

IN THE HIGH COURT FOR ZAMBIA
HOLDEN AT MONGU

HT/23/2015

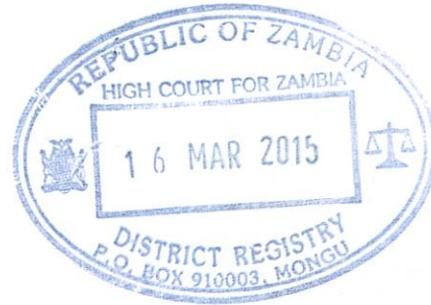
(Criminal Jurisdiction)

BETWEEN

THE PEOPLE

Vs.

JONAS LIKUMBI



Before: Hon. Judge B.M.M. Mung'omba on this 16th day of March, 2015.

For the Prosecution: Mr. B. Mpalo, Senior State Advocate & Mrs. P. Nyangu, State Advocate - NPA

For the Defence: Mr. I. Yambwa, Legal Aid Counsel – Legal Aid Board

JUDGMENT

Cases referred to:

1. *Mwewa Muroso vs The People (2007) ZR.207*
2. *The People vs Hosie Mulumbi (1995) ZR. 117*

Legislation referred to:

1. *The Penal Code Chapter 87 of the Laws of Zambia.*

The accused, **Jonas Likumbi**, was charged with the offence of murder contrary to **Section 200 of the Penal Code** Chapter 87 of the Laws of Zambia. It is alleged that the accused herein on 17th day of September, 2014 at Mbotwa

village of Shang'ombo in the Shang'ombo District of the Western Province of the Republic of Zambia, did murder **Chibambo Mukonda**.

When called upon to plead accused denied the charge.

It is trite law that the prosecution has the onus of proving all the elements of the offences charged beyond all reasonable doubt. The accused person has no burden to prove his innocence. (see **Mwewa Murolo vs The People (2004) ZR.207**).

The Accused stands charged under S.200 of the Penal Code which provides as follows:

"Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder"

In order for me to feel safe to convict, the prosecution must satisfy each and every ingredient of the offence as outlined in the foregoing legal provision.

The case for the prosecution is supported by evidence from four (4) witnesses who all testified on oath. The accused elected to give sworn evidence and called no witnesses.

PW1 was **Lundu Machaloo** of Ngongoloka village in Shang'ombo District. She told the Court that on 5th September, 2014, she was at her home drinking some local brew in the company of Chibambo Mukonda, the deceased, and Maswabi Sililo (wife to the accused). Then the accused arrived and beat up the deceased with a stick on the head, diaphragm and at the back of the body. The deceased started to bleed on the head and nostril.

The accused beat up the deceased on allegation that he was having sexual relations with the accused's wife. PW1 was equally beaten by the accused for no apparent reason. The incident happened at about 20 hours.

On the following day, the matter was reported to Shang'ombo Police Station where the victims of assault were given police medical reports to take to Shang'ombo Hospital.

The second witness for the prosecution was **Maswabi Sililo (PW2)** of Syanyanya village in Shang'ombo District. This witness confirmed that on 5th September, 2014, she was drinking some local brew in the company of the deceased and PW1. This was in PW1's courtyard.

PW2 testified that her ex-husband, in reference to the accused, also came to PW1's courtyard from Sylela. Without talking to anyone, PW2 said, the accused hit the deceased on the head with a piece of wood. The accused alleged that the deceased was having an affair with his ex-wife. PW2 also confirmed that she and PW1 were also beaten by the accused.

She testified that on the next day following the incident, the matter was reported to police. The accused was arrested. The injured were given police medical reports to take to the hospital.

PW2 came to learn that the deceased had died in Senanga District Hospital. This was barely a week from the assault incident.

PW2 denied having had any affair with the deceased. She further stated that the accused is her ex-husband. She denied receiving gifts from the deceased. PW2 positively identified the accused in Court.

PW3 was No. **33936 Detective Sergeant Mwikisa** of Shang'ombo Police Station. He testified that on 18th September, 2014, while on duty, he received a report of murder. The report was made by one Lingunga Mukonda, that one

Chibambo Mukonda, who had earlier on 5th September, 2014, been assaulted, died in Senanga District Hospital.

PW3 confirmed that the deceased had earlier been assaulted by the accused. He was admitted at Shang'ombo District Hospital before being transferred to Senanga District Hospital where he died around 22 hours on 17th September, 2014.

PW3 then interviewed the witnesses and the accused. At this time the accused was already in custody for the offence of assault committed on the three victims including the deceased. He charged and arrested the accused with the subject offence of murder.

PW3 identified the medical report that had earlier been given to the deceased regarding the assault. It was produced and marked P1. PW3 told Court that as regards the assault, the deceased had suffered a deep cut on the forehead, a swollen right hand, bruises on the chest and back.

According to PW3, a postmortem was conducted on the body of the deceased by Dr. Shibaka of Senanga District Hospital. The said postmortem was attended by Detective Sergeant Chibwenta of Senanga Police Station. The cause of death was listed as acute abdominal (generalized peritonitis). He identified the postmortem report produced and marked P2.

PW4 was **Dr. Mbao Matuwa**, a Medical Officer based at Lewanika General Hospital. He is a General Medical Practitioner. This witness confirmed that the deceased died of acute abdominal (generalized peritonitis) as indicated on the postmortem report marked P2. He testified that peritonitis can be caused by an infection arising from impact from outside the body that damages the internal organs.

This was the case for the prosecution.

Having evaluated the evidence adduced by the prosecution witnesses, I found the accused person with a case to answer and accordingly put him on his defence. After explaining his rights to him the accused elected to give evidence on oath and called no witness.

In his sworn evidence, **Jonas Likumbi**, the accused, testified that he did not know the events of 17th September, 2014 because he was in custody. The events of 17th September, 2014, referred to the accused, concern the death of the deceased in Senanga District Hospital.

The accused was then directed to focus on the events of 5th September, 2014, which apparently led to him being taken into custody by Shang'ombo police.

He informed the Court that on 5th September, 2014, around 01:00 hours, he was travelling from Johnson Kayenga village to his village known by the name Siyoyela. When he reached PW1's village, he heard a child crying and immediately recognized the voice as that of his daughter Maureen.

He became curious as the daughter was not expected to be in that village because she stayed with the mother at Mboiwa village. The accused then stood at the entrance to the courtyard where the daughter was crying from. To his surprise, he found the mother, his wife (PW2), having carnal knowledge with the deceased, Chibambo Mukonda.

He then entered the courtyard, slapped the deceased and held him by the belt. He started dragging the deceased to Hanson Lialenga's courtyard who at this time was sleeping. He intended to notify Hanson Lialenga of the adultery he had unearthed. On the way his wife (PW2) appeared with a stick and there

was a fracas. He was beaten using the said stick; first by his wife and later by PW1.

According to the accused, he grabbed hold of the same stick which he later used to beat up his wife, PW1 and the deceased. He confirmed that the matter was later reported to Shang'ombo Police and the deceased was later taken to hospital. He was apprehended for the offence of assault.

In cross-examination by Ms. Nyangu, the accused informed me that he was a jealous husband. He stated that the deceased had built a house for his wife, ploughed the field and engaged someone to build a courtyard. This made him jealousy.

The accused further confirmed assaulting the deceased, PW1 and PW2. It was also his testimony that, at the time of the incident, he lived separately from his wife.

The accused, however, stated in cross-examination that he found the deceased and PW2 having carnal knowledge in the presence of PW1. When questioned further, the accused mentioned that while PW1 was not present, she was actually within the courtyard. He later also testified that the carnal knowledge occurred on the bed in the courtyard.

Finally, the accused testified that the deceased was taken to hospital on an ox-cart because he was severely injured by the assault of 5th September, 2014.

At the close of the defence case, Counsel sought to rely on the evidence on record. I then adjourned the case to 16th March, 2015, for judgment which I now wish to render.

From the evidence on record I am satisfied that on 17th September, 2013, PW1, PW2 and the deceased were together at PW1's home. They had earlier

been imbibing a local brew together in PW1's courtyard. What is also not in dispute is that the accused arrived at the courtyard and there was an altercation. The accused beat the deceased, with a stick and he subsequently died from his injuries. It is what transpired when the accused arrived that is disputed.

The prosecution witness PW1 and PW2 attest to the fact that when the accused arrived he proceeded to pick a stick and descended on the deceased beating him on various parts of the body such as his head and his back. He then attacked PW1 and PW2. The accused does not deny beating the deceased, PW1 and PW2 with a wooden stick.

According to him when he arrived at PW1's courtyard he heard his child crying and upon trying to establish what was going on he found his wife and the deceased in a state of undress and having canal knowledge. This is what incensed him. It was his evidence that he approached the deceased and started dragging him to Hanson Lialenga to notify the later that he had caught the deceased ready handed with the wife. In the process PW2 started pulling him, his belt broke and trousers also dropped. He fell down and the deceased and PW2 started beating him. According to the accused, PW2 is the person who obtained a stick and as he was fighting with the deceased he retrieved the stick from PW2 and used it to thrash PW2 and the deceased with it.

The accused went further to explain a litany of grievances he had with his wife. He insisted she was still his wife although they did not live together. The accused complained bitterly that the deceased had been having an affair with his wife, had built her a house, showered her with gifts. The deceased's behavior had compelled the accused to sue him in the Local Court at some point.

PW2 on the other hand denied that she was still espoused to the accused. She claimed that she had separated with the accused and denied the allegations leveled against the deceased regarding the advancement of favours to her.

After a careful analysis of all the evidence before me, I am satisfied that indeed there was a fracas that occurred at PW1's house which involved PW1, PW2, the accused and the deceased.

I find as a fact that the deceased participated by picking up a stick and thrashing the deceased with it. The deceased as a consequence sustained injuries which injuries led to his death.

I find that the assault occasioned on the deceased was motivated by jealousy. This is a case of a jilted husband who refused to accept that his marriage was over. In his mind he was convinced that PW2 was still his wife and owes him loyalty. Seeing PW2 with the deceased made him fly into a fit jealous rage which had dire consequences. Given the historical problems the accused had with the deceased I find that the accused had been harboring ill will against the deceased. I have no doubt that the accused was possessed with malice aforethought which is an ingredient for the offence of murder.

The case of ***The People vs. Hosie Mulumbi (1995) Z.R. 117*** is instructive where the court reiterated that where a person has caused the death of another person with malice aforethought is guilty of murder.

I reject the story by the accused that he found the deceased with PW2 having canal knowledge in the presence of PW1. I find that it is merely a concoction by the accused to justify his action. I do not believe that PW2 and the deceased could have been performing sexual acts in the presence of PW1. That picture does not ring true. I accordingly reject it. What I believe is that indeed the accused did find the deceased with PW2, which incensed him.

In the light of the foregoing, I find that the prosecution have discharged the onus on them and proved all the ingredients of the offence of murder.

I find as a fact that the deceased did die by the hand of the accused with malice aforethought. In light of the foregoing I arrive at the inescapable conclusion that the accused is responsible for the death of the deceased and I accordingly find him guilty of murder and convict him accordingly.

DELEVERED AT LUSAKA THIS 16TH DAY OF MARCH, 2015



Hon. Judge B.M.M. Mung'omba
HIGH COURT