IN THE HIGH COURT FOR ZAMBIA **HT/108/2022**
AT THE DISTRICT REGISTRY
HOLDEN AT MONGU
(CRIMINAL JURISDICTION)

BETWEEN:

THE PEOPLE

V.

SHEBBY CHILEKWA CHISENGA

AND

JOSEPHINE CHILUFYA MUMBI

Before:	***The Hon. Mr. Justice Charles Zulu***
For the State:	Mr. K. Safali, Senior State Advocate, and Mr. T. Mufaya, State Advocate, National Prosecutions Authority.
For the Defence:	Mr. M. Zulu, Mr. J. Zimba of Makebi Zulu Advocates, and Mr. C. Changano of D. Findlay & Associates.

R U L I N G

Cases referred to:

1. ***Day v. Regina [1958] R & N 731.***
2. ***Mwewa Murono v. the People (2004) Z.R. 207.***
3. ***The People v. Resident Magistrate ex parte Faustine Kabwe & Another (SCJ No. 17/2009).***
4. ***Shamwana & Seven Others v. The People (1985) Z.R. 41.***
5. ***Jones v. National Coal Board [1957] 2 Q.B 55.***

Legislation referred to

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

This ruling is in respect of whether or not the accused persons are liable to answer to the charge of murder, following the close of the prosecution's case. The two accused persons, Shebby Chilekwa Chisenga (A1), and Josephine Chilufya Mumbi (A2) jointly stand charged with the offence of murder contrary to section 200 of the ***Penal Code, Chapter 87 of the Laws of Zambia***.

The particulars of the offence allege that, the duo on the 6th day of October 2019, at Kaoma District in the Republic of Zambia, jointly and whilst acting together did murder one Lawrence Banda.

The State called fourteen (14) prosecution witnesses, and produced exhibits to support the charge. I will not at this stage labour to reproduce seriatim a summary of the witnesses' testimonies, recorded verbatim in real time.

I am indebted to the Defence Counsel and the State Advocates for their concise *ex tempore* submissions, for no case to answer, and case to answer respectively. While acknowledging that the standard of proof in criminal case placed on the State is proof beyond reasonable doubt, that standard at this stage is inapplicable. Accordingly, Spencer Wilkinson C.J., in ***Day v. Regina [1958] R & N 731*** lucidly stated that:

> ***The words, a case made out sufficiently to require him [the accused] to make a defence, cannot be equated with a case sufficient to warrant a conviction...and if the***

crown has made out a prima facie case, the Court is entitled to call for the accused to make a defence.

The applicable standard, as it were, at this stage can be distilled from the celebrated case of ***Mwewa Murono v. the People (2004) Z.R. 207***, wherein the Supreme Court guided as follows:

> ***If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case, and shall forthwith acquit him.***

The converse to the foregoing, and with comparable precedential value, the Supreme Court in the case of ***The People v. Resident Magistrate ex parte Faustine Kabwe & Another (SCJ No. 17/2009)*** held:

> ***[T]here is no requirement under section 206 of the Code [The Criminal Procedure Code] that the Court must give reasons for acquitting the accused; that it must merely appear to the Court. The converse, therefore, must also be true that where the Court finds an accused with a case to answer, it must merely appear to the Court that a case has been made out.***

The Supreme Court went on to add that:

> ***In our considered view, a finding of a case to answer is based on the Court's feelings or impressions and appearance of the evidence.***

I find no incompatibility between the above findings with the finding stated in the case of ***Shamwana & Seven Others v. The People (1985) Z.R. 41***, wherein the Supreme Court held:

> ***Finality of assessment as to a witness's credibility, especially as to his truthfulness, should be reserved until***

> ***the final judgment stage, after both sides have been heard; it was wrong to make final assessment in the ruling on no case to answer submissions.***

The above measurably resonate with what Lord Denning wisely said in ***Jones v. National Coal Board [1957] 2 Q.B 55***, to the effect that:

> ***The judge's part in all this is to hearken to the evidence,... and at the end to make up his mind where the truth lies.***

Therefore, the suggestion by the Defence Counsel, that the ***Shamwana*** case is somewhat outdated, in the light of its successor, the ***Mwewa Murono*** case is unconvincing. In fact, all the above stated cases are unanimous and mutually compatible in principle.

A question of some sort was posed by the Defence Counsel, to the effect that, if the two accused persons elect to remain silent, would there be enough evidence to convict them? This cannot dissuade the Court from making a finding of case to answer, where it has been established, because the standard of proof for convicting an accused is distinctively different from the threshold of finding an accused with a case to answer, or no case to answer, as the case may be.

It be should restated that the fact-finding process vis-à-vis a case to answer, or no case to answer, in terms of assessment of the evidence is restricted to the appearance of the evidence. The Court need not to labour to justify its findings at this stage, as though it was rendering a final judgment. This restraint is necessary to avoid

making undesirable pre-judgment comments, especially when the accused is put on his/her defence.

In the present case, the appearance of the evidence is such that, there is *prima facie* evidence to find the two accused persons with a case to answer.

In the light of the foregoing, I find, Shebby Chilekwa Chisenga (A1), and Josephine Chilufya Mumbi (A2) with a case to answer for the offence of murder as charged. Accordingly, they are put on their defence.

DATED THE 14TH DAY OF OCTOBER, 2022.

.....

THE HON. MR. JUSTICE CHARLES ZULU