

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



BETWEEN:

THE PEOPLE

VERSUS

ROY CHISEKO SAKALA

Before the Hon. Mr. Justice E. M. Sikazwe in Open Court.

For the State : *Ms A. M. Mwanza*
Ms P. Nyangu – State Advocates NPA

For the Accused : *Mr. M. Mukupa Messrs Isaac & Partners*

J U D G M E N T

CASES REFERRED TO:

- 1. Nakalonga vs The People (1981) ZR 252*
- 2. R Vs Evans (1962) 3 ALL ER 1087*
- 3. Chuzi Vs The People (1967) ZR 137*
- 4. Kabwe Transport Company Limited Vs Press Transport (1975) Limited (1984) ZR. 43*

LEGISLATION REFERRED TO:

1. *Section 184(3) of the Road Traffic Act Number 11 of 2002 of the Laws of Zambia.*

The accused **Roy Chiseko Sakala** stands charged on information in one count of *Causing Death by Dangerous Driving Contrary to Section 161 (1) of the Road Traffic Act No. 11 of 2002 of the Laws of Zambia.*

Particulars of the offence is that **Roy Chiseko Sakala** on the 18th day of August, 2015 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, did cause the death of **Kennedy Kunda**, by driving a motor vehicle namely Isuzu Truck Registration number ALX 5930 on a public road namely Mumbwa Road in a manner which was dangerous to the public and other road users having regard to all the circumstances of the case, including the nature, conditions and use of the road and the amount of traffic which was actually at the time on the road or which might reasonably be expected to be on the said road.

The accused pleaded not guilty to the charge and the matter proceeded to trial.

I warn myself at the outset that it is duty of the prosecution to prove the case beyond a reasonable doubt. It is not for the accused to prove his innocence. If at the end of the case or upon the whole evidence a doubt remains in my mind as to the guilt of the accused he will be entitled to an acquittal.

In support of the case the prosecution called four witnesses.

Faidon Mbwewe a 35 years old mechanic for Road Transport and Safety Agency (RTSA) was the prosecution's first witness *PW1*. He stated that on 19th August, 2015 he examined an Isuzu truck registration number ALX 5930 to state its fitness on the road. He found that all the systems such as the breaks, transmission, suspension, engine steering system, tyres and lights were all in good working condition. Only the left front part was damaged. He wrote a report and handed it to the Police of Westwood Post. He identified the Road Transport and Safety Agency (RTSA) report and it was marked as "P1".

Cross examined he stated that there was a small scratch below the bumper and it was pushed inside. The head lamp was not broken. Looking at the impact on the bumper the vehicle was not moving very fast.

Constable Emmanuel Mpongo service number 32382 of Westwood Police Station was prosecution's second witness *PW2*. He stated that on 15th August, 2015 whilst on duty around 20:00 hours he received information that there was a traffic accident along Lusaka Mumbwa road, Kalundu Area and near Chambu Lamina Farm. He booked out to the scene of the accident, where he found a pedestrian male Kennedy Kunda had been hit by a truck Isuzu registration number ALK 5930 and white in colour. He was found lying on the road side and unconscious. At the scene of the accident he also found the driver of the truck whom he came to know as Roy Chiseko Sakala. Arrangements were made to take the injured person to the University Teaching Hospital (UTH).

The following morning, he received the information that the accident victim had died. By that time the driver was under detention and he warned and cautioned him in Nyanja the language he seemed to understand better, charged

him with the offence of causing death by Dangerous Driving and he voluntarily denied the charge. He later on released him on Police Bond. He revisited the scene of the accident with the accused and later drew a sketch plan not to scale and found that the driver was negligent to cause the accident, as he never hooted or give chance to the deceased to cross the road. He made up his mind charged and arrested the accused for causing Death by Dangerous Driving Contrary to Section 161(1) of Act 11 of 2002 of the Laws of Zambia. He identified the sketch plan and it was marked as "P2".

Cross examined he stated that the accident happened at night and it was near a bar called Chamba Chambalamina Lamina which was about Seventy meters from the main road. There was no marked area for pedestrians crossing on the road. According to the marks on the road it showed that the accident happened on the right lane for the road. The body of the deceased was lying about four walking steps from the point of impact and to him it indicated that the vehicle was not moving fast. The speed limit indicted in that area was 120KM/h and over. The impact was on the left side of the motor vehicle.

Doctor V. Telendy a Forensic Pathologist with Zambia Police Service was the prosecution's third witness **PW3**. He stated that he conducted a postmortem on the body of the deceased on 27th August, 2015. His findings were that the cause of death was Subdural Hemorrhage due to Blunt Head Injury. This cause of injury can be caused by one falling on the road or ground. The other noticeable bruises and injuries on the body were not serious to cause the death of the deceased.

Anderson Nkata a 42 years old man was the prosecution's forth witness *PW4*. He stated that he was at his shop were about twelve to fifteen youths were drinking spirits (Bols). They had started drinking spirits from 16:00 hours until 19:30 hours when they decided to leave the place. All were in a drunken state. He decided to give them transport money as they had also attended a Political meeting which was held at his shop. Despite giving them transport money the deceased and his other friend opted to walk to their homes. Just after a few minutes the deceased friend Justin went back and told him that his friend the deceased has been bashed by a truck. He rushed to the scene of the accident with other people who were also drinking beer at a nearby bar. He found the deceased lying on the left side of the road. He was still unconscious and rushed him to the University Teaching Hospital (UTH). The truck was found parked about two meters away from the injured person. About two hundred meters away there are humps on the road to reduce the speed of motor vehicles. On the right hand side across the road were the injured was lying there is a bar.

At the time of the postmortem he is the one who identified the body to the Doctor in the presence of the Policeman and another person. He observed some injuries on the back of the neck and on top of his head. He last saw the deceased at his shop in the drunken state with his friends. Before they left his shop he told all the men who were drinking to move properly on the highway as they went home. Their drunken state was also reported to the Investigating Officer when he was giving a statement. After the burial of the deceased he never saw again Justin the one who was with the deceased when they left his shop.

Re-examined he stated that the deceased and his friend Justin left his shop in a drunken state.

At the close of the prosecution's evidence, the accused was put on his defence and he opted to give evidence under oath and call one witness.

In his defence the accused stated that on 1st August around 19:00 hours he was driving from Mumbwa going to Lusaka. As he arrived near Kalunda area, there was another vehicle coming towards him and both of them dimmed their lights and by passed each other. After that, flashing his lights he saw two people on the middle of the road. He braked and one of them went back where they were coming and the other proceeded crossing the road. The one who decided to proceed was the one who bumped himself on the left hand side of the truck and he fell down. He stopped the vehicle and rushed to attend to him. He at the same time phoned Officer Mpongo and his workmate in the same area for assistance. This person by that time was conscious. The other friend came back and after asking him he said they were on their way going to Kanyama Compound.

He further told him that they were blinded by the vehicle lights and they had taken some alcohol. Within a short time Officer Mpongo arrived at the scene. He saw about fifteen people who came from a bar and when they arrived at the scene, they started beating him. Officer Mpongo tried to stop them beating him and to save him. He told the crowd that this person you are beating was only sent to come and pick the truck. But it was too late as he had been injured. These people claimed to be cadres for the Patriotic Front Party. This is when the other Police Officers came and calmed the situation. The injured man was then carried to the University Teaching Hospital (UTH) in the Police

Van. He also drove the truck to Westwood Police Station and gave a statement. Later he was told that the same injured man had passed on and he was locked up. The following morning he was released on Police Bond and went to report to his employers about the accident. He denied that he was moving very fast, as just before the accident he had passed the road humps which have put on the highway by Road Transport and Safety Agency (RTSA) and it was about fifty meters from the humps where the accident happened. He also stated that his truck was fitted with gadgets to determine the speed the vehicles was moving on, as well as to locate where the truck was at any given time.

Cross-examined he stated that just after bypassing with another vehicle, this is when he saw two people crossing the road. He braked, but it was too late, he hit into one of them as the other had returned back to where they were coming from when crossing the road. At the time of the impact his gadget which was fitted in the truck recorded that the speed he was moving on was 28km/h. he has been driving vehicles for 17 years and he was a very experienced truck driver.

Re-examined he stated that before by passing with the other vehicle both had dimmed their lights and he had slowed down. He saw these two people in the middle of the road and he braked.

Wantula Sinkamba a 41 years old National Fleet Manager for National Breweries Limited was the Defence witness number two **DW2**. He stated that he was in charge of looking after company's fleet of vehicles in their daily runs as they delivered their product beer, country wide. He had at his command 128 trucks and 38 small lights vans. To help him run the system the company

It is not in dispute that there was a Road Traffic Accident in the evening of 18th August, 2015 in which the deceased died. The accused was the one driving the vehicle, on this high way from Mumbwa to Lusaka. What is to be determined by this Court is whether the accused negligently, recklessly or dangerously, caused the death of the deceased. The accused was very much conversant with this road as it was his frequent area of his sales (beer). He was also very much aware that his truck was fitted with a Geo-Tab machine which recorded every movement he was making that is the speed he was moving on and any stop made. He was at the time of the accident moving at night and he stated that before the accident he had just passed through the humps on the road, which have been mounted up by Road Transport and Safety Agency (RTSA) to remind the motorist to reduce their speed as approaching a densely populated area. This was corroborated by *PW4* who stated that he was aware that just before the scene of the accident there were humps on the highway. So the accused definitely reduced his speed to a reasonable one in line with what he was expecting the activity of people around that area. Apart from that he stated that he was by passing with another vehicle to which both of them dimmed their lights as by the rules of the road at night when approaching each other.

PW4 stated that the deceased and his friend Justin had been drinking spirits from about 16:00 to 19:00 hours when they decided to go to their homes. As they left his shop he could see that the two of them were in a drunken state. Even before he gave them transport money to go to their homes, he warned them of being careful on the highway. To that effect the state of mind and thinking of the deceased and his friend Justin were that of not normal, but for the people who were intoxicated.

Their vision and judgment of things was very poor. *Section 184(3) of the Road Traffic Act Number 11 of 2002 of the Laws of Zambia* states that:

“No pedestrian shall cross a public road without satisfying oneself that the carriageway is sufficiently free of oncoming traffic to permit the pedestrian to do in safely”.

Therefore regard having been had to all the circumstances in particular the fact that drivers are entitled to drive on the assumption that other road users, whether pedestrian or cyclist will behave with reasonable care especially on the high way, it cannot be concluded that the accused drove the vehicle in a manner which falls short of a reasonable prudent driver, as the deceased likewise had a duty as a public road user to exercise due care and obey the provisions of the Road Traffic Act aforesaid. Even though the law is clear that the offence of causing dangerous driving is committed even though the deceased by his sown conduct contributed to his death so long as the accused's manner of driving was a substantial cause of the accident. If this is to happen there should be something more than the MINIMUS, the case of *Nakalonga Vs The People*⁽¹⁾ followed. In this case at hand there was nothing more than the MINIMUS that was established, and therefore it cannot be concluded that the cause of the accident ought to be attributed to the accused's driving. **DW2** the company's Fleet Manager proved to this Court that using the Geo-Tab monitoring system which records the movements of each truck and vans on their deliveries and according to the time of the accident the machine recorded that the vehicle was at a slow speed leading eventually to a stop. Between 19:00 hours and 19:15 the vehicles speed was between 76km/h and 13km/h indicating that the driver was not moving at a high speed. Both the accused and **PW4** confirmed to this Court that a few meters before the scene of the

accident there were humps erected by Road Transport and Safety Agency (RTSA) to slow down traffic. The prosecution has not proved to this Court that the driver caused the death of the deceased by dangerous driving, despite proving that an accident had happened, the case of R Vs Evans followed⁽²⁾

The prosecution has therefore not proved beyond reasonable doubt that the accused drove dangerously to cause the death of the deceased the case of Chuzi Vs The People followed.⁽³⁾

However, before I conclude this Judgment, I should commend Officer Mpongo Emmanuel Service number 32382 of Westwood Traffic Section for submitting to this Court a well drawn and labeled sketch Plan drawn not to scale as emphasised in the case of Kabwe Transport Company Limited Vs Press Transport⁽⁴⁾, which the Zambia Police Command should emphasise strongly to its Traffic Officers when drawing the sketch plans not to scale, on all Road Traffic Accidents.

I therefore accept the evidence of the accused and his defence witness and a doubt remains in my mind as to the guilt of the accused as charged and *I acquit him.*

Appeal to the Higher Court granted.

Delivered at Lusaka this.....day of.....,.....2020.

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E. M. SIKAZWE
JUDGE

Recd on 31.07.2020 By -11- CHITABO, SCJ at 1630