

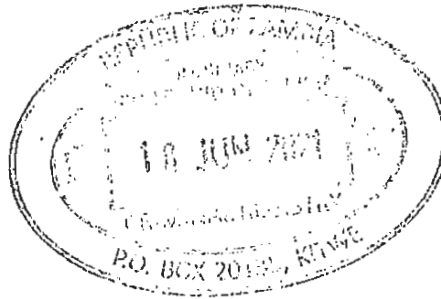
Judge

IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT KITWE

HK/41/2020

(CRIMINAL JURISDICTION)

BETWEEN:



THE PEOPLE
VS
BOYD KAMIZHI
MACLEAN KAMIZHI
GILBERT ZIMBA
SYVIO KWIBISA
JIMMY BWEMBYA
BABA KABASO MULENGA

Before the Hon. Madam Justice Abha Patel, S.C.

For the Prosecution: Mr. Bako SA, Mrs. M. G Kashishi Ngulube PSA,
Ms. M. Mwangala, Mr. B. Sifwa State Advocate, and
Mr B. Z. Tembo of
Messrs National Prosecution Authority

For the Defence : Ms. M. Nzala & Mr. P Chavula of
Messrs Legal Aid Board for the Accused persons

For Accused No. 6: Mr. Freddie Chalenga and Mr. J Sinkala of
Messrs Freddie & Co,
Mr. I.K. Mulenga, and Mr. N. Goma of
Messrs. Iven Mulenga

RULING ON TRIAL WITHIN A TRIAL



Legislation referred to:

1. The Penal Code, Chapter 87 of the Laws of Zambia
2. Criminal Procedure Code, Chapter 88 of the Laws of Zambia

Cases referred to:

1. Chigowe v The People [1977] ZR 21 (S.C)
2. Zeka Chinyama and Others v The People (1980) ZR at 568.
3. The People v Chanda (1972) ZR 157
4. Muwowo v The People (1965) ZR 91
5. Boniface Chanda Chola, Christopher Nyamande and Nelson Sichula v The People (1988-1989) ZR 163 (S.C)
6. John Mwansa and Samuel Mwansa vs The People SCZ/App/No. 170/171 2014
7. R vs Kahyata High Court Northern Rhodesia 1964
8. The People vs B (1980) Z.R. 219
9. Haamenda vs The People (1977) Z.R 184 (S.C)
10. Kalebu Banda vs The People (1977) Z.R 169 (S.C)
11. Chulu vs The People (1969) ZMHC 128
12. Anayawa and Sinjambi vs The People Appeal No.143/144/2011

1. Introduction

1.1 Boyd Kamizhi, Maclean Kamizhi, Gilbert Zimba, Syvio Kwibisa, Jimmy Bwembya and Baba Kabaso Mulenga, **A1** to **A6** respectively, were charged for offences committed on a date unknown but between 22nd January, 2019 and 23rd January, 2019 at Chingola in the Chingola District of the Copperbelt Province of the Republic of Zambia, jointly and whilst acting together, as follows:

In **count 1** for the offence of murder, of Emmanuel Chibwe Mapunda, contrary to section 200 of the Penal Code Chapter 87 of the Laws of Zambia.

In **count 2**, for the offence of attempted murder of Billy Mapunda contrary to section 215 of the Penal Code.

In **count 3**, for the offence of attempted murder of Shila Bwembya, contrary to section 215 of the Penal Code.

In **count 4**, for the offence of attempted murder of Staley Mapunda, contrary to section 215 of the Penal Code.

In **count 5**, for the offence of rape, contrary to section 132 and 133 of the Penal code Chapter 87 of the Laws of Zambia.

1.2 When called upon to plead, all six (6) Accused denied the charges. The Court entered a plea of not guilty and the matter proceeded to trial.

1.3 During the presenting of the case for the Prosecution, **PW15**, Senior Superintendent Moses Kabamba was called, in his capacity as Deputy Criminal Investigation Officer (DCIO), for North Western Province. He was in charge of cyber and financial investigations based at Police Headquarters in Lusaka, until

May 2020 when he was transferred to Solwezi. It was his evidence that he, together with a team of Police Officers, namely, Prince Kalala, Zyambo, and Mr Mwale did on 24th January 2020 travel to Chingola to pick up an accused man named Jimmy Bwembya, **A5**, a resident of Chingola, who was in police custody and together with whatever belongings were on him, was handed to them. PW15 identified Jimmy Bwembya as Accused 5 in Court. He confirmed that together with **A5**, they arrived back in Lusaka on the same day, where he was detained at Lusaka Central Police Station. While PW15 was giving evidence relating to the cell phones, sim cards found on **A5**, he referred to statements made by **A5** in the course of his evidence. The defence team objected to the line of evidence as it was their instruction that the statements were obtained under duress and after extensive torture and beatings sustained by **A5** at the hands of the Police and hence not free and fair.

- 1.4 Counsel for the State applied for the Court to conduct a Trial within a Trial as they intended to rely on the statement as part of their evidence. The defence team were of the same opinion and the Court adjourned the hearing of the main trial in order to conduct a Trial within a Trial.
- 1.5 Amid adjournments for various reasons, all of which are on record, the trial within a trial, commenced on 11th February 2021 and ended on 6th April 2021 with a direction issued by the Court for the state and the defence to file submissions in writing on 16th April 2021 and 19th April 2021 respectively.
- 1.6 The Court having received three sets of written submissions from Counsels, extends its gratitude to Counsels respectively for their industry and has duly

considered the record, the submissions, which are referred to as appropriate and form the basis of my Ruling below.

2. Evidence of the Prosecution's Witnesses

2.1 The prosecution called three (3) witnesses, the first of which was **PW16, Moses Kabamba** in his capacity as Assistant Commissioner of Police DCIO, North Western Province in Solwezi. He testified that on 29th January 2020, at about 10:30 hours, he left the Police Headquarters in Lusaka to go to Lusaka Central Police Station. He was in the company of Detective Chief Inspector Zgambo and Detective Inspector Mwale. Around 11:00 hours, he reported his presence to the Officer in Charge of the Flying Squad, a Mr. Gershom Mwila from whom he requested for the use of an Office in order to record a warn and caution statement from **A5** who was already in police custody at Lusaka Central Police headquarters. It was his evidence that he, together with his two colleagues, (Zgambo and Mwale,) went down to the cells and picked **A5**. He said that for security reasons and owing to the distance between the cells and the Office they had requested, they did place **A5** in handcuffs and went with him to the office of the flying squad.

2.2 He described the office which had 3 tables, one being near the main door, the other facing the main door and the third at the far-left corner of the room. He said it had a sofa and several chairs and a cabinet on which stood a Television set. He described the office as having 2 large sliding windows with no curtains and that there was ample light in the room. He also said that

the door was left open for ventilation. He said the office was about 4.5m by 4m in size. He testified that he and his two colleagues and Mr. Mwila of the Flying Squad were in the office with **A5**. He proceeded to state that he explained to **A5** that they had brought him to record a warn and caution from him and asked if he had any complaints about his health or any other complaints. According to him, **A5** was in good health and understood the process that was to take place and opted to use bemba, the language of his choice. He also confirmed that none of the 4 of them were armed.

2.3 **PW16** further explained to **A5** his rights of counsel, or to have a friend or relative to witness the process and that he (**A5**) confirmed that he was comfortable to proceed without having anyone present. **PW16** proceeded to record a warn and caution in bemba for 1 count of murder of Emanuel Mpunda, 3 counts of attempted murder of Stanley Mpunda, Billy Mpunda and Sheila Bwembya, and 1 count of rape against Sheila Bwembya. He said these were contained in a statement of allegations levelled against **A5** which were recorded in bemba and read to him. **A5** responded by saying he had understood the allegations and signed that he had understood the charges against him.

2.4 It was the evidence of **PW16** that he then proceeded to the second part of the warn and caution informing **A5** that he was not obliged to answer any part of the allegations but that if he did, anything that he would say, could be used in a court as evidence against him. He testified that **A5** decided to respond to the allegations which were recorded in writing by **PW16**, then

read back to him in bemba, and after he confirmed the accuracy of the response, he signed every page of the warn and caution statement.

2.5 **PW16** testified that Inspector Mwale had bought some food and had given **A5** some chicken and chips which he ate and that he said he had no complaints of the manner in which the process of the warn and caution had been conducted. **PW16** confirmed that the whole process lasted for about an hour and that they returned **A5** to the cells by midday. He described and identified the statement which was in his handwriting, written in bemba and duly signed by him. He referred to the first part being the caution and the last part where he signed to confirm his understanding and was also signed by Detective Inspector Zgambo as a witness. This was produced and marked **ID16**.

2.6 He then translated the same statement into English, read it over to **A5** who again signed it accepting that he understood the contents and the translation. He said that again the version of the warn and caution statement was signed by **A5**, by himself and Zgambo as witness. The statement was described and produced in Court marked **ID17**.

2.7 **PW16** confirmed that he, Mwale and Zgambo were dressed in jackets without ties, and that Mr. Mwila was in jeans and trainers and that **A5** was wearing jeans, a shirt and trainers. He appeared well, his voice was okay and that he also observed a few old scars on his face and further confirmed that he had been in the cells in Lusaka for about 3 days from the time they had

brought him from Chingola. He explained that he had had other assignments that he was attending to relating to his duties as he was in charge of cyber and financial crime.

2.8 Under cross examination by Counsel Chavula, he confirmed that **A5** was picked up from Chingola Central Police Station on 24th January 2020 and that he had not told the Court if **A5** had been given any food along the way or while he was in Lusaka. He also confirmed that he knew the family and relatives of **A5** were in Chingola and that they had not offered **A5** any means of contacting his relatives, such as a cell phone. He further agreed that unlike in prisons, Police Officers do not provide food for inmates.

2.9 **PW16** was asked if he and his colleagues, Mwale and Zgambo, had been involved in the violent beatings and torture of **A5** in the days between the 24 January 2020 and 29 January 2020 such that he was tortured, starved and forced to sign the statement. It was also put to the witness that after severely beating **A5**, pictures were taken of his bloodied face and posted on facebook. He was shown a picture of **A5** and asked to confirm if there was a picture of the IG of Police in the background. **PW16** denied having caused any beatings or torturing **A5** at all. He however agreed that if a person was beaten to that extent as shown in the picture, any statement taken from that person could not be said to have been obtained in a free and voluntary manner. He also confirmed that the Police did have video recording facilities available at Lusaka Central Police Station.

- 2.10 Under continued cross examination by Ms Nzala, he confirmed the presence of 4 officers and **A5** in the office. He denied that they had suspended the accused from the tables and further denied that the officers ate alone and that the accused had been starved for several days.
- 2.11 **PW16** approached **A5** and several scars were shown to him on the body of **A5**. He was shown a scar on the left side of his skull, another on the right, a huge scar on his left shoulder and another scar on his left wrist and more smaller scars on his left elbow and on top of his left eye. He also could not confirm what may have happened to **A5** in the several days that he was held at Lusaka Central Police Station. He was shown a book which had the name of **A5** on the book and that he had lodged a complaint of torture at the hands of the Police in Lusaka, when he had been taken back to Kamfinsa. The witness denied any knowledge and further denied that he had recorded and written the statements himself and had them signed in March 2020. He was also referred to alterations in the date and asked why he had not testified in his evidence in chief as to the alterations.
- 2.12 Under continued cross examination by Counsel Mulenga, he confirmed that although **A5** had been apprehended in Chingola, there were further ongoing investigations at Lusaka and that it was felt prudent to bring **A5** to Lusaka for his own safety. He explained that the Country had had incidents of gassing and that the public were taking law into their hands against any suspects deemed to be involved in such activities. He was further questioned on the alterations by Counsel Chalenga and taken to task on the same. It was put

to him that **A5** was taken to Kitwe and then brought back to Lusaka in March 2020 when he was taken back upstairs to the office of the Flying Squad. He confirmed that he had not been part of that group as it was led by Inspector Kangwa and others in his team.

2.13 Under Re-examination, he was shown the picture again and he confirmed that the picture had no date on it and that as a seasoned experienced officer, he would not have recorded a warn and caution statement from someone in that distressed condition as depicted by that picture. He denied having posted any picture on social media and also confirmed that though he had not given **A5** his cell phone, he had informed him of his rights of having a relative or counsel present. He also clarified that the statements (ID16) and the translated copy (ID17) was recorded on 29 January 2020 and the bottom of every page was signed on the same date.

3. **PW17**, Detective Chief Inspector Geoffrey Zgambo took oath and confirmed that he was based at the Anti Fraud Unit at Police Head Quarters in Lusaka. He explained that the anti fraud unit deals in specialised crimes such as cyber and financial crimes and that he had been with the same unit for a period of 12 years.

3.1 He narrated to the Court that on 29 January 2020, he was asked by the then Officer In Charge, (OIC), Mr. Moses Kabamba of the same unit at Force Headquarters to accompany him to Central Police Station he was to record a warn and caution statement from one Jimmy Bwembya **A5**, who was in

custody at Central Police in Lusaka. He explained that Police HQ does not have designated cells and they usually hold the accused from areas such as Kabwata, Woodlands and Central Police being the nearest to Force Head quarters.

3.2 He confirmed that he was in the presence of Inspector Peter Mwale, and Moses Kabamba and that at around 10 hours of the said morning, they approached the OIC of the Flying Squad at Lusaka Central Police, and requested for the use of an office for them to conduct the warn and caution. He testified that upon being given an office, the three of them went to withdraw Jimmy Bwembya and handcuffed him for security reasons, there being 2 outlets and windows on the way, and led him to the office which was upstairs on the 1st floor.

3.3 He described the physical lay out and set up of the office which did not differ in any material aspects to the description given by Senior Sup Moses Kabamba (PW16). He confirmed that the 3 of them, were joined by Mr. Mwila, the OIC of the Flying Squad. He testified that Mr. Kabamba was seated about one metre from the accused, Mr. Mwila and himself at a distance of about 2 metres and Mr. Peter Mwale was seated about 3 metres from Mr. Kabamba. He described the office as being a big room with 2 big windows which lets is light and that there were no curtains.

3.4 He narrated that the accused appeared in good health and spirits, spoke in bemba and had hair on his head, shaved on the sides and appeared to have

a scar on his left wrist and left cheek. The accused raised no concerns when he was asked about his welfare by Mr. Kabamba. The accused also said he was comfortable to proceed in bemba and that he was also fine to proceed to the warn and caution in the absence of his relatives or legal representatives.

- 3.5 He further testified that Mr. Kabamba informed the accused that they had brought him for the purpose of recording a warn and caution about the allegations of murder, attempted murder and rape levelled against him which occurred in an area called Kankoko in Chingola. He was also informed of his rights to remain silent and that anything he said could be used against him in Court. He signed to confirm that he understood his rights and then narrated the events as they had taken place while Mr Kabamba recorded the statement in writing. **PW17** testified that the statement was read back to the accused and after he had agreed with the contents, he signed on every page and that he, **PW17**, signed each page as a witness and the said statement was also signed by Mr Kabamba, being the officer that recorded the warn and caution statement. He testified that the said statement was then written in English, read out and explained in bemba to the accused, who accepted the version and signed it in a similar manner. **PW17** described the physical features of the statements namely, **ID16** and **ID17** and confirmed his signature, that of Mr. Kabamba and the accused.

- 3.6 He also stated that he gave money to Inspector Mwila to buy some food, and that he sent one of his officers across the road to Levy Mall to buy and bring

back some food for them all. He said there were more than 5 packets of food and that all the officers, and the accused had a packet of food and a soft drink each.

- 3.7 **PW17** further identified the accused, Jimmy Bwembya **A5** in Court and pointed out the 2 scars that he had observed on the material date. He explained that the accused appeared jovial, and that the atmosphere had been cordial and that there was nothing intimidating in the room such as guns, batons, tazers or riot gear. He described that he was dressed in a navy blue suit, without a tie and had no fire arm and only had his note book on him. The accused was dressed in a shirt and blue jeans and wore sneakers.
- 3.8 He further confirmed that he had many times detained suspects in the same facilities and that the custody officer ensures that every suspect is fed as there is communal sharing of food and he confirmed feeding times were at 6:30 am, then between 12 and 13 hours and between 17 and 18 hours. According to **PW17**, food is provided in two ways, either by the relatives of those in custody and by the Police who have brought suspects for detention.
- 3.9 He confirmed that he had seen Jimmy Bwembya before on 24 January 2020 when he had been assigned on duty to Chingola during the sensitive time of incidents of gassing. He confirmed that the accused had been detained on suspicion of alleged murder, rape and attempted murder and that according to stories circulating on social media, the accused was deemed to be involved in the gassing incidents. He further confirmed that for fear of the safety of

the accused, he was one of the officers sent to pick him up from the cells in Chingola to bring him to Lusaka.

3.10 He testified that on 24 January 2020, he with 3 other officers, namely, Mr. Moses Kabamba, Mr. Kalala the deputy OIC at the time, Inspector Peter Mwale and the accused travelled to Lusaka in a MarkII Zambia Police vehicle. He explained that the sister of the accused, whose name he did not recall asked to speak to the accused which he allowed. He also informed her that the accused was being taken to Lusaka. He explained that he drove the vehicle with Mr. Moses Kabamba in the front, while the accused sat in between the 2 officers (Kalala and Mwale) on the back seat. He testified that the atmosphere was cordial and that they stopped in Kapiri Mposhi to buy food for everyone and that the accused raised no complaints at all.

3.11 Under cross examination, he denied inflicting injuries on the accused and was shown the scars (on his face under his left eye, on his forehead, on his elbow and a deep gash on his left shoulder) to extract the statement from him. He further denied suspending the accused from a metal bar by placing two tables together and denied beating him every night till 29 January 2020. He was categorical that as the Police, they did not engage in such acts of aggression against the accused.

3.12 Under further cross examination, he could not confirm whether the accused was sharing food with other inmates and could not confirm if Mr. Moses Kabamba provided food to the accused as he was not the detaining officer.

He confirmed that he did not offer his phone to the accused for him to call his relatives but maintained that the accused said he was fine to proceed to the warn and caution in the absence of his relatives or legal representation.

- 3.13 The witness clarified that when the accused was withdrawn from the custody officer, there were no complaints recorded of the accused not having eaten whilst in detention in Lusaka.

4. **PW 18** was Detective Inspector Peter Mwale of the Anti-Fraud Unit based at Lusaka with 13 years of experience in the field of investigating cyber and financial crimes. He confirmed that on 29 January 2020, he, in the company of Mr. Moses Kabamba and Det Inspector Zgambo went to Central Police Station at Lusaka, to witness the warn and caution statement from one Jimmy Bwembya. His evidence confirmed that of Mr. Moses Kabamba and Mr. Geoffrey Zgambo, on the arrangements for requesting an office from Mr. Mwila, the Officer in Charge of the Flying Squad Unit. He narrated how they withdrew Jimmy Bwembya **A5**, from the cells and asked the custody officer of the condition of the inmates and were informed that all was reported to be well. He confirmed that when brought to them, Jimmy Bwembya appeared well, and that due to the many outlets at Central Police, they handcuffed him as they took him to the office on the first floor.

- 4.1 He proceeded to describe the office and the seating arrangement, which in all material respects, was a confirmation of the evidence by **PW 16** and **17** respectively. He testified that the door and windows were left open and that

his handcuffs had been removed and that all officers though dressed in suits, had removed their ties and that no one was armed. He said the weapons are placed in a red box at the central armory and that no equipment or weapons were in sight on the day.

4.2 He confirmed that Mr Moses Kabamba asked Jimmy Bwembya which language he understood and then proceeded to inform him of the charges levelled against him and explained his rights to him. It was his evidence that the accused opted to use bemba and understood his rights and understood that the warn and caution would first be conducted in bemba and thereafter translated in English. That is how the warn and caution was administered, charges against him read out and that he proceeded to give a statement, having confirmed that he understood the charges. He also narrated that after Jimmy Bwembya signed every page of the statement, the same was signed by Mr Moses Kabamba and the signatures witnessed by Mr. Geoffrey Zgambo.

4.3 He went on to testify that one of the Officers from the station was sent to buy some food from across the road at Levy Mall and that the five of them in the room, including Jimmy Bwembya, shared the food that had been bought. He confirmed that after the statement was recorded from Jimmy Bwembya, it was signed, witnessed and translated into English, which was also signed and witnessed in the same manner. He also stated that he recognised the handwritings and signatures of Mr Kabamba and Mr Geoffrey Zgambo having worked with them both for 4 years and 12 years respectively. He identified Jimmy Bwembya as **A5**, and remembered a scar on his face over his eye. It

was his evidence that the atmosphere in the room was cordial and that they ate together.

4.4 He narrated that he was part of the group that travelled to Chingola on 24 January 2020 to bring him to Lusaka and recalled that Mr. Geoffrey Zgambo was approached by a lady who enquired where they were taking Jimmy Bwembya. He further narrated that he had not seen Jimmy Bwembya from the 29th day of January 2020, to the date he was giving evidence in Court. He also explained that due to the incidents of gassing prevalent at the time, the security was high and that they were escorted up to Kafulafuta when they left Chingola. He said they stopped at Kapiri Mposhi to buy food, which they all ate whilst driving, including the accused.

4.5 Under cross examination, he said that after Jimmy Bwembya was taken to Lusaka on 24 January 2020, he saw him on the 29 January 2020, and that he had been working on other assignments including investigations into the incidents of gassing. He confirmed that he had not personally verified if Jimmy Bwembya had eaten and that they proceeded with the warn and caution when Jimmy Bwembya said he was comfortable to proceed without his relatives. He said his role was simply to provide back up and denied that he or indeed any of the other officers had inflicted any form of torture on the accused. He denied that Mr. Mwila had held a gun to his head in order to induce him to sign the statement.

4.6 His testimony remained steadfast and he denied all allegations of torture inflicted on the accused and neither did he knew that the accused was

purportedly moved between Lusaka, Kitwe and Chingola, and that the statement was allegedly signed in March 2020.

4.7 This marked the close of the Prosecution's case.

5. Evidence of the Defence Witnesses

5.1 **DW1** Jimmy Bwembya, the fifth accused person (**A5**) in the case before this Court, confirmed that he was 23 years of age and lived in Chingola and was a copper dealer. He testified that on the night of 22 January 2020, he was asleep with his relatives in Solwezi, when he heard a knock at the door, which was broken down and 4 police officers entered the house. He testified that his hands were placed in handcuffs behind his back and that he was taken to the Police station in Solwezi. He told them his name and stated that he lived in Chingola and had come to Solwezi to look for a job. He said he was taken back into the car at night and driven to Chingola Police where he was placed in custody and left till 24 January 2020, on which day 4 police officers came to the cells, grabbed him and put him in a grey coloured vehicle, and that he was made to sit in between 2 officers in the back seat and another 2 officers were in the front.

5.2 It was his evidence that they drove to lusaka and did not stop for food and that they reached Lusaka at night and that he was pushed into cells and the officers told the inmates not to give him any food. His evidence was that he was not given any food for the several days after he was brought to lusaka

and that he rummaged for crumbs and left overs from among the garbage, and ate whatever he could find.

5.3 According to him, late at night, an Officer called Kalala, and another officer called out for him, took him upstairs where they entered an office which had 3 tables, big windows, a sofa, some stools and a TV. He said there were 5 officers altogether and made him sit on a stool. He said Officer Kalala told him that he had been arrested in connection with a video that he had apparently posted on social media. They proceeded to show him the video which depicted a woman being stabbed with a knife. He said they started beating him with short batons all over his body insisting that he had taken and posted that video. The beatings continued for about one hour, after which he was returned to the cells.

5.4 He narrated that the following day, again he was not given any food and that at night Officer Kabamba and Musonda came to the cells, handcuffed him and took him back upstairs to the office, where the 3 other officers were and made him sit on a stool and that they all started to eat food but did not give him any. When they (the officers), had finished eating, Officers Musonda and Kabamba sat closer to him and brought some paper and pen and asked him to sign the paper. He said they had written some allegations against him and asked him to sign the paper and that he was severely beaten by Officer Musonda by being punched on his face and head until he was bleeding from the mouth and nose. They then took a picture of him and left him alone in the office with Officer Kabamba. It was his evidence that they returned after

a long time and again gave him a pen and shouted at him to sign the paper. When he refused again, he was made to strip. They had short batons, planks and 2 iron bars and 2 handcuffs. There were two tables on either side and it was his evidence that they suspended him from those tables and was made to swing with his legs up his bottom exposed, head down and hands raised.

5.5 He narrated that they continued to inflict beatings with planks and batons and said they would kill him unless he signed the papers. He said he sustained severe injuries with swellings on his feet, buttocks and on his private parts. He said that he still has the wounds and pointed at the scars on his head caused by the short batons, and above his left eye and a deep scar on his left shoulder caused by a plank. He said he urinated and defecated due to the severe beatings and that they left him suspended in that manner for a while and that when they came back, they removed the pole from the table and put him on the floor and pulled out the long pole and removed the handcuffs from his legs but not his hands. It was his evidence that he was taken back to the cells where he started coughing blood and that the following day, on 28 January 2020, Officer Musonda and Kabamba again came and asked him to sign. When he refused, he showed them his injuries and asked to be taken to the clinic and also asked for a phone to call his relatives, both of which requests were denied.

5.6 He narrated that at night they came back, and found him lying on the floor, face down as he could not lay on his bottom and dressed only in his boxers, they took him back upstairs, while he staggered and they held him up. He

said they repeated what had happened the previous day and suspended him again and inflicted the same violent beatings. He recalled another officer, who was not part of the team, entered the office and told them to stop for fear that they would kill him and that is how they stopped. He said that the handcuffs were very tight and that he collapsed again due to the beatings and that two of the five officers, Officers Kabamba and Musonda, dragged him back to the cells and ordered the inmates to help him get dressed. He narrated that the same ordeal was repeated the following night, he was thrown back into cells and left till 31 January 2020.

- 5.7 It was his evidence that Officer Kabamba with other unknown officers came to get him, and placed him in a white hilux van and drove him to Ndola Police where he was taken to the holding cells. He said he was denied food while in Ndola and also denied access to a phone to call his relatives. He testified that sometime in February 2020, the same officers removed him from the cells and took him in the Hilux to Kitwe Police where they detained him in the holding cells. He repeated his requests for medical attention and a telephone, both of which were denied. He narrated that the same officers came and transported him in a similar fashion to Chingola and placed in the holding cells. He said Officer Kabamba told him that they would release him if he signed the papers which he again refused. He also said he was not allowed to contact his relatives while he was held in Chingola.

- 5.8 He continued by stating that sometime in the early part of March 2020, the same officers came and placed him in handcuffs and put him on a Quantum

bus. There were 6 Officers and he was the seventh person and they told him they were taking him back to Lusaka. He stated that he was not given any food or water and that they reached Lusaka at night and he was taken to the cells. The following day, he said the Officer Kabamba and another officer came and took him back upstairs to the office where several other officers were present. He was again forced to sign some papers and when he refused, Officer Kabamba got a long black piece of rubber and started whipping him with it, while the other officers beat him with short batons.

5.9 He stated that two of the other officers who were involved in beating him had also appeared in Court and that one of them took him towards a wall and showed him pictures with what appeared to be people who were being subjected to various forms of torture, including pictures of people lying dead in a pool of blood. He said a gun was then cocked at his head and that a light-skinned officer, who has testified in court, started beating him with a short baton, while the other officers simply shouted *“kill him, kill him”*.

5.10 It was his evidence that fearing for his life, he had not bathed for some time, and being overcome, he started to sign his name although he did not know what he was signing. He said he was thereafter returned to the cells and that two days later, Officer Kabamba and another Officer took him in a white Hilux to Kitwe where he stayed for 6 days. And that they then took him in a Quantum bus to a different police station in Kitwe. According to him, Syvio Kwibisa, (A4) and Gilbert Zimba (A3) got on to the bus and they were taken to another police station from where McClean Kamizhi (A2) and Boyd

Kamizhi (**A1**), were all taken to Chingola Police Station. It was his evidence that they were all transferred to Kamfinsa on Friday 13 March 2020 at about 18 hours.

5.11 He said that he was denied medical attention at all these facilities and that at Kamfinsa, he informed someone referred to as "Commander" that he needed medical attention and was subsequently taken to a clinic within Kamfinsa where he was attended to by a medical officer, who recorded notes in his book and that he showed him all the injuries that he sustained and told him how they had been caused. He said he was given some painkillers.

5.12 In concluding his evidence in chief, he said the police had taken a picture of him but he could not recall the date. He confirmed that Officer Musonda, whose name was Zgambo, was referred to as Musonda in Lusaka and is the one who testified in court after Officer Kabamba.

5.13 Under cross examination, **A5** was questioned as to the date of the documents shown to him in Court as being the confession statement. It was suggested to him that the document was dated 29 January 2020 and he told the Court it was signed sometime in March 2020. He was taken to task on his evidence of not being comfortably seated in the back of the car, which is designed for 3 occupants, and he confirmed that there were only 3 occupants in the back seat during the drive to Lusaka.

5.14 He was insistent that all the injuries he had sustained, and all the scars that he had shown to the Court were occasioned as a result of the beatings he had endured at the hands of the Police while in Lusaka. He admitted that he had not disputed the evidence of the prosecution witnesses who testified that his sister was present when he was being taken to Lusaka.

5.15 The accused was shown ID16 and showed the Court where he had written his name and pointed at the *11 pages* on ID16 and similarly on ID17 at the bottom of each page. He was asked if he recalled being taken to an office on 29 January 2020 and asked if the office had big windows similar to the ones in Court. He confirmed the fact but denied that Officer Kabamba had explained the charges to him.

5.16 He also confirmed that he was picked up by the Police from his house in Solwezi but said that his family did not know where he had been taken and that he did not speak to his mother. He confirmed in re-examination that he was made to sign the statement in March 2020.

6. **DW2** was Mr. Makombe Zama, who stated his particulars for the record and confirmed that he was a Clinical officer general at Kamfinsa Facility. He obtained his diploma in clinical medicine from Chainama College in the year 2014 and that he had been working at Kamfinsa Facility for a period of six (6) years. His duties include attending to inmates who are ill or have other complaints.

- 6.1 Of relevance to this matter, the witness narrated that on 16 March 2020, whilst he was on duty at around 08:00 hours, Jimmy Bwembya, a patient was brought in with complaints of general body pains, headaches, scars on his forehead and bruises on his back. **DW2** confirms that he did attend to Jimmy Bwembya and noted that he was being aided to walk by other inmates and he was informed by Jimmy Bembya that he had been severely beaten and tortured by the Police . He testified that he physically examined him and noted that he did not sustain any fractures, prescribed medication and ordered that his wounds be cleaned every day for 5 days. He testified that all findings are recorded in a book which is issued in the name of the patient and which exercise book will bear his handwriting.
- 6.2 The witness was shown and identified the exercise book, which was produced and admitted into evidence with no objection by the State and marked "**D1**". The witness identified Jimmy Bwembya as **A5** in Court and described that he looked ill, did not have anaemia or jaundice. From a close examination, he said Jimmy Bwembya had cuts on his scalp, bruises on his back, his lower limbs were swollen and that he was being helped to walk by his colleagues.
- 6.3 He also testified that he had been approached by the defence counsels to issue a report which he did in February 2021. The said report on a headed Zambia Correctional Service paper was admitted into evidence and marked "**D2**". It was his evidence that Jimmy Bwembya had sustained beatings and he also conceded that this was based on what he was told by Jimmy Bwembya and further supported by his clinical assessment.

- 6.4 Under cross-examination, he was taken to task about soft tissue injuries, cuts and bruises and questioned if **D2** was conclusive in its findings that Jimmy Bwembya had been tortured at the hands of the Police. He confirmed that he had been told by Jimmy Bwembya that he got the 3 scars on his forehead as a result of the torture inflicted on him by the Police. He also confirmed that both documents **D1** and **D2** did not bear an official date stamp. He also confirmed that he did not see any injuries on his thighs, hands and wrists. According to the exercise book **D1**, the witness confirmed that he had prescribed antibiotics, pain killers, ointment and daily wound cleaning for five (5) days.
- 6.5 The witness was questioned about the entry made on 2 August 2000, where Jimmy Bwembya was attended at the clinic as he was coughing blood viz his findings in March 2020. He further confirmed that he had not signed any of his findings.
- 6.6 Under re-examination, he clarified that with reference to bruises on the back and scars on the shoulder, he was actually referring to his back. He further pointed to the three (3) injuries he had seen on the forehead and scalp.
7. **DW3** Wezi Bola confirmed his details and that he was a property consultant by profession. It was his evidence that on 27 January 2020, a link appeared on one of his whatsapp groups under the heading "*what really hurts us in Zambia*". He narrated that he opened that link on his hp computer which contained a story of a Prophet Issac and of a criminal who had been arrested in Solwezi. He testified that under the story was a picture of a man with blood

on his mouth and nose. He explained that this story appeared at the time when ritual killings were rampant in the country. He testified that he had approached the legal team for the defence and that they had asked him to come to court to testify in the matter.

- 7.1 The witness confirmed that he had printed the article and wished to produce it as part of his testimony. Although the State informed the Court that they wished to mount a formal objection to the production of the proposed article, they withdrew their objection and the same was admitted and marked "D3". He further explained that an article once posted on the internet, could not be altered in its content and that he had printed it on 1st April 2021. He stated that he had forgotten about it until he heard of the ongoing case in court and that is how he approached the lawyers.
- 7.2 Under cross examination, he read out the article which referred to one Francis Mumba Chileshe as having been apprehended the previous day. He confirmed that he did not know when or where the picture of the man was taken and that he decided to approach one of the lawyers in the defence team. He stated that he did not know Jimmy Bwembya and his interest was drawn to the story under the caption: *"one of the 18 ritual killers arrested in Solwezi"*.
- 7.3 He appeared evasive and avoided certain questions put to him as to how he was able to identify A5 as the man in the picture that he had produced in Court. He failed to give satisfactory answers as to why he had gone to see the defence counsel as he claimed to neither know Jimmy Bwembya nor

Francis Mumba Chileshe, and neither could he give any reasonable answer to support his interest in the case before the Court.

7.4 He was later shown a selection of pictures on the facebook platform and interrogated on the pictures. He confirmed that the images he was shown were those from the facebook page of Jimmy Bwembya and he was asked to point at certain scars and descriptive physical features of Jimmy Bwembya. At best, he appeared evasive and hesitant to answer questions put to him by the Team of Advocates for the State. He insisted that all pictures of the person wearing a headsock was a disguise and hence he failed to make an identification of the person whose images were being broadcast on the screen.

7.5 He was shown several other images of Jimmy Bwembya where he pointed out scars that were visible on his forehead, another below his eye and above his eye and agreed that the dates on the pictures were in the year 2017.

7.6 Under re-examination, he was shown the last picture and he confirmed that he could not identify the person as he was wearing a headsock.

7.7 This marked the close of the defence and the end of the trial within a trial.

8. Submissions by the Parties

The State filed its written submissions on 16th April 2021 and the Court received two sets of submissions filed by the defence team, on 19th April 2021, each supporting the position taken by them respectively. The Court

extends its gratitude to counsel on record for their industry and diligence and will refer to the submissions received in the context of analysing the evidence before the Court. Needless to say, the Court will not repeat or narrate the submissions in their entirety, save to say that they have been fully considered and appreciated and form part of the record.

9. Findings of Fact

At this stage of my determination, it is critical for me to arrive at findings of fact, after analysing the voluminous evidence that has been placed before me. However, I will address facts of particular importance to my mind, which are the following:

- 9.1 The accused was apprehended in Solwezi on 24th January 2020. The accused was taken from Solwezi to Chingola and then brought to Lusaka in the company of **PW16, 17 and 18 and one Mr Kalala.**
- 9.2 The Accused was held at Lusaka Central Police Station, where suspects are usually held for investigation.
- 9.3 There are no facilities for feeding prisoners at Lusaka Central Police Station, inmates eat in two ways: in communal fashion from food brought by their relatives or provided by the Police who have detained the suspect(s).
- 9.4 The interview, referred to as the warn and caution statement followed by the written recording of the disputed confession statement took place in an upstairs office of the Flying Squad, at Lusaka Central Police Head Quarters.

- 9.5 The Prosecution witnesses did not offer a telephone or any other facility to the accused to enable him to telephone his relatives, friends or counsel of choice.
- 9.6 The Prosecution witnesses, especially **PW16**, Moses Kabamba being the detaining officer, did not take or provide food to the accused while he was held at Lusaka.
- 9.7 At the material time of the detention of the accused, and his being taken to Lusaka in January 2020, the Court will take judicial notice of the state of heightened alarm and agitation from members of the public, due to the sensitive situation of incidents referred to as "*gassing*" in the country, especially on the Copperbelt Province.
- 9.8 There was no reasonable or satisfactory explanation as to why the disputed confession statement was not recorded immediately or the following day, other than the prosecution witnesses saying that they were carrying out *other duties in the national interest*.
- 9.9 The accused was subjected to at least two trips between Chingola and Lusaka for unexplained reasons.
- 9.10 The contested confession statement **ID16** and its translated English version, **ID17** were each 11 pages in length.
- 9.11 There were video recording facilities available at Lusaka Central Police Station, but were not used for the purpose of the interview and subsequent disputed confession statement recorded from **A5**.

10. Analysis of the Law and evidence before the Court

10.1 Before I move to examine the evidence placed before the Court, I note that **DW3** came to Court in his capacity as a *concerned citizen* and whose interest was apparently piqued by a story that appeared on his whatsapp feed under the heading " **what really hurts us in Zambia**"

10.2 I must state at this juncture, that Counsel do critically examine the role played by witnesses that they choose to call in support of their case.

In my considered opinion, **DW3** played no role at all, and did not do anything to assist the Court. He was evasive, edgy and avoided answering questions that made him uncomfortable, or whose answers may not have been favorable to the party calling him. His evidence was at best speculative, and indeed I may go as far as state that his evidence wasted the time and resources of the Court.

10.3 The story that he spoke to, **D3**, had no mention of Jimmy Bwembya other than a picture, which picture was confirmed to be that of Jimmy Bwembya, by **PW16**, showed him bleeding from the nose and mouth, and from what appeared like his hands were tied behind his back. There appeared to be a portrait of a man in police uniform hanging on a wall behind him, all suggestive that this picture may have been taken whilst he was in custody in Lusaka and where he may have been tortured.

10.4 I have noted that there was no date on the picture, no caption in the story that referred to Jimmy Bwembya and no conclusive evidence as to why it was placed at the foot of a story, to which it did not fit at all. The witness also

offered no suitable explanation as to what role of a *concerned citizen*, he was purporting to discharge, by contacting the defence team when he confirmed that he did not know Jimmy Bwembya at all. According to him the newsfeed appeared on his whatsapp chat in January 2020, even before the matter was brought to Court.

10.5 For these reasons, I have not considered his evidence at all, as I do not consider it to be of any relevance in the issues facing the Court. Nor have I considered evidence of scars on the body and face of Jimmy Bwembya, that the learned Senior State Advocate, Mr Bako chose to dwell on, from what may or may not have been the facebook page of Jimmy Bwembya. The Court was not provided with a link for independent verification, nor were these images produced or admitted in evidence. To the extent that they call into speculation the existence of the scars on the body of the accused before his incarceration and treatment at the hands of the police, they will remain just that, speculation. The Courts are not called to speculate but to determine matters on the evidence available and presented in an acceptable manner.

11.1 I now move to analyse the evidence of the other witnesses and apply the principles of law to the facts of the case at hand. Having heard from all the Prosecution witnesses, and indeed from the accused, and his witnesses, it is my task to critically examine the circumstances leading up to the day on which the alleged confession statement was recorded from Jimmy Bwembya
A5.

11.2 It was the prosecution witnesses' evidence that the confession statement was freely given in an atmosphere that was cordial, on 29th January 2020. **PW 17** and **PW18** confirmed this fact and their evidence in all material respects went to support the evidence of **PW16**.

11.3 The accused, Jimmy Bwembya, **A5**, on the other hand, narrated a long and harrowing ordeal of physical torture, abuse and victimisation at the hands of the Police during the nights from 24 to 28 January 2020. He denied having offered a free and voluntary confession. To the contrary, he maintained that he was physically beaten and starved intermittently from the period between 24 January 2020 when he was apprehended in Solwezi and brought to Lusaka, and taken back and forth several times, till an unknown date in March 2020, when he was forced to put his signature to a document that he neither understood nor offered.

11.4 In the case of **R v Kahyata (High Court, Northern Rhodesia, 1964)** Charles J opined that:

"The application of the law relating to incriminating statements is, no doubt, one which places a heavy burden on the police in conducting their investigations. Nonetheless, it is in my opinion, of constitutional importance, far transcending the proof of guilt of guilty individuals, that it be not whittled down and that it be applied by the courts strictly; to do otherwise will open the door to the inquisition and Gestapo, and to police usurping the functions of the courts."

11.5 In the case of **The People v B (1980)**, it was held that:

(i) It is a fundamental principle of criminal law that when an accused raises an objection to the introduction of a confession into evidence, alleging that it was not made freely and voluntarily on account of assaults, threats or inducements, the burden of proving that a confession is voluntary is on the prosecution and at no time does this burden shift to the accused.

(ii) The basis of the admissibility of a confession is voluntariness and not the truth of the content in the statement.

11.6 As stated above, the burden of proving the voluntariness of the confession beyond reasonable doubt lies on the prosecution. This was further confirmed by the Supreme Court in the case of **Anayawa & Sinjambi vs The People**.

11.7 This Court is guided by the principles highlighted in the case of **Zeka Chinyama and Others v The People**. It is trite that when dealing with an objection to the admission of an alleged confession, the trial court must first satisfy itself that it was freely and voluntarily made; if so satisfied, the Court in a proper case must then consider whether the confession should in the exercise of its discretion be excluded, notwithstanding that it was voluntary and therefore strictly admissible, on the ground that in all the circumstances the strict application of the rules as to admissibility would operate unfairly against the accused.

11.8 It would appear from a close reading of the case above and the guidance issued by the Supreme Court, that I should adopt a two staged approach to determine the issue of the admissibility of the confession statement allegedly made by the accused. In the first stage, I need to satisfy myself that the confession statement was itself freely and voluntarily made, and secondly, if I am so satisfied, I must move to consider whether the confession should in the exercise of my discretion be excluded, notwithstanding that it was voluntary and therefore strictly admissible.

11.9 It is important to note as I do, that the circumstances in which the reception of evidence would operate unfairly against an accused, will depend on the facts of the particular case and do not lend themselves to precise definition. The discretion ought to be exercised in favour of the accused where, but for the unfair or improper conduct complained of, the accused might not voluntarily have provided the evidence in question or the opportunity to obtain it.

11.10 I am further guided by the Supreme Court, in its detailed analysis of the practice adopted by a trial court, in the case of **Chinyama v The People** in dealing with an objection to the admission of an alleged confession.

11.11 I am also alive to the fact that in a trial-within-a-trial, the burden and standard of proof of the voluntariness of a confession statement is on the prosecution and has to be beyond reasonable doubt.

11.12 In the case of **Chigowe v The People** the conviction of the appellant rested solely on a confession statement. Commenting on the burden and standard of proof, the Supreme Court had this to say:

“At a trial—within—a trial to determine the voluntariness of a confession, the prosecution must negative beyond reasonable doubt, any form of inducement which might have caused the accused to make the confession.”

11.13 I caution myself that the trial court must clearly make findings of fact. It will not be sufficient for the trial court to say **“I do not believe the accused.”** The trial court must set out reasons and details for not believing the accused to enable the appellate court to ascertain the mind of the trial court when it made that ruling. A short ruling without detailed findings and ruling, amounts to no ruling.

11.14 It was the Prosecution witnesses’ evidence that Jimmy Bwembya, was apprehended for the role he allegedly played in one incident referred to as *gassing*, in Chingola, and that they transported him to Lusaka for his safety and well being so that they could interrogate him without sending off alarm and panic.

11.15 In as much as this was a noble aim, and the Court is alive to the situation that prevailed in the Country at the time in question, I remain concerned that there was no satisfactory answer from all three prosecution witnesses as to

why it took them at least five days (if not longer), before they conducted the warn and caution, reportedly on 29th January 2020.

11.16 The Court has further noted that **PW16**, the detaining officer in charge of **A5** did not confirm whether **A5** had in fact been fed or had access to food, if at all.

11.17 It was also confirmed by each of the Prosecution witnesses, that neither of them had taken any responsibility to ensure that the accused received food or other supplies, as it is commonly known that there is no food supplied by the authorities where he was held and that inmates only eat food from what is brought by their relatives. The Prosecution witnesses also knew and confirmed that Jimmy Bwembya was apprehended from Solwezi and was a resident of Chingola and they had not allowed him access to a telephone to contact anyone from his family, or at all.

11.18 The prosecution witnesses confirm that they travelled safely between Chingola and Lusaka, stopping for food and health breaks along the way. The accused testified that he was not comfortable, handcuffed all the way and was denied food and drink all the way to Lusaka. On this evidence, **PW17**, testified that they had stopped at Kapiri Mposhi to buy food and that the accused was also given food. **PW18** confirmed that the accused was handcuffed from Chingola up to Kapiri Mposhi when they took off the handcuffs.

11.19 The accused further narrated that he was denied food throughout his incarceration in Lusaka and that if at all, he only managed to survive by eating

off the crumbs and left-over food brought by the relatives of the other inmates.

11.20 On the issue of food, I am alive to the fact that this is critical to the physical and mental well-being of the accused, I can only conclude that **A5** was kept in a semi-starved state as a form of torture, and that the only food he may have eaten was either left-overs or whatever he managed to scavenge off from the waste areas. This evidence was supported by **PW17** who said he did not know if **A5** had been fed and further stated that it was not his responsibility to see to the issue of food, as he was not the detaining and arresting officer.

11.21 As has been noted, the burden of proving the voluntariness of the confession beyond reasonable doubt, lies on the prosecution. The police did not record the proceedings when the Accused, **A5**, made the confession statement. The video recording of the proceedings would have helped the court to make its conclusion as regards the voluntariness of the confession. It is noteworthy that **PW16** himself confirmed that such facilities were available at Lusaka but did not state why they were not used.

The Defence has submitted, and I am inclined to agree with them that the failure to adopt a more reliable method of recording a confession, amounted to dereliction of duty by the police. Counsel relied on the case of **Haamenda v The People** where the Supreme Court guided as follows:

"Where the nature of a given criminal case necessitates that a relevant matter must be investigated but the Investigating Agency fails to investigate

it in circumstances amounting to a dereliction of duty and in consequence of that dereliction of duty the accused is seriously prejudiced because evidence which might have been favourable to him has not been adduced, the dereliction of duty will operate in favour of the accused and result; in an acquittal unless the evidence given on behalf of the prosecution is so overwhelming as to offset the prejudice which might have arisen from the derelictions of duty."

11.22 I escalate my enquiry further, and ask myself whether the recording of the disputed confession statement **ID16** and its translated version in English, **ID17**, each reported to be 11 pages in length, could reasonably have been conducted in a one-hour time frame. **PW16** stated that the whole process took one hour.

11.23 **PW17** stated that the process took long and that they were hungry and asked Mr Mwila, to send someone to buy food from Hungry Lion, of which one packet was given to the accused and that he ate it also. To my mind, the scenario described by **PW17** could not have taken only one hour from start to finish. Further, in the circumstances analysed by the Court, I am not convinced of the apparent jovial and collegial atmosphere as described by **PW17**.

11.24 Much evidence was led by both sides on the issue of scars on the body of **A5**. The accused himself pointed at several scars on his forehead, above his temple, on his scalp, on his shoulder and wrists and insisted that these were as a result of the torture and beatings inflicted on him by the Police. **DW2**

Makombe Zama testified that after his clinical observations he concluded that **A5** had indeed been tortured by the Police and that he had sustained serious injuries for which he had been prescribed pain killers, antibiotics and dressing on his wounds for five days.

11.25 It is also noted that the prosecution failed to account for the whereabouts of **A5** from the date the disputed confession statement was recorded, purportedly on 29 January 2020, to sometime in March 2020 when the Accused was taken to Kamfinsa. The accused **A5**, on the contrary, gave detailed evidence of where he was taken and placed in custody in various cells in Ndola, at Kitwe and details of how many in mates he was with, to the day he was taken in a Quantum bus, and where they picked up his other co-accuseds', until they were finally taken to Kamfinsa. It is further noted that the prosecution witnesses could not explain why an accused held in police custody should be received in such a poor state with apparent injuries, fresh wounds, and in a condition such that he was not able to walk on his own accord, and was helped by other in-mates.

11.26 Having examined the record, and having scrutinised the exercise book admitted as **D1**, used by **DW2** to record his findings and clinical assessments every time he attended to **A5**, I form the opinion that **DW2** came across as a credible and reliable witness who had recorded his clinical findings and professional assessments in **D1** and **D2**. I note also that the only cross examination this witness was subjected to was rhetorical questioning on body parts and names such as shoulder, back or scalp. The accused **A5**, confirms having being taken to Kamfinsa Prison on 13 March 2020. The

witness, **DW2**, in the opinion of the Court, had no motive to fabricate evidence and his evidence confirms that he attended to **A5** on 16th March 2020.

11.27 In the circumstances described above, I ask myself if the evidence offered by the prosecution is so overwhelming and that of the accused is so discredited that, I should accept the evidence of the prosecution witnesses as opposed to the harrowing narration of the accused?

12. Findings of the Court

I must as a result of my findings above, and the detailed analysis of the evidence, answer the question in the negative.

I am reminded of the guidance issued by the former Court of Appeal, the predecessor to the current Supreme Court, when it guided in the case of **Muwowo vs the People** as follows:

"At the trial within trial the prosecution must negative beyond all reasonable doubt any form of inducement which might have caused the accused person to make a statement...The prosecution must prove beyond all reasonable doubt that a confession was made voluntarily."

I do not have to interrogate every aspect of the evidence offered by the witnesses, to find inconsistencies or make findings of fact on every issue laid before the Court.

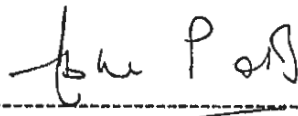
to make a statement...The prosecution must prove beyond all reasonable doubt that a confession was made voluntarily."

I do not have to interrogate every aspect of the evidence offered by the witnesses, to find inconsistencies or make findings of fact on every issue laid before the Court.

Suffice it to state, as I do, that I am satisfied and hold the considered view that the Prosecution has not discharged its burden beyond reasonable doubt, and has not established that the statement, made by the accused, and sought to be produced in evidence, was freely and voluntarily made.

I will not allow the written confession into evidence.

Delivered at Kitwe, this 18th day of June, 2021.



Lady Justice Abha N. Patel, S.C.

JUDGE