

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

HP/83/2014



BETWEEN:

THE PEOPLE

VERSUS

LEVY CHUNI
CHRISTOPHER LIKUPE

BEFORE : HON JUDGE G. C. M. CHAWATAMA

For the State : *Mr. G. Zimba & Ms Soko – National Prosecution Authority*

For the Defence : *Mr. Siampinda & Mrs Marabesa Mwenya– Legal Aid Board*

JUDGMENT

CASES REFERRED TO:

1. *People V Njovu (1968) ZR 132*
2. *The People V Sitali (1972) ZR 139,*
3. *David Zulu V The People (1977) ZR 151*
4. *Patrick Sakala V The People (1980) ZR 205*
5. *R V Exall (1866) 176 ER 850*
6. *Kalaba Ilunga and Another V The People (1981) ZR 102*
7. *R V Hochman, Volley and Peebles*

AUTHORITIES REFERRED TO:

1. *Section 200 and 204 of the Penal Code Cap 87 of the Laws of Zambia*
2. *Alexander M. Burill in A Treatise on the Nature, Principles And Rules of Circumstantial Evidence*

Whilst there she went to Mumbwa Prison where she saw those that had been apprehended.

PW1 informed the court that Faith Maunga a boss to the deceased had given her a telephone number for a Jembo phone which she passed on to the Police. The Police dialed the number in her presence and it was answered. **PW1** later saw the phone at the Police Station. **PW1** testified that she and other members of her family went to Woodlands Police to look at photos of an unknown person that she had looked at earlier. It was decided that the body be exhumed. She was present when this was done. She and other members of the family identified the body of her son Mofya. It was her testimony that his arms and legs were tied behind with a twine cotton. The legs were tied with a wire. It was her testimony that from the date her son had gone missing to the date the body was exhumed, four months had passed. **PW1** observed that her Son's face was intact however, his body was decomposed. **PW1** recalled that her deceased Son's clothes were removed and taken to Central Police as exhibits. **PW1** identified Levy Chuni the person she saw at Mumbwa.

When cross examined **PW1** informed the court that she first saw the suspect in Mumbwa.

PW2 was **Faith Hiller**. It was her testimony that in February 2007 her sister Mrs. Claudette Musengule sent her a car, a

Toyota Sprinter white in colour whose Registration Number was ABG 2904 for fixing. **PW2** employed the deceased to drive the car using it as a taxi in order to raise money to fix it. She informed the court that on the day he disappeared the deceased had asked if he could work until late to which **PW2** agreed. Around 21:00 hours she decided to phone the deceased first the phone was just ringing, later the phone was switched off.

The deceased lived in the servant's quarters and upon checking if he was there **PW2** found that he was not. According to **PW2** she searched at Clinics, Hospitals and the Police Stations but did not find him. The court was informed that the deceased had been given a Jamie phone with the hope of finding someone who could operate it. The phone was in the boot of the car driven by the deceased. **PW2** informed the court that the phone and the car were recovered. The witness identified the vehicle. **PW2** informed the court that she was able to identify the phone whose receipt had a serial number and she still had. Secondly the manner in which the phone was recovered after having given the phone number to the deceased's mother.

When cross examined **PW2** informed the court that the phone was in working order but was not being used as a pay phone at the time. She reconfirmed that as far as she knew the phone was in the boot of the car.

PW3 was **Silishebo Elvis** a Driver/Mechanic who worked for Family Health International. It was his evidence that on the 31st April, he was in Mongu town. He saw a car a Toyota Sprinter white in colour with a for sale sign, a contact number was also displayed. He informed the court that his wife Gertrude Hatyoka wanted a car so he called the number displayed to find out who the owner of the vehicle was. The owner of the vehicle turned out to be someone he knew came from Lilamono Guest House where the vehicle was parked. He stated that this person's name is Christopher Likupe. **PW3** knew Christopher's uncle who used to look after him. The same uncle Lawrence Silishebo rented a house from **PW3's** uncle in Imiko Compound in Mongu. According to the witness the same owner of the vehicle was a brother to his good friend Joe Kaunda a driver who worked for ZESCO. **PW3** gave Christopher his telephone number asking him to call in the evening. After they spoke, **PW3** and his wife went to Kanyambi Supermarket between 17:00 hours to 18:00 hours where Christopher was in order to view the vehicle. **PW3** found Christopher with a person he introduced as his friend Levy Chuni. **PW3** asked Likupe to open the bonnet of the vehicle. When he was satisfied with the state of the engine, Christopher and Levy took his wife on a test drive. **PW3's** wife was interested in purchasing the vehicle and inquired about the documentation. The couple was informed by Christopher that the documentation was being processed in Lusaka.

On Monday the 31st April, Levy and Christopher at 10:00 hours drove and parked the car along Senanga Road at Water Affairs Compound. **PW3** informed the court that they went to the home of Silishebo Silishebo where Likupe was paid a down payment of five thousand kwacha. It was agreed that the balance of Eight thousand would be paid when the documentation for the vehicle was brought. Likupe wrote on a paper his National Registration Card Number and his names and signed. The transaction was witnessed by Daires Simunji who also signed. **PW3** informed the court that his wife Gertrude also signed the document. Levy remained in the car whilst this transaction took place. According to **PW3** the number plate of the vehicle was ABJ 1310.

At this point Counsel for the defence asked that she be excused from defending Accused one. Accused one decided he wished to defend himself reasons being his defence Counsel did not want to ask questions which he thought ought to be asked. The court was unable to convince Accused one from changing his position.

When cross examined by accused one. **PW3** informed the court that he did not know the accused before. He denied seeing Accused one at Mongu Police Station in the CID room. He admitted to identifying Accused one in Mongu and at the Subordinate Court. **PW3** denied that there was as identification parade when he identified Accused one. It was his testimony that there were two persons when he identified him.

PW3 informed the court that he was approached by Likupe on the sale of the car the one he bought the car from. It was his testimony that **PW3** did not sign the sell agreement. He further stated that the receipt shows that Elvis Silishebo got onto a bus after the transaction was found on Accused one. **PW3** admitted that he spent two nights with the Accused in cells.

PW4 was **Gertrude Hatyoka**. It was her testimony that her husband **PW3** asked her to meet him at Kanyambi Supermarket. She found her husband with two people, introductions were done. She was informed that the two men were selling a vehicle. She was shown the vehicle a white Toyota Sprinter. She recalled negotiating with the two men on the price. It was agreed that the sale price was K13,000.00. **PW4** was taken on a test drive. **PW4** informed the court that it was Monday when they paid five thousand kwacha towards the purchase price. She informed the court that in the morning she went to Senanga road where the vehicle was packed opposite where her in-law Silishebo Silishebo stayed. According to her she found Levy, Christopher and her husband there. It was further her testimony that her husband (**PW...**) Christopher and her entered the in-law's house where the money was paid to Christopher and the sell agreement signed. Levy the court was informed remained in the car. **PW4** informed the court that after some days had passed the Police came to her work place where they asked for her. They took her to the Police Station. She agreed when asked that she had bought a vehicle

and took them where it was parked. It was her testimony that her husband came the next day, he was taken to Mumbwa.

When cross examined by Accused one **PW4** informed the court that Christopher sold her the vehicle, that he was accompanied by Levy. When cross examined by Mrs. Mwenya **PW4** informed the court that she is the one who drafted the sale agreement, however, Christopher inserted the number Plate. It was her testimony that at the time she was buying the car there was no number plate.

PW5 was **Davis Simunji**, it was his testimony that in April 2007 he was amongst the three people who were present when **PW4** gave Christopher money. It was his testimony that he was with Elvis Silishebo. According to **PW5** the money was for the purchase of a vehicle. He recalled seeing the vehicle along Senanga road. He further recalled that the vehicle was a Toyota Sprinter white in colour. It was his testimony that the two accused were in the vehicle. He further informed the court that he signed the Sale Agreement as a witness. **PW5** identified Christopher as the seller and as the one who signed and received money as a down payment. He identified accused one as a person whom he remembered he saw when he was put in cells.

When cross examined **PW5** declined going on a road test. It was his testimony that when they were detained in a cell that's when

he came to know accused one. When cross examined by Mrs. Mwenya, **PW5** informed the court that he only came to know accused when they met at the house the day they were transacting.

PW6 was **Henry Musonda** an Inspector with the Zambian Police. It was his testimony that he received information from a member of the public that he saw a vehicle he suspected to having been stolen. The informer told him that the vehicle was at Ishibizu village. It was his evidence that the people who brought the vehicle were known to him. **PW6** found the vehicle parked at the house as per the information of the informer, with the help of the same informer he was able to apprehend two suspects.

At the Police Station the suspects were searched, a road tax was found on Christopher Likupe. The same bore the Registration number ABG 2904, the vehicle was a Sprinter. On Levy Chuni, **PW6** informed the court that he found a letter of sale. According to the letter of sale Christopher had sold a vehicle to Gertrude Hatyoka. The vehicle was taken to the Police Station. Messages were circulated to other Police Stations on two vehicles. The one recovered in Mumbwa and the other where information obtained was that it was in Mongu. **PW6** went with accused One and two to Mongu. There he was led to Gertrude Hatyoka who admitted purchasing a vehicle from the two accused persons. The vehicle that was sold to **PW4** was recovered. Upon returning to

Mumbwa **PW6** learnt that the vehicle he had inquired about had been reported stolen in Lusaka. The two suspects were then surrendered to Officers of Lusaka Central Police.

When cross examined by Accused one, **PW6** informed the court that he was with another Officer called Augustine Kabamba. When the vehicle found at the village was impounded, it was his evidence that the owner of the vehicle was not found. **PW6** admitted that he did indicate in his report that Accused one was found with a road tax. It was his testimony that Accused one and **PW4** lead him to where the vehicle was. It was his testimony that the person who is alleged to be the owner of the vehicle found at the village was not found. He visited this person's home in Makeni and found he had shifted. Thus the accused was charged with, found in possession of goods believed to be stolen or unlawfully obtained.

When cross examined by Mrs. Mwenya, **PW6** informed the court that he was told that accused two was found in Mongu.

PW7 was **Elias Banda** an Inspector based at Police Service Headquarters. It was his testimony that at the time of the occurrence of the offence he was the team leader in the Criminal Investigations Department. He recalls receiving a wireless message from Woodlands Police. Information obtained was that grave diggers at New Leopards Hill Cemetery came across a

decomposed body in a shallow grave; which fact **PW7** and other Officers confirmed. According to **PW7** the body was of a male person. He was lying facing down. He wore blue jeans and a shirt. His legs were tied with a wire. His hands were tied at the back using a brown belt and a rope made of polythene threads. On the 8th a postmortem was conducted at the scene. The body was then reburied. At a later date **PW7** facilitated the exhumation of the body once the relatives of the deceased came forward.

When cross examined by Accused one, **PW7** informed the court that when the post mortem was conducted there were no relatives present. It was his testimony that no identification was found on the deceased.

PW8 was **Henry Chilopa** a Detective Chief Inspector based at Lusaka Division. He was in-charge of the team that investigated this matter. Investigations followed a report by **PW2** on the disappearance of a vehicle and its driver. The team followed a lead in Mumbwa. The suspects were brought to Lusaka after their matter in Mumbwa was concluded. The court was informed that a Jemi phone that was in the car at the time of the theft was recovered from Chisembu. John informed **PW8** that he got the phone from Kayukya Baitiba his mother who also happened to be accused one's mother. **PW8** later learnt that the body of Morgan Mofya was exhumed and identified by Martha

Mumba his mother and his wife Charity Mumba. Following the death of the dealing Officer **PW8** informed the court that he dealt with the matter. He was the one who charged the accused. It was his evidence that the mother to accused one had since died and his brother John had shifted from the house where he lived and could not be located. It was his testimony that two vehicles were recovered one vehicle was the one driven by the deceased.

When cross examined by accused one, **PW8** informed the court that the accused told him they had bought a car from Mfunu. It was his testimony that although he was told where Godfrey Mfunu stayed however, the accused failed to lead them to the house despite going to Chawama with them. When cross examined by Mrs. Mwenya for accused two, **PW8** informed the court that he was not aware that accused two was acquitted for theft of a motor vehicle. He denied coming across a letter of sale from Mfunu. **PW8** attributed his failure to locate Mfunu to inadequate information from the accused. He denied being informed that accused two was in Mongu and a Mongu resident.

At the end of the Prosecution's case the accused persons gave evidence on oath and did not call any witnesses.

DW1 was **Levy Chuni**, accused one. In his defence he told the court that in February, 2007, he bought a car from Kambwa Mumba of Makeni. It was a Toyota Sprinter, registration number

ABJ 3040. In April, the same year, he witnessed Christopher (accused two) buy a car from Godfrey Mfunne of Chawama, this was at Family 24 along Mumbwa road, he signed on the sale agreement as a witness. **DW1** went to Mumbwa to Chimototo village where he left the Toyota Sprinter and proceeded to Kayindu. Upon his return to the village he found the Police had taken the vehicle. When he went to the Police Station he was told that the person dealing with the case was not there. He got in touch with accused two who informed him that he was on his way from Mongu. **DW1** asked him to stop over in Mumbwa so that they could go together. Together they went to the Police Station where he was asked about the car. He told them the car was his and documents were in Lusaka. **DW1** and accused two were detained in the cells. They were both charged with failing to account. Accused two was told by the Police Officers that they needed to see the car he had taken to Mongu. They were then moved to and detained in Mongu. There a woman was brought and asked where she bought the car and also put in cells. The next day a car with registration number ABJ 1310 was brought. From there they were taken back to Mumbwa. Elvis was taken out of cells after four days. In June, 2007 **DW1** was brought to Lusaka, where he was charged with theft of motor vehicle for which he was found guilty and sentenced. **DW1** has since appealed to the Supreme Court.

DW1 told the court that he did not know anything about that case of murder.

In cross examination **DW1** told the court that he had known accused two since 1992 and that the two were friends. He confirmed that he witnessed a sale of motor vehicle where Godfrey was the seller and Christopher was the buyer but that the motor vehicle was never brought to court.

When challenged that the person who bought the motor vehicle identified him, **DW1** told the court that he bought the car from accused two. When asked whether accused two was identified in Mongu by the person who bought a vehicle as the one from whom she bought the vehicle, **DW1** said there was no identification parade held so he did not know how the friend was identified. **DW1** denied that Kayukwa Baitiba was his mother and that John Chisembu was his brother. He found John Chisembu in the cells. Further, that he just heard from the Police that John Chisembu was found with the MTN jembe phone. **DW1** told the court that accused two told him that he came by bus from Mongu. Further that he only came to know Gertrude (**PW4**) from the Police Station. He did not know Godfrey Mfunne, who sold his vehicle to accused two. He told the court that **PW3** and **PW4** lied to the court for reasons he did not know.

DW2 was **Chritopher Likupe**. His testimony was that he discussed the issue of buying a car with his friend and workmate **DW1**. In May, 2007, together with **DW1**, they met with someone who was selling a car at Family 24. **DW1** is the one who introduced him to his friend Godfrey Mfunne, the vendor of the vehicle. A part payment was made and the vendor held on to the white book. An agreement was signed and **DW2** identified it in court (photocopy). The agreement dated 20th April, 2007 related to a Toyota Sprinter, registration number ABJ 1310. The balance was to be settled within two weeks and whereupon he would be given the white book.

DW2 narrated how he sold the car to **PW3** in the same way as **PW3** and **PW4**, save that he said the reason he sold it was because the vendor was pestering him for the balance. He also testified that he was with accused one in Mongu during the time he was selling the car.

It was **DW2's** testimony that **DW1** informed him that the person he had bought the vehicle from wanted his balance. He decided to sale the car and informed **DW1** about the sale of the vehicle to **PW4** to which he agreed as a good idea. When collecting the money he asked his friend to go with him to finish the business but his friend refused. **DW2** signed a sale agreement and was given part payment in the sum of K5,000.00. **DW2** further testified that he and **DW1** were escorted to the bus by Silishebo

(PW3). Before the two could get to Lusaka **DW1** informed him that the white book was at the farm and instead of going to Luska they should drop off in Mumbwa and then proceed to finish the transaction with Mfunne. They went to Levy's mother's house where Levy left the white book. **DW2** was introduced to a woman he called his mother by the name of Kayukwa. **DW2** was informed that the white book had been taken by his brother John Chisebu and that they had just missed him.

They decided to proceed to Lusaka but as they were waiting for the bus they were apprehended by two men who said they were Police Officers. The Police Officers told them that they had found a stolen vehicle at Levy's farm and demanded for the papers. They were put in cells for a week and charged with the theft of a motor vehicle. **DW2** was acquitted of the offence but was not released as the Police wanted to wait until he was cleared of the car that he had sold in Mongu. **DW2** was informed about the arrest of Levy's brother in connection with the jembo phone. It was **DW2's** testimony that Levy's brother knew where the car was from. **DW2** denied knowing anything about the motor vehicle, though he admitted buying a car registration number ABJ 1310.

In cross examination, **DW2** told the court that he used to work with **DW1** from 1998 until 2005 when the company closed. **DW1** is the one whose friend (Mr. Mfunne) was selling the car. It was his testimony that he could not obtain the white book from the

vendor because he had a balance to settle which he would have done after reselling the car, had he not been apprehended.

The Penal Code Cap 87 of the Laws of Zambia Section 200 provides that:

“Any person who with malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”

For the charge of murder to stand it must be proved that the accused by an unlawful act or omission caused the death of the deceased, and that such unlawful act or omission was motivated by a malicious state of mind.

Section 204 of the Penal Code outlines instances in which malice aforethought is deemed to be established as follows:

- 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.*

In the case of the ***People V Njovu (1968) ZR 132***¹ the court held that:

“To establish ‘malice aforethought’ the prosecution must prove 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.”

The onus is always on the Prosecution to prove beyond reasonable doubt that the accused is guilty of the offence of murder. According to the court’s decision in the case of ***The People V Sitali (1972) ZR 139***,²

“There is no onus of proof on the accused to prove his innocence. Furthermore, the standard of proof which the prosecution must attain is such a standard as enables the court to be sure of the guilt of the accused beyond reasonable doubt. If upon the whole of the evidence the court is not satisfied that he guilt of the accused has been proved to that standard, then, whatever may be the probabilities of the matter, the accused is entitled to an acquittal.”

In this case the evidence brought by the Prosecution to prove this charge is circumstantial. The Prosecution’s case is that the vehicle which the deceased was driving on the day or night he disappeared and the jembo phone which was in the boot of the vehicle was traced to the two accused persons. The jembo phone

was allegedly given to Levy's mother by levy (accused one), who later gave it to her other son from whom it was traced. The motor vehicle was found in Mongu having been sold to **PW4** by accused two who was at all material time with accused one. Therefore it was concluded that the two accused persons to whom the motor vehicle and the jembo phone were traced are the ones who murdered the deceased and buried him in shallow grave where his body was found.

The evidence of **DW1** is that he did not know anything about the phone nor the motor vehicle in question. Though **DW2** testified that he was with **DW1** when selling the motor vehicle in Mongu, **DW1** denied this fact. **DW1**, however, testified that he was there when **DW2** was purchasing a motor vehicle from Mfunu in Lusaka. **DW2's** evidence was that **DW1** is the one who organized the purchase of the motor vehicle as the vendor was a friend of **DW1**.

In the case of *David Zulu V The People (1977) ZR 151³* the court expressed the peculiarity of circumstantial evidence when it held that:

"It is a weakness peculiar to circumstantial evidence that by its very nature it is not direct proof of a matter at issue but rather is proof of facts not in issue but relevant to the fact in issue and from which an inference of the fact in issue may be drawn."

In its holding the court further cautioned that:

“It is incumbent on a trial Judge that he should guard against drawing wrong inferences from the circumstantial evidence at his disposal before he can feel safe to convict. The Judge must be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of cogency which can permit only an inference of guilt.”

An example of where the court found a compelling inference of guilt on circumstantial evidence is in the case of **Patrick Sakala V The People (1980)**.⁴

The brief facts of that case are that the appellant was convicted of murder of a boy aged four years. Rute with her child aged four years and the appellant had been travelling together for two hours. The appellant proposed love to Rute and upon her refusal he assaulted her so severely that she was rendered unconscious for about eight hours. On regaining consciousness, she found that her suitcase had disappeared and the child was dead. There was no dispute as to the appellant's identity nor was the assault challenged. The crucial issue was whether the appellant caused the child's death. On appeal the appellant denied killing the child and argued that there was no direct evidence connecting him with the offence.

It was held that:

“The circumstantial evidence was so cogent and compelling that no rational hypothesis other than murder could the facts in this case be accounted for.”

Alexander M. Burill in A Treatise on the Nature, Principles And Rules of Circumstantial Evidence had this to say:

“Circumstantial evidence is that indirect evidence which is applied to the principal fact indirectly through the medium of other facts establishing certain circumstances or minor facts already described as evidentiary from which the principal fact is extracted and gathered by a process of special inferences...”

Pollock C.B. in the case of *R V Exall (1866) 176 ER 850^s* had this to say:

“It has been said that circumstantial evidence is to be considered as a chain and each piece of evidence as a link in the chain but that is not so, for then if any one link breaks the chain would fall. It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence - there may be a combination of circumstances no one of which would raise a reasonable conviction of more than a mere suspicion but the three taken together may create a conclusion of guilty with as much certainty as human affairs can be required of it.”

The evidence before me is not direct proof of the matter at issue but is proof of facts in issue which are relevant to the facts in

issue and from which an inference of the fact in issue may be drawn.

The following facts are not disputed that:

- *On the 27th day of April, 2007 at Lusaka a crime was committed. A crime in which the deceased Morgan Mofya Mumba was murdered and a vehicle and Jembe phone stolen.*
- *The vehicle driven by the deceased was a Toyota Sprinter white in colour whose Registration was ABG 2904.*
- *The stolen vehicle was given to the deceased by **PW2** to drive. **PW2** identified the vehicle as the one given to the deceased and the one which was stolen. The vehicle was identified by description and the chasis number although the Registration number had been changed.*
- *The missing phone from the stolen vehicle and the vehicle were recovered from accused one's village. Accused one had given the phone to his mother who passed it on to his brother. Although accused one denied that the person found with the phone was his brother and that he person he got it from is his mother,*

there was over whelming evidence that they actually were, from both the prosecution and accused two.

- *The stolen vehicle was sold to **PW3** and **PW4** in Mongu where it was recovered. This evidence was supported by a letter of sale signed by accused two as the seller, **PW4** as the buyer, **PW3** and his uncle as witnesses.*
- *The second accused was a person well known to **PW3** and that the second accused introduced the first accused to **PW3** who later also introduced **PW4** to accused one and accused two.*
- *That both **PW3** and **PW4** spent enough time with the accused person as they transacted for the purchase of the vehicle, this included the time the accused went for a test drive with **PW4** and the time they went to the home of **PW3**'s uncle where accused one the seller and **PW4** the buyer signed a sale agreement and money exchanged hands.*

The accused produced an Agreement letter in which a certain Godfrey Mfula of House No. 112 Chawama Compound Lusaka sold a motor vehicle to accused two. The vehicle was a white Toyota Sprinter white in colour and whose registration was ABJ 1310. Godfrey Mfula was not called as a witness nor were the

people who were said to have witnessed the sale. The Police did state that the accused was offered an opportunity to lead them to Godfrey Mfula and they went to Chawama but he was unable to lead them to where Mfula could be found, thus the Police discharged their duty. The sale agreement is dated the 20th April, 2007, seven days before the incident occurred. The only conclusion I can reach is that it was not the same vehicle that was the subject matter of this case and evidence of the Prosecution witnesses is clear on this fact.

In the case of *Kalaba Ilunga and Another V The People*⁶ it was held inter-alia that:

“It is trite law that odd coincidences if unexplained may be supporting evidence. An explanation which cannot reasonably be true is in this connection no explanation at all.

DW1 informed the court that he bought a car whose registration was ABJ 3040 in February, 2007 and knew nothing about the murder. This is despite the item namely the Jembo Phone being found in the vehicle that was stolen from the deceased was established to having been found with his brother who had been given the same by **DW1**'s mother.

DW2 admitted selling a car to **PW3** and **PW4**. The vehicle was a Toyota Sprinter whose Registration Number was ABJ 1310. Surprising **DW2** knew Levy's mother's name and his brother's

name and admitted that they dropped off in Mumbwa. His evidence was corroborated by **PW3**, **PW4** and **PW5** as independent witnesses and **PW6**, **PW7** and **PW8** who are Police Officers who played a role in investigating this matter. Thus the explanations given by both accused persons cannot reasonably be true and is in this connection no explanation at all.

As guided in the case of **David Zulu V The People** referred to earlier I have guarded against drawing wrong inferences from the circumstantial evidence at my disposal. I must say that the evidence against the two accused persons though purely circumstantial, their guilt is entirely a matter of inference.

I am satisfied and feel safe to convict the accused persons before me because the circumstantial evidence has not taken the case out of the realm of conjecture. It has attained such a degree of cogency which can permit only an inference of guilt.

In **R V Hochman, Volley and Peebles**⁷ it was held that:

“Circumstantial evidence does not require establishment of guilty with mathematical certainty. All that is required is moral certainty that all the bits and pieces, if taken together into one coherent picture pointing to the guilty as the only reasonable inference then conviction is entirely justified.”

From the evidence before me the Prosecution have proved that by an unlawful act which caused the deceased to die by mechanical Asphyxia due to suffocation. The unlawful act was motivated by a malicious state of mind. The act done by the accused persons was done with an intention to cause the death of Morgan Mofya Mumba.

I find the accused persons guilty as charged and convict them accordingly.

In accordance with **Section 201(1)** which states that any person convicted of murder shall be sentenced to death. I sentence you to death in accordance with **Section 303 of the Criminal Procedure Code**. You are to hang by the neck until you are dead. May the Lord have mercy on your souls.

You have a right to appeal to the Supreme Court if you are unhappy with my decision.

DELIVERED AT LUSAKA THIS 11TH DAY OF FEBRUARY, 2016.


G.C. CHAWATAMA
JUDGE