

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA
(Criminal Jurisdiction)

SCZ APPEAL NO. 64 OF 1997

BETWEEN:

TIMOTHY LUNDA
AND
THE PEOPLE

APPELLANT

RESPONDENT

Coram: Bweupe, DCJ, Chaila and Lewanika, JJS
10th September, 1997 and 4th December, 1997
For the Appellant: In person
For the Respondent: Mr. R. Okafor, Principal State Advocate

J U D G M E N T

Chaila, JS delivered the judgment of the court.

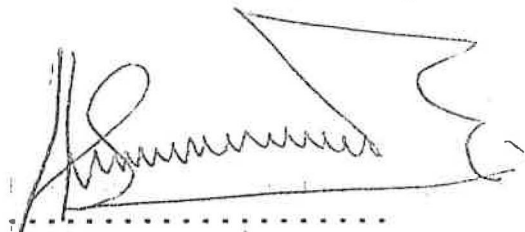
This is an appeal by the appellant against the High Court decision convicting him of the offence of aggravated robbery, contrary to Section 294(2) of the Penal Code, Cap. 146 of the Laws of Zambia. The particulars of the offence were that the appellant on 6th September, 1994 at Mufulira in the Mufulira District of the Copperbelt Province of the Republic of Zambia, whilst armed with an offensive weapon, namely a gun, did steal K23,000 from Mr. Winston Kaunda and at or immediately after the time of such stealing did use or threatened to use actual violence to Winston Kaunda, in order to obtain or retain the said property.

The facts were not mainly in dispute. The appellant hired a vehicle driven by the complainant PW1 from a taxi rank at about 20.00 hours in Mufulira. The appellant wanted to go to Kamuchanga and the fare was agreed at K1,500. The complainant drove the appellant and he was directed where to stop by the appellant who was sitting in the front seat. They went to

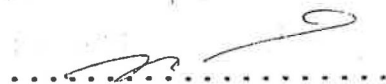
Kamuchanga Clinic and they then drove for about 8 metres to a grocery which was closed. The appellant asked the complainant to stop the vehicle. The appellant got out of the vehicle and walked to the driver's side. He produced a gun and pointed out at the complainant. The complainant was ordered to put off the engine and leave the keys in the ignition. The complainant got out and the appellant then ordered the complainant to hand in all the money. The appellant ordered the complainant to put the money on the ground and to move backwards. The complainant moved backwards and the appellant took the money and ordered the complainant to drive away. The complainant refused to go, saying as he had taken his money of the day, he should also take the vehicle. The appellant refused. The appellant told the complainant that the gun was not fake. He took out from his pocket some two bullets and loaded the gun. The complainant then moved to the passenger's side. The appellant moved backwards and started running away. The complainant followed him and called him 'thief'. As the complainant ran after him the appellant dropped his black bomba. The complainant met somebody ahead of them and he told him that somebody has stolen some money. the complainant was assisted by that person to chase the thief. The thief stopped and threatened to shoot them. They approached him and the complainant took hold of the appellant and they apprehended him and took the gun away from him. They took him to Kamuchanga Police Station. At the Police Station the appellant took out the K22,000, part of the money taken from the complainant. The police through their ballistics officer confirmed that the gun taken away from the appellant was a firearm. In his defence, the appellant admitted having hired the complainant's vehicle. He admitted also that he was carrying a firearm belonging to his friend who lived in Kitwe. He testified that the firearm dropped on the floor and that is what caused the confrontation. The learned trial commissioner considered the evidence before him and came to the conclusion that the offence had been committed. He convicted him of armed aggravated robbery and sentenced him to death.

The appellant has argued that the prosecution lamentably failed to establish the case of the robbery against him. He further complained that the learned trial judge erred in holding that the three bullets found were capable of being fired from the gun which was found on him. The appellant further argued that the learned trial judge erred in dismissing his defence. We have considered the evidence on record, the judgment and the appellant's ground of appeal. We are satisfied that the identity of the appellant was not a problem. The appellant himself admitted in his evidence that he had hired a motor vehicle from the complainant. He further admitted that he carried a firearm, but what he denies was that he did not steal the K23,000 from the complainant. The learned trial judge went through the evidence. He considered the defence advanced by the appellant, and the learned trial judge dismissed the complainant's story.

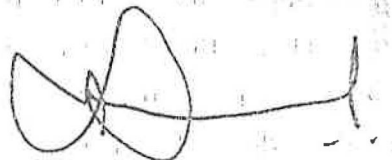
We have seriously considered the arguments and the evidence. The evidence against the appellant was overwhelming. The appellant was properly convicted. The learned trial judge did not misdirect himself in any way. The appeal is therefore dismissed.



B.K. Bweupe
DEPUTY CHIEF JUSTICE



M.S. Chaila
SUPREME COURT JUDGE



D.M. Lewanika
SUPREME COURT JUDGE