

IN THE SUPREME COURT OF ZAMBIA  
HOLDEN AT LUSAKA

APPEAL NO 37 OF 2004

(CRIMINAL JURISDICTION)

BETWEEN:

DOZEN TUUNKU MALINDI

APPELLANT

VS

THE PEOPLE

RESPONDENT

*Coram: Chirwa, Chibesakunda and Chitengi, JJS on 18<sup>th</sup> May, 2004.*

For the Appellant: Mr Kayukwa of Sambo Kayukwa & Company  
For the Respondent: Mrs Kaumba, Deputy Chief State Advocate

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## JUDGEMENT

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*Chirwa, JS delivered judgment of the Court:*

The appellant *DOZEN TUUNKU MALINDI*, was charged with one count of murder, contrary to Section 200 of the Penal Code, Cap. 87.

The particulars of the offence are that the appellant, on a date unknown but between 29<sup>th</sup> June, 2000 and 18<sup>th</sup> September, 2001 at Lusaka in the Lusaka Province of the Republic of Zambia did murder one, *LOVE MWEETWA MALINDI*. He pleaded not guilty to this charge, but upon conclusion of the trial, he was found guilty of the offence and he was sentenced to a term of life imprisonment, the judge having found that there were some extenuating circumstances surrounding the case.

In presenting this appeal, Mr Kayukwa argued a number of grounds, but to sum it all, he was of the view that there were so many doubtful circumstances of the case which ought to have been resolved in favour of the appellant. At conclusion of his submissions, he prayed that the appeal be allowed and the appellant set free.

On behalf of the State, Mrs Kaumba did not support the conviction, the stand taken, this court this court feels is a wise one. The case depended on the so called circumstantial evidence, which could not lead one to conclusion only that the appellant murdered his wife.

There are various and unresolved issues brought out by the evidence in the court below such as, the state in which the so called remains of the deceased were found, it was not clear as what bones were found and in what state. Also the people who initially found the remains were not called to testify.

Further there is a discrepancy as to the type of the bones that was recovered from the scene. The witnesses said that it was a jaw but the learned judge said that it was pelvic bones.

Taking into account all these discrepancies, there are a lot of doubts lingering on our minds and it is unsafe to uphold this conviction. This appeal is therefore allowed, conviction set aside and sentence squashed.

D K Chirwa

**JUDGE OF THE SUPREME COURT**

L P Chibesakunda

**JUDGE OF THE SUPREME COURT**

P Chitengi

**JUDGE OF THE SUPREME COURT**