she was with a man. He entered that bedroom and found a man he was meeting for the first time, lying on the bed and his wife wrapping herself in a chitenge. The light in the room was off but the TV was on and so it was visible. The accused asked PW2 what she was doing. The man then got up and started punching the accused. A fight ensued. The two fought and ended up in the sitting room. The children ran out; the accused and the deceased continued fighting. The deceased then pushed the accused against the TV stand and he fell. He then pushed the glass table towards the deceased using his leg and the glass table broke. The accused ran towards the door and started struggling to open it. The deceased then came from behind. The accused stepped on the wall and pushed the deceased towards the wall. The deceased later managed to get an iron bar used to lock the door and attempted to hit the accused with it. The accused ran outside and the deceased followed him with the iron bar. They struggled with the iron bar until the accused over powered the deceased and grabbed the iron bar from him. The deceased continued punching the accused, when the accused realized that the deceased would not stop, he hit him with the iron bar and he fell on the children's bicycles. He stood and followed the accused but the accused eluded him and he fell down again.

The accused testified further that he left the deceased lying on the ground and went to the next door tenants. He asked for his wife and was told that she was in the bedroom. He went to get her and showed her what she had caused. At

that time, the deceased was seated in the doorway. The accused did not observe whether or not the deceased was injured.

The accused then went out and called a taxi. On his way back to the house, he met his wife and she too got into the taxi. The accused then carried the deceased into the taxi and took him to UTH. At the reception, he told the authorities that he had brought a man whom he had been fighting. They got the deceased and took him to the ward. He was still alive at that time. The accused and PW2 were then taken to enquiries and asked where the fight took place. They were then advised to go to Kalingalinga Police Post to obtain a medical report but the accused was scared so they went to Kabwata. The accused gave PW2 some money and told her he was leaving for his trip to Kaoma.

The accused went to Kaoma for work where he was ferrying timber from the bush to Kaoma District. He was then transferred to Livingstone. While in Livingstone, the accused did not communicate with PW2 but only sent her money through her account.

In Livingstone, the accused used to repair vehicles for Police officers. As he was checking on one of the vehicles, Mr. Mwape, the officer in charge, called him to enquiries and asked for his name. He was taken to an office and questioned then later detained. He was surprised to be detained as he was not aware that the police were looking for him. He was later taken to Lunda Police station where he was again interviewed. He told the officers that he remembered

fighting someone but was not aware that the person had died. He was later transferred to Lusaka.

In cross examination, the accused told the court that he did not attack the deceased. The deceased punched him a countless number of times; he was bleeding and had a swollen nose. When he went to the hospital, he did not seek medical attention as he was confused. He told the court that he did not stab the deceased and neither did he use excessive force but only hit him with an iron bar. According to the accused, the deceased was at fault and he is the one who began the fight. PW2 was not present when the deceased and the accused were fighting.

The accused testified that he was provoked as PW2 was his wife. He said that he did not find the deceased and PW2 having sex but found his wife dressing up.

The accused also stated that when he went to Chikankanta, he did not suspect that PW2 was in a relationship with the deceased. He denied uttering the words 'I will sort out whoever is going out with my wife'. He repeated that he was staying at his mother in law's home with his wife and further that he did not run away from his home but went to Kaoma for work. PW2 was aware of his whereabouts. He had even told PW2 to let him know if the Police would be searching for him. He was not a fugitive.

He further testified that he knew PW3, he used to see her whenever he was home but did not know whether or not she had a grudge against him. He told

the court that his relationship with PW2 was a sound one. He repeated that he did not use a knife. He stated that PW2 gave false evidence.

I have considered the evidence led by the prosecution as well as the accused person's in defence. I find as a fact that on 25th July, 2011, PW2 Sabi Phiri was at home in Kalingalinga with the deceased Kennedy Mulenga around 19:30 hours in the bedroom. It is further undisputed that the accused person went to PW2's house and found the deceased on the bed and PW2 putting on a chitenge.

I find as a fact that the deceased was stabbed, as he had a penetrating wound injury. The post mortem report indicates that the deceased had a penetrating wound injury on the left side, as well as a deep cut on the head. He also had a fractured skull. These injuries are consistent with the weapon employed, namely an iron bar and a knife. According to PW2, who may be said to be a suspect witness with an own interest to serve, or indeed a witness with a bias as per **George Musupi vs The People Z.R. 291**,

accused entered the bedroom with an iron bar and he started beating the deceased with the said bar, about 2 or 3 times while deceased was seated. The deceased got up and went towards Kennedy Phiri trying to defend himself. Then accused produced a knife and stabbed the deceased at the back. PW2 only saw one stab because she ran out to the neighbour's place.

According to the postmortem report, the cut on the penetrating wound measured a very deep wound indeed there was another ulceration wound 2 cm

diameter in the popliteal fossa. It cannot be doubted that the implement used to inflict the penetrating injuries was sharp. The accused said he pushed a glass table towards the deceased and the glass broke. Even allowing for injuries from broken glass, you cannot have an injury so deep that it would allow a 20cm prob. The injuries lead to the inevitable conclusion that a knife and iron bar were used when the accused assaulted the deceased. The injuries corroborate PW2's evidence, as they are independent evidence capable of corroborating her testimony. It is therefore safe to rely on PW2's testimony as the danger of false implication has been eliminated. Even PW3's testimony reveals that PW2 was afraid of what accused was doing and she ran into PW3's home, to hide from accused, who nevertheless fished her from the bedroom where she had hid.

There is no evidence that the knife used to stab the deceased was grabbed in the heat of the moment. The deceased was stabbed in the bedroom where the accused found him with PW2. The inference I draw is that accused calculatingly and level headedly armed himself with the iron bar and the knife on his way to the bedroom where he found the deceased with PW2. In his own testimony, he testified that he was informed PW2 was with a man. The intent to attack the said man was formed before he even entered the bedroom. I therefore discount as untrue his claim that it was the deceased who sprang up from the bed and punched him. Armed as he was, I do not believe he merely entered the bedroom and asked PW2 what she was doing. I do not believe his version of events at all.

I find as a fact therefore that the accused hit the deceased with a metal bar and stabbed him with a knife on the material night. It is indisputable that the accused person flagged down a taxi and took the deceased to the hospital, in the company of PW2. Thereafter the accused fled Lusaka. PW2 was escorted to the police station by her sister the following day, and apprehended as a result.

The elements of the offence of murder are stipulated in section 200 of the penal code CAP 87 of the Laws of Zambia. The prosecution is therefore required to establish three elements:

1. The accused person caused the death of the deceased.
2. By an unlawful act.
3. With malice aforethought.

Malice aforethought is established when it is proved either that the accused had an 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.

Before I turn to consider the defences of provocation and self defence, I will first deal with the defence of intoxication, as the deceased led evidence that he took some alcohol on the material night.

In **Libuku vs The People 1973 ZLR P. 345**, the defence of intoxication was considered on appeal. In that case, the appellant was convicted of arson. His defence was that he had been drinking heavily on the day in question, that he

had no recollection of visiting the complainant's house and that he had no knowledge of the offence until he was arrested and charged with it.

It was held on appeal that evidence of drinking, even heavy drinking, is not sufficient in itself to give rise to a defence of intoxication under section 14 (4) of the Penal Code.

Further, that although the appellant was probably drinking heavily on the day of the offence and may have subsequently suffered alcoholic amnesia the fact that he was seen by two witnesses deliberately to set fire to the complainant's house and then run away conclusively negated the defence that by reason of intoxication he was unable to the necessary intent.

In the case I am now considering, the accused person went into the bedroom with a knife and an iron bar. He had the presence of mind to arm himself with those weapons. The iron bar was retrieved from another part of the house and not in the bedroom. The knife was equally in his possession at the time he entered the bedroom. The act of arming himself deliberately beforehand clearly negates the defence of intoxication. I now turn to consider the defence of provocation. The relevant provision in the penal code is section 205.

205. (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion, caused by sudden provocation as therein after defined, and before there is time for his passion to cool, he is guilty of manslaughter only.

(2) The provisions of this section shall not apply unless the court is satisfied that the act which causes death bears a reasonable relationship to the provocation.

In **Banda (Bezaliel) vs The People 1973 ZLR 111**, the appellant was convicted of murder. The trial judge found that it was highly probable that the appellant had come across his girl friend making love with another man and had killed them both with an axe. He rejected the defence of provocation because he held that before such defence is available the partner must be legal spouse.

It was held that the question is not the formal relationship but what is the factual relationship and how an ordinary person would react to finding his partner with someone else in circumstances of intimacy. It was further held that the defence of provocation is available where a man and a woman are living together in a stable relationship and not formally married. It was also held that the availability of the defence is not necessarily confined to cases where the partners were living together in a stable relationship. It was further stated, albeit obiter that the defence would not be available on the basis of a previous casual relationship.

The evidence in the present case is that PW2 said she did not know if the accused knew the relationship had ended but to her, it had ended. She also said she never told Kennedy Phiri that she had another boy friend. She further said she was afraid to tell the hospital authorities what had happened because the accused had a knife. I am not convinced that PW2 made any or sufficient effort to report the incident to those around her and was only being dissuaded

by reason of the knife with the accused and the fact that he kept following her. If she had truly wanted to report the matter, she would have done so. From her statements, I draw the inference that the relationship between her and the accused did not cease. There was a relationship between the two, as I do not see how the accused could walk into her bedroom if that were not so.

If PW2 did not inform the accused that the relationship was over and she had a boyfriend, then he can be excused for thinking she was his girlfriend and that he was entitled to warn off those straying into his domain.

On the material night, the accused found the deceased lying on the bed in the bedroom, with PW2 wrapping a chitenge around her body. Clearly, those circumstances were highly suggestive of intimacy between PW2 and the deceased. It was an act such as was likely, when offered or done to an ordinary person of the community to which the accused belonged, to deprive him of the power of self control and to induce him to assault the person by whom the act or insult is done or offered. It was grave provocation.

The law is that a homicide induced by provocation will not be reduced to manslaughter if the assault occurs after the accused has had adequate time to cool his passions. It will be so reduced only if the response of the accused bears a reasonable relationship to the provocation offered.

In **Chibeka vs Regina R & N Law Reports (1959) 1 & 2 P. 476**, the Federal Supreme Court, considering similar provisions in the Penal Code of Northern Rhodesia held, in a matter in which the appellant inflicted 23 axe wounds an

account of his wife's provocation, that the attack did not bear reasonable relationship in that community to the provocation given.

In **Kalinda vs The People 1966 ZLR Report P. 33**, the court of Appeal precursor to the Supreme Court of Zambia set aside a conviction for murder and substituted in its place a conviction for manslaughter, upon finding provocation on the deceased wife's part. It was said there that in Zambia, a confession of past adultery or of intention to commit adultery is as serious provocation as being discovered in flagrante delicto and can form the basis of a valid defence to a charge of murder.

In the present case, the accused was informed that his girlfriend, PW2 was with a man. He then armed himself as earlier found. I find premeditation in his actions in that even before he found them, he took a knife. While I accept he was provoked by finding his girlfriend and deceased in compromised circumstances, premeditation is demonstrated by the taking of a knife. The essence of the defence of provocation is that the death is caused in the heat of passion, caused by sudden provocation. Section 205 of the Penal Code suggests a spontaneous reaction propelled by sudden provocation. This is demonstrated by the fact that the defence of provocation will not avail a person whose passion has had time to cool. The actions of the accused person show that even before he happened upon his girlfriend and the deceased, he made up his mind to inflict knife wounds on the deceased:

It is my considered view therefore that due to the premeditation on the accused person's part, although the accused was provoked, the offence is not reducible to manslaughter.

Turning to the defence of self defence, I have already discounted the accused person's version that the deceased hit him first with fists. There is no evidence that the deceased had a weapon. It was the accused who had an iron bar and a knife. I do not accept that an unarmed man struck the accused first. Besides, it was the accused who was incensed by the compromising scene he found and more likely to lash out at the deceased.

The deceased must be taken to have known that the accused claimed PW2 for his wife, since the accused travelled to Chikankata to warn him off. On the view I have taken of the facts however, I find the defence of self defence cannot avail the accused, as it was he who began to inflict blows on the deceased. Section 204 of the Penal Code sets out the elements that establish malice aforethought. It is in the following terms.

204. Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

- a) An intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;*
- b) Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by*

indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

c) An intent to commit a felony;

d) An intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.

Grievous harm is interpreted in section 4 of the Penal Code as any harm which endangers life or which amounts to a main or which seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense.

On considering that provision, it is clear that a knife wound endangers life in that a stab wound leads to bleeding which can lead to death if unchecked.

A serious stab injury was inflicted on the deceased and it must be taken that the accused intended to do grievous harm to the deceased. The deceased succumbed to the injuries so inflicted.

On the foregoing, I find the accused guilty of the offence of murder and convict him accordingly.

Dated the^{21st}..... day of^{July}..... 2014



F. M. CHISANGA
HIGH COURT JUDGE