

**IN THE HIGH COURT FOR ZAMBIA**

HP/109/2016

**AT THE PRINCIPAL REGISTRY**

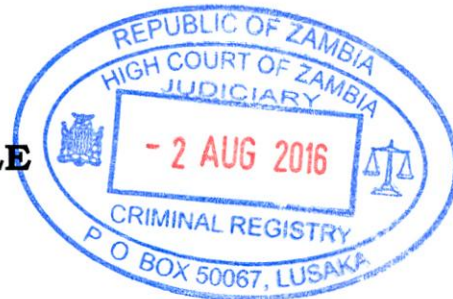
**HOLDEN AT LUSAKA**

*(Criminal Jurisdiction)*

**THE PEOPLE**

**VS.**

**CHAMA MWAMBA  
ADAM SIMWAMBO  
GIFT MBILITU  
ALEX JUNIOR MULENGA**



Before Mrs. Justice A. M. Banda-Bobo on the 2<sup>nd</sup> day of August, 2016

**FOR THE STATE:**

**Mr. M. P. Lungu and 2 Others**

**FOR THE RESPONDENTS:**

**Mr. F. Mutale of F. M. Legal Practitioners**

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**R U L I N G**

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**Cases referred to:**

1. Mwewa Murono vs. The People (2004) ZR 207 (SC)
2. The People vs. Japau (1967) ZR 95 (H.C)

3. The People vs. Winter Makowela and Robby Tayabunga(1979) ZR 290
4. Abbot vs. Regina (1955) 39CR App R 141
5. The People vs. The Principle Resident Magistrate Ex-parte Faustine Kabwe and Aaron Chungu (SCZ J No. 17 of 2009).

**Legislation and other Works referred to:**

- The Penal Code Cap. 87 of the Laws of Zambia
- Criminal Procedure Code Cap. 88 of the Laws of Zambia

This is a Ruling on a case or no case to answer relating to the four accused herein who stand charged with two offences of aggravated robbery and rape; contrary to Sections 294(1) and 132 of the Penal Code Cap. 87 of the Laws of Zambia, offences which they denied committing.

The law regarding this stage of proceedings before the High Court is set out in Section 291 of the Criminal Procedure Code Cap. 88 of the Laws of Zambia. The case of **Mwewa Murono vs. The People**<sup>1</sup> was clear on this point, though the finding that the Judge has to record under that section is ultimately the same as that under Section 206 of the same Act.

Section 291(1) categorically states that the prosecution must make out a case against the accused sufficiently requiring the accused person or persons to make a defence. Should there be failure to do so, the Court ought to dismiss the prosecution's case and acquit the accused immediately. The crucial question to ask at this stage is whether in the event that the accused herein opted to remain silent and offered no explanation, in view of the evidence so far adduced by the prosecution a properly directed tribunal could convict them. If the answer is in the affirmative,

then there is a prima facie case. If it is in the negative, then there is no case to answer and is a predicate for acquittal of the accused. The cited cases of **The People vs. Japau<sup>2)</sup>** and **The People vs. Winter Makowela and Robby Tayabunga<sup>3</sup>** are relevant on this point.

I have carefully, considered the submissions by both the prosecution and the defence. I note that both have gone to great lengths to argue on substantive points on the evidence adduced so far. I wish to state that while that is well and good, the point to be noted is that at this point of the proceedings, the Court is not required to find that the prosecution has proved its case beyond reasonable doubt. Rather, the question to be answered is whether there has been a prima facie case made out by the prosecution.

In the case of **Abbot vs. Regina<sup>4)</sup>**, at page 156 Lord Chief Justice Goddard said

**“A man against whom there is no prima facie case at the close of the case for the prosecution is entitled to an acquittal”.**

The converse would apply, namely that a man against whom there is a prima facie case at the close of the prosecution’s case should be put on his defence. It is sufficient if there is a prima facie case established.



I have carefully considered the evidence on record, taken into account submissions for the accused and the prosecution and have ultimately drawn the conclusion that prima facie, a case has been made out against the accused herein sufficient to require them to be put on their defence.

For that reason I accept the prosecution's submissions for a case to answer.

I have also sought to rely on the case of **The People vs. The Principle Resident Magistrate Ex-parte Faustine Kabwe and Aaron Chungu<sup>5</sup>**.

The accused are put on their defence.

**DELIVERED AT LUSAKA THIS 2<sup>ND</sup> DAY OF AUGUST 2016**

  
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**MRS. JUSTICE A. M. BANDA-BOBO  
HIGH COURT**