

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

HP/159/2014



Between:

THE PEOPLE

AND

CHARLES CHINYAMA MATEMBA

Before Hon. Mr. Justice C. F. R. Mchenga SC

For the People: R.L. Masempela, State Advocate, National Prosecution  
Authority

For the accused: C. Siatwinda, Legal Aid Counsel, Legal Aid Board

---

J U D G M E N T

---

Case referred to:

1. The People v Edward Samuel Zulu [1982] ZR 159

Legislation referred to:

1. The Road Traffic Act, Act No. 11 of 2002

Charles Chinyama Matemba, the accused person, stands charged with the  
offence of Causing Death by Dangerous Driving contrary to **Section 161 (1)**



of the Road Traffic Act. The particulars of offence allege that on 16<sup>th</sup> May 2013, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia he caused the death of Joseph Chilinda by driving a motor vehicle, Toyota Coaster, Registration Number ABT 5956 on Mukwa/Kansanshi Roads, public roads, in a manner that was dangerous to the public having regard to all the circumstances of the case including the nature condition and use of the road and the amount of traffic which was actually at the time or which might have been expected to be on the road. He denied the charge and four prosecution witnesses were called.

Virginia Mambwana (Pw1) was the 1<sup>st</sup> prosecution witness. Her evidence was that on 16<sup>th</sup> May 2013, between 17:00 and 18:00 hours she was buying airtime near Mukwa Road. She said she heard a bang and saw a minibus that had come from the southern direction, along Kansanshi Road had hit a van that was on Mukwa Road. The van went off the road and ran over a cyclist. She also said that there was a stop sign on Kansanshi Road where it crosses Mukwa Road.

When cross-examined, Pw1 said at the time of the accident it was not dark. She maintained that there was a stop sign on Kansanshi Road.

The 2<sup>nd</sup> prosecution witness was Julius Tembo (Pw2). His evidence was that



on the material day, around 17:15 hours, he was driving a Nissan Hard Body Registration Number ALG 4231 along Mukwa Road heading to his work place in the heavy industrial area of Lusaka. He said when he reached the junction of Mukwa and Kansanshi roads, he was hit by a minibus that was being driven by the accused person. At that junction, there was a stop sign and a white line on Kansanshi Road. He also said he was hit on the fender and that at the time of the accident the road was not busy.

Pw2 said after being hit by the accused person, he applied brakes but one of his tyre burst; he then lost control and hit a cyclist. The cyclist was taken to the University Teaching Hospital (UTH) using the accused person's minibus and he later reported the incident at Matero Police Station. The following morning, he was detained at that police station after news was received that the cyclist had died.

When cross-examined, Pw2 denied the suggestion that the road was not marked and that there was no stop sign on Kansanshi Road. He also said he was driving at about 40 Km/h and the accused person's vehicle was not stationary at the time of the collision. He said though he was driving at that speed, he failed to stop because he saw the accused person at a very short distance. He admitted being detained by the police after the



accident and said it is the practice for the police to detain a driver whenever a person dies.

The 4<sup>th</sup> prosecution witness was Roggie Mateyo Chilinda (Pw4) and his evidence was that Joseph Chilinda was his son and he attended the post-mortem examination of his body at the University Teaching Hospital.

Sergeant Moses Daka was the 3<sup>rd</sup> prosecution witness (Pw3). His evidence was that on 16<sup>th</sup> May 2013, around 18:00 hours, he received a report of the accident. He went to the junction of Mukwa and Kansanshi Roads where he found a Nissan Hard body Registration Number ALG 4231 but he did not find the Toyota Coaster bus ABT 5956. He recorded statements from witnesses and the following day he went with PW2 and the accused person to the scene of the accident where he drew the sketch plan.

Pw3 said he found that the accused person was driving in a southern to northern direction while Pw2 was driving in an eastern to western direction. The accident occurred because the accused person failed to give way and he hit Pw2 who in turn hit a cyclist, Joseph Chilinda. He also said there were stop signs on Kansanshi Road and there is no stop sign on Mukwa Road because it is the main way.



He produced the post-mortem report and the Sketch plan; they were admitted into evidence as Exhibits P2 and P3 respectively. He also produced 2 photographs of the van that Pw2 was driving and they were collectively admitted into evidence as Exhibit P4

When cross-examined, Pw3 told the court the roads at the junction where the accident occurred were marked. He confirmed that Pw2 was locked up after the accident. He also said Pw2 stopped twenty metres from the point of impact.

At the close of the prosecution's case, I found the accused person with a case to answer and put him on his defence. He elected to give evidence on oath and called one witness.

The accused person's evidence was that on the material day, he was driving on Kansanshi Road and when he got to the junction with Mukwa Road he stopped. He saw Pw2 coming on Mukwa Road at a high speed, he tried to stop but failed. Pw2 hit into his bus and thereafter hit a cyclist who was 20 to 30 metres away. The van stopped 30 to 40 meters after hitting him. He said he took the cyclist to the hospital and the following day he was told that they could not make statement because the arresting officer was not there.



It was also the accused person's evidence that on Saturday they went to the scene of the accident that was a four-way junction. It was a four-way junction because none of the roads were marked. He said he was stationary at the time of the accident and PW3 hit the bull bar on his bus and lost control.

When cross-examined, the accused person maintained that there were no stop signs on Kansanshi Road at the time of the accident. He also maintained that Pw2 hit into the bus he was driving and it was stationary at the time. He said Pw2 lost control because he was driving at a high speed.

James Kaponda was the only defence witness (Dw1). His evidence was that he was a passenger on the accused person's bus at the time of the collision. He said when they got to the junction, the accused person stopped but he was hit by Pw2's van that was being driven at a high speed. The van stopped 40 metres after hitting the accused person's bus.

When cross-examined, Dw1 said he was not a driver. He also said there were no road markings or stop sign on Kansanshi Road. When re-examined he maintained that Pw3 was driving at a high speed and that they had been using the road for 4 years.



On the evidence before me, I find that it is not in dispute that on 16<sup>th</sup> May 2013, between 17 and 18 hours, a Toyota Coaster minibus registration Number ABT 5956 being driven by the accused person collided with a Nissan Hard body van Registration Number ALG 4231 that Pw2 was driving. The collision was at the intersection of Mukwa and Kansanshi Roads in Lusaka's light industrial area. It is also not in dispute that at the time of the collision the accused person was driving on Kansanshi Road while Pw2 was driving on Mukwa Road.

I also find that it is not in dispute that following the collision, Pw2 lost control of the van he was driving and knocked down a cyclist, Joseph Chilinga, who was cycling through the intersection. Joseph Chilinga was taken to the UTH by the accused person and died the same day. Further, it is not in dispute that he died from the injuries he suffered after he was knocked down by Pw2. Post-mortem established that he died after suffering from "subdural haemorrhage due to blunt head injuries due to road traffic accident".

What is in dispute is what caused Pw2 to hit the cyclist. According to Pw2, he lost control after being hit by the accused person who drove into the intersection without stopping. But the accused person's position is that the collision was because Pw2, who was over speeding, failed to stop



at the intersection and hit into the bull bar on his bus. He then lost control of his van and knocked down the cyclist.

Also in dispute is who had the right of way at the intersection. According to the accused person and his witness Dw1, both Mukwa and Kansanshi roads were not marked at the intersection. That being the case, Pw2 was supposed to stop but he went ahead and crossed the road. But Pw1, Pw2 and Pw3's evidence is that it was Pw2 who had the right of way and there was a white line and stop sign on Kansanshi Road.

I will first deal with question of who hit into the other, was it Pw2 who hit into the accused person's bus or was it the accused person who hit into Pw2's van? The photographs produced by Pw3, Exhibits P4, show that Pw2's van was damaged on the sides after the collision. From the two photographs it is also apparent that the front of the van was not damaged. This would not have been the case if the accused person's evidence that Pw2 hit into his bus when it was stationary was true. Had it been the case, the front of the van would have been damaged. Consequently, I accept Pw2's evidence and find that it was the accused person who hit into Pw2's van.

Coming to the issue of who had the right of way at the intersection, Pw3



visited the scene a day after the accident and drew a sketch plan of the intersection. In addition, he testified that Pw2 had the right of way because there was a stop sign on Kansanshi Road and a line on the road. Though Pw3 visited and drew the scene of the accident the morning after the accident, I accept his evidence that there was a stop sign and a line on Kansanshi Road at the time of the collision. Pw1 supports his evidence of the stop sign on that road and there is no reason for me to suspect that the road was marked and stop sign was placed on it after the accident but before Pw3's visit. Consequently, I find that the road was marked and there was a stop sign on Kansanshi Road. I also find that the accused person was supposed to stop as Pw2 had the right of way.

Section 161(1) of The Road Traffic Act provides as follows:

*Any person who causes the death of another person by the driving of a motor vehicle on the road recklessly, or at a speed, or manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be, expected to be, on the road commits an offence and shall be liable, upon conviction, to a fine not exceeding thirty thousand penalty units or to imprisonment for a period not exceeding five years, or to both.*

Further, in the case of *The People v Edward Samuel Zulu (1)*, it was held, *inter alia*, that driving that falls far short of that reasonably expected of a prudent driver is either careless or dangerous, depending upon



whether or not danger actually results. It was also stated that the failure to obey traffic signals resulting in danger is dangerous driving.

In this case, the accused person drove through an intersection that had traffic signs that required him to stop but he did not stop. It was between 17 and 18 hours, on a working day, at a time at which it was reasonably expected that other road users would be on the road. I find that he drove in a dangerous manner because he ignored traffic signs that required him to stop and it resulted in him hitting Pw2 who lost control and knocked down and killed the pedestrian. This being the case, I find that the charge has been proved beyond all reasonable doubt. I find that Charles Chinyama Matamba, caused the death of Joseph Chilinda by driving a Toyota Coaster bus registration number ABT 5956 on Mukwa/Kansanshi Roads in a manner that was dangerous and I convict him.

Delivered in open court at Lusaka this 22<sup>nd</sup> day of December 2014



C. F. R. MCHENGA SC  
JUDGE