

**IN THE SUPREME COURT OF ZAMBIA**

**SCZ Appeal No. 116/2021**

**HOLDEN AT LUSAKA**

*(Criminal Jurisdiction)*

**B E T W E E N :**



**MAKAS MAZUBA**

**APPELLANT**

**AND**

**THE PEOPLE**

**RESPONDENT**

**Coram: Malila CJ, Kaoma and Chinyama, JJS**  
**on 13<sup>th</sup> July 2021 and 1<sup>st</sup> February, 2022**

*For the Appellant:* Mr. M. Mankinka, Senior Legal Aid Counsel -  
Legal Aid Board

*For the Respondent:* Mrs. M. Muyoba-Chizongo, State Advocate -  
National Prosecutions Authority

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## **J U D G M E N T**

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**Malila CJ**, delivered the judgment of the court.

**Cases referred to:**

1. *David Zulu v. The People* (1977) ZR 151
2. *Saidi Banda v. The People* (SCZ Appeal No. 144 of 2015)
3. *Dorothy Mutale and Richard Phiri v. The People* (1997) SJ 51(SC)
4. *Saluwema v. The People* (1965) ZR4 (CA)
5. *Mwanaute v. The People* (Appeal No. 200/2011)
6. *P. L. Taylor and Others v. R* (21 Cr. App. R.20)

## **1.0. INTRODUCTION**

- 1.1.** The appellant, Makas Mazuba, was a lorry-mate to the deceased lorry driver, Hurfe Jama. The two had gone on a business trip from Ndola to Maamba and back to Ndola. They conveyed various consignments of goods between the two locations.
- 1.2.** The deceased was found dead in the lorry he had been driving which was parked around Masangano area on the Kapiri/Ndola highway. This was during the return trip to Ndola. The circumstances in which the body of the deceased was found were suggestive of villainy.
- 1.3.** The appellant claimed that he was not with the deceased at the time the latter met his death as he had remained in Kapiri Mposhi. This explanation by the appellant, compounded by the fact that there was no direct evidence linking the appellant or anyone else for that matter to the death, heightened the enigma surrounding the death.

- 1.4. The appellant was nonetheless tried and convicted, on the basis of circumstantial evidence, for the murder of the deceased and was sentenced to death. He continues to protest his innocence and has now appealed his conviction.

## **2.0. BACKGROUND FACTS**

- 2.1. Abdifatah Ahmed Yusuf is in the road transportation business known as Gabobe Transport and Construction which owns and operates several lorries. In April 2015 one of the lorries, a Volvo, was driven by the deceased who had been newly employed.
- 2.2. The deceased was on 16<sup>th</sup> April 2015, assigned to undertake a business trip to Maamba from Ndola using a Volvo lorry registration No. ACR 7784. As he was unfamiliar with the routes to Maamba, he was assigned another driver from the business, Peter Chenze, to voyage with him and show him the routes. Lorry-mate Makas Mazuba was also part of the crew. Chenze was later to testify for the prosecution as PW3.

- 2.3.** Richard Munayimbo, a key prosecution witness (PW5) was another driver working for Yusuf's business. He was also in the general area of assignment of lorry No. ACR 7784 but was using a different lorry registration No. ACR 8256.
- 2.4.** Chenze returned from the trip on 18<sup>th</sup> April 2015, having left the deceased driver and his lorry-mate, Mazuba, behind. He shortly undertook another trip to Mkushi. He, however, kept in constant touch with the deceased from whom he learnt that his lorry had loaded cargo on its return trip on 22<sup>nd</sup> April 2015 and delivered it to its destination in Kabwe on 23<sup>rd</sup> April 2015.
- 2.5.** As the payment for the cargo delivered to Kabwe could only be made the following day, the deceased and Lorry-mate, Mazuba, spent the night in Kabwe and left after Munayimbo had received the payment for the delivery from the consignee of the cargo. Chenze by phone, directed Munayimbo to pass on the money (K4,000) to the deceased driver.

- 2.6.** With the two lorries driven by Munayimbo and the deceased in tow, the return trip to Ndola was undertaken with the close telephonic monitoring by Chenze who, because the battery of the deceased's phone had discharged, was in constant telephone contact with Munayimbo and in the process, was being updated on the progress the two parties were making on their move towards Ndola.
- 2.7.** The last call from Munayimbo to Chenze was after 19:00 hours during which the latter was informed that he (Munayimbo) had arrived safely in Ndola and had parked the lorry at their garage.
- 2.8.** In the same conversation, Chenze was informed by Munayimbo that the deceased and his lorry-mate had remained behind. Apparently the two lorries had separated at the weigh bridge at Kapiri Mposhi after the crews paid their respective toll fees. This was not before Munayimbo had confirmed with the deceased that all was

well, and was satisfied that the deceased's lorry was trailing behind his.

**2.9.** While on his way from Mkushi on the same day, Chenze saw the lorry which had been driven by the deceased parked by the road side. It was between 19:00 hours and 20:00 hours in the evening. He pulled over and, being curious as to what was happening, went over to the lorry to check. He, however, found no one around or near it although it had its curtains drawn and cabin light on. He thereupon telephoned Yusuf, the employer, to inform him of the finding and to inquire whether he knew what could have happened to the lorry.

**2.10.** On the instruction of Yusuf, Chenze had a close look at the lorry and discovered a lot of blood on the left side of the lorry and reported. Yusuf thereupon hurried to the scene. The doors to the lorry were closed and the curtains drawn. He and Chenze opened the driver's door of the lorry and to their utter shock saw the deceased's lifeless

body lying on the seats with the head resting on the passenger's side.

**2.11.** A metal bar was found near the deceased's head in the lorry while outside the lorry, in very close proximity to it, two other items that aroused suspicion were discovered: a container of water and a pair of flip flops, both of which were blood stained.

**2.12.** Chenze called Munayimbo to inform him about the macabre find and requested that he should at once join them at the scene of the crime. Munayimbo in turn called Makas who explained that Jama left him in Kapiri Mposhi paying the toll fee. Munayimbo then drove together with Makas to the scene of the crime where they found Yusuf and saw the pair of the stained flip flops and 20 litre container. He recognised the flip flops as belonging to Makas.

**2.13.** The police, on information, attended the incident scene and after examination, conveyed Jama's lifeless body to a mortuary in Ndola. Noticeably, there was no visible human activity in close proximity to the scene of the incident, with a church at about 100 metres away from where the lorry was parked, being the only building in view.

### **3.0. ARREST AND INVESTIGATION**

**3.1.** In investigating the murder, the police requested Munayimbo to furnish his toll fee receipt for the Kapiri Mposhi toll which he did. His toll fee receipt had no blood stains and showed 16:58 hours as the time of payment for the lorry registration No. ACR 8256.

**3.2.** Meanwhile, after learning of the incident, Yusuf's brother Osman Ibrahim Yusuf, who in court testified as PW1, went to meet his brother at the garage where the truck the deceased had driven had been parked. As Yusuf was looking for a cheque that the deceased had, they opened the cabin of the lorry and found the cheque and two road

tool fee receipts with blood stains. They were dated 24<sup>th</sup> April 2015. They were in respect of the lorry registration No. ACR 8256. These were handed to the police, too.

- 3.3.** The police detained Munayimbo and his lorry-mate. When asked how his toll fee receipt was found in the deceased's lorry, he surmised that the appellant (Makas) had used his lorry's registration number because that was the one that could have readily come to his recollection at the toll gate as he was quite familiar with it given that he had been a lorry-mate assigned to that lorry previously.
- 3.4.** During investigation, the appellant was interviewed. He denied having been with the deceased when he met his death, claiming that the deceased had left him behind in Kapiri Mposhi. He was thus unable to explain the circumstances of the deceased's death.
- 3.5.** The investigating officer viewed the CCTV footage produced by PW3, Augustin Musonda (Head of Security at RDA in charge of operations and investigations). It showed the appellant with the deceased paying the road toll fees

at Kapiri Mposhi weigh bridge. The appellant was seen getting the receipts and leaving together with the deceased. The recording shows the date as the 24<sup>th</sup> April 2015; the time as 17:11 hours to 17:17 hours.

**3.6.** A Scenes of Crime detective sergeant Anthony Sichilima (PW7) visited the crime scene and compiled a photographic album which was admitted in evidence. The exhibits captured included the blood-stained flip flops and the 20 litre empty container found near the scene of the incident. From the amount of blood he saw in the cabin of the lorry, he formed the view that the attack of the deceased must have occurred inside the lorry.

**3.7.** The dealing officer, John Kamungwa, who testified as PW8 informed the court that he was led by the appellant to the scene of the crime where, in a radius of about 500 metres from the scene, an RDA certificate on which had been paid the road toll fee in respect of lorry registration No. ACR 8256, was recovered. He also confirmed that the CCTV footage which he viewed did capture the appellant making

a payment on the receipts which were found inside the lorry. At that time, he was wearing a T/shirt and flip flops.

**3.8.** Although the appellant had admitted having been in the company of the deceased at the weigh bridge and having walked out of it with him towards the lorry, he did not mention any other person as having been in their company at the material time. Furthermore, the appellant had told the police that he had some differences with the deceased right from Maamba.

**3.9.** On the evidence as given in court by the various witnesses, the High Court judge found that a *prima facie* case had been established against the appellant and thus put him on his defence.

#### **4.0. DEFENCE**

**4.1.** In his defence, the appellant gave evidence on oath on his own behalf and called no other witness. He gave a splendid account, explaining his movements on that day which distanced him from the offence.

- 4.2. At the weigh bridge at Kapiri, he explained, the deceased had given him K60 to pay the weigh bridge toll. The cashier rejected it on account of being insufficient. He went back to the lorry to tell the deceased about this development. He found the deceased with a woman.
- 4.3. Unbelieving what the appellant had told him, the deceased left the lorry and went back with the appellant to pay the toll fee. After they had together paid the toll fee, the deceased gave the appellant K50 to go and eat nshima at a restaurant.
- 4.4. It was the appellant's further testimony that upon his return from the restaurant, the appellant found that the deceased had made off with his lorry, leaving him stranded at Kapiri Mposhi. He tried to alert Munayimbo on phone on what had transpired but his battery, he said, discharged at that very moment.
- 4.5. The appellant further testified that he eventually hitchhiked a different lorry driven by a Tanzanian driver who kindly deposited him at Ndola where he eventually met

with Munayimbo. To the latter he explained that he and the deceased had a language problem.

- 4.6.** He denied ever telling the police that he had differences with the deceased or leading the police to the scene and to where the RDA certificate was recovered. He also denied that the pair of flip flops found on the scene of the incident were his and alleged that he would not even fit in them. At that point, his counsel asked him to try the flip flop on and they turned out to be a perfect fit for him. He admitted, however, that the 20 litre empty container that was found near the scene of the incident had been inside the lorry.

## **5.0. DECISION OF THE HIGH COURT**

- 5.1.** On the circumstantial evidence as recounted by nine prosecution witnesses, the trial court presided over by Chanda, J came to the conclusion that the prosecution had proved its case against the appellant beyond reasonable doubt. It convicted the appellant accordingly.

5.2. In reaching that conclusion the High Court judge reminded himself of the dangers of circumstantial evidence as we explained in **David Zulu v. The People**<sup>(1)</sup>. He stated, among other things, that:

**In this case, there is no dispute that the accused was the only person who was last with the deceased in the truck in which the deceased's body were found. It was not also in dispute that the accused's tropicals was found a few metres away from the truck and I am satisfied that those tropicals were for the accused as I saw that they fitted him and even took the shape of his feet. Those tropicals were also confirmed by Richard (PW5) that he had seen them with the accused when he was his lorry-mate. In addition, the accused was found wearing only a vest when in actual fact the CCTV footage showed that the accused was wearing a T/shirt.**

**The circumstances prove that the accused was with the deceased throughout the whole period. Indeed, the circumstances offered ample opportunity for the accused to have committed the offence especially that there was no other inference that was suggested or could be made in this regard.**

5.3. The judge found no extenuating circumstances. He thus sentenced the appellant to death.

## **6.0. THE APPELLANT APPEALS**

**6.1.** Unhappy with the High Court judgment, the appellant has now appealed against conviction on one ground structured as follows:

**The learned trial judge erred in law and in fact when it convicted the appellant on circumstantial evidence which had not taken the case out of the realm of conjecture so as to permit only one inference of guilt as there were other inferences to be drawn.**

**6.2.** Heads of argument were filed by the Legal Aid Board on behalf of the appellant in support of the lone ground of appeal.

## **7.0. THE APPELLANT'S ARGUMENT ON APPEAL**

**7.1.** In the heads of argument, it was contended by counsel for the appellant that the evidence on record from the CCTV footage did not show the appellant and the deceased enter into the truck together after they had been to the toll fee payment point. For that reason, the testimony of the appellant that the deceased drove off in the lorry leaving the appellant behind is reasonably possible.

- 7.2.** Counsel also submitted that the holding by the trial court that it was undisputed that the appellant was the last person who was seen with the deceased in the truck in which the deceased's body was found, is not supported by any evidence on record.
- 7.3.** Counsel for the appellant further submitted that the factual matrix in which the murder occurred ought to be contextualised when circumstantial evidence is evaluated. In this case, PW7, Detective Sergeant Anthony Sichilima, testified that he was unable to say where the attack happened from as he found the truck parked off the road and he did not observe any skid marks. PW8, Detective Inspector John Kamungwa, for his part, admitted that the incident occurred in the Masangano area which is inhabited.
- 7.4.** This, according to counsel, makes it reasonably possible that the deceased could have been attacked by someone whom he gave a lift to other than the appellant, such for example, as the woman the appellant suggested he saw in

the lorry. It is also equally possible that someone else in the Masangano area could have killed the deceased.

**7.5.** Rather unusually, it was also submitted, as regards the flip flops discovered near the crime scene, that it should not be strange to find them at the place they were found considering that the appellant was a lorry-mate of the deceased and those flip flops were rightly kept in the lorry. It was thus possible that whosoever attacked the deceased could have disturbed the items in the lorry thus explaining why the flip flops and the RDA certificate were thrown some metres away from the lorry.

**7.6.** We say that this is an unusual submission because it is inconsistent with the narration that was given by the appellant in his defence, namely, that he did not own the flop flops and was thus unaware of their existence and, that he did not lead the police to the discovery of the RDA certificate.

**7.7.** To support the submission that circumspection must animate the treatment of circumstantial evidence, three

quotations were made by counsel from different judgments: two from our judgments and one from a judgment of the predecessor court of this court - the Court of Appeal.

7.8. From **Saidi Banda v. The People**<sup>(2)</sup> the following passage was quoted:

**The law with respect to circumstantial evidence has been restated many times by this court, and it is that in order to convict based on circumstantial evidence, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of the accused's guilt.**

7.9. From the judgment in **Dorothy Mutale and Richard Phiri v. The People**<sup>(3)</sup> counsel quoted the following passage:

**Where two or more inferences are possible, it has always been a cardinal principle of the criminal law that the court will adopt one which is more favourable to an accused if there is nothing in the case to exclude such inference.**

7.10. In respect of the submission that there are other hypothesis in this case which point to the innocence of the appellant, counsel quoted from the Court of Appeal

(predecessor to the Supreme Court) judgment in **Saluwema v. The People**<sup>(4)</sup> where it was stated that:

**If the accused's case is 'reasonably possible' although not probable, then a reasonable doubt exists, and the prosecution cannot be said to have discharged its burden of proof.**

7.11. On the basis of the foregoing arguments, we were urged to quash the conviction, set aside the sentence and acquit the appellant.

#### **8.0. THE RESPONDENT'S ARGUMENT ON APPEAL**

8.1. The respondent's learned counsel relied on the heads of argument that were, upon leave being granted, filed at the hearing.

8.2. It was submitted that there was in the present case, evidence that the appellant was the last person seen with the deceased, in addition to other circumstances, indicating that the inference of his guilt was warranted. She quoted a passage from the Supreme Court judgment in **Mwanaute v. The People**<sup>(5)</sup> as follows:

**Applying the above principles [from David Zulu v. The People<sup>(1)</sup>] to the facts of this case, we are satisfied that the learned trial judge was on firm ground when he drew the inference of guilt on the basis of the circumstantial evidence before him. The totality of this circumstantial evidence which is that the appellant was the last person seen with the child before the child wound up dead in the bus, takes this case out of conjecture.**

- 8.3. The submission by the respondent's learned counsel, then changed focus from circumstantial evidence to the credibility of the appellant. Counsel posited that the appellant had told a number of material lies to cover up his guilt. He lied that he was left by the deceased at Kapiri Mposhi and that he informed PW5 that he had been left behind when in fact not. PW5 denied being told by the appellant that he had been left behind in Kapiri Mposhi.
- 8.4. Other lies that counsel for the respondent submitted the appellant told related to the clothes he wore on the material day; that he wore a white vest, yet the CCTV footage showed that he wore a T/shirt. The only reason, according to counsel, the appellant went to the crime scene in a vest was because he had discarded the T/shirt

as it must have been covered in the blood of the deceased. Not only that, contrary to evidence that was presented, he also lied about paying toll fee; he denied being the owner of the stained flip flops found near the crime scene; he denied having led the investigating officer to the point where the RDA certificate was thrown. Counsel asked the question how else would the officer have known where the RDA certificate was thrown?

- 8.5.** With all the lies that the appellant allegedly told, counsel submitted that the appellant's defence was not reasonably possible and not probable. The inculpatory facts on the record are irreconcilable with the innocence of the appellant. The circumstantial evidence was sufficient to lead to one conclusion only, namely that the appellant was guilty of killing the deceased. We were thus urged to uphold the conviction.

## **9.0. ANALYSIS AND DECISION**

- 9.1.** It is clear to us that the issue for determination here is associated with the safety of the appellant's conviction as

that conviction is premised entirely on circumstantial evidence.

- 9.2. There is no direct evidence linking the appellant to the commission of the criminal act of killing the deceased. The critical evidence that leaves some gaps in the chain of events relates to the period from the time the deceased and the appellant were seen together (on CCTV footage) dealing with the cashier at Kapiri Mposhi weigh bridge through to the time the deceased was found dead in the truck around Masangano area.

- 9.3. As we stated in **David Zulu v. The People**<sup>(1)</sup>:

**It is incumbent upon a trial judge to guard against drawing wrong inferences from circumstantial evidence at his disposal before he can feel free to convict. The judge must be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so as to attain such a degree of cogency which can permit only an inference of guilt.**

- 9.4. In the case of **Saidi Banda v. The People**<sup>(2)</sup>, we expressed our sympathy to the observation by Lord Heward, Chief

Justice of England in **P. L. Taylor and Others v. R**<sup>(6)</sup> where at p.21 he stated that:

**It has been said that the evidence against the applicant is circumstantial; so it is, but circumstantial evidence is very often the best. It is evidence of surrounding circumstances which, by underlying coincidences, is capable of proving a proposition with the accuracy of mathematics.**

9.5. While, therefore, the often quoted lamentations we expressed in **David Zulu v. The People**<sup>(1)</sup> regarding the difficulties that faces a trial court in assessing circumstantial evidence remain real, there is, as Heward CJ, pointed out, somewhat of a silver lining to circumstantial evidence. It could provide easy answers to what may at first appear to be an insoluble conundrum. Thus, if we know that one plus two is always equal to three, we should be able also to figure out what 'x' represents where we are told two plus 'x' equals three.

9.6. In the **Saidi Banda**<sup>(2)</sup> case, we did, as counsel for the respondent correctly quoted, state that while there is no magical formular to employ in piecing together the missing

evidence in instances where circumstantial evidence is relied upon to justify a verdict of guilt, the trial judge must employ a measured thought process. We stated there as follows:

**Where the prosecution case depends wholly or in part on circumstantial evidence, the court is, in effect called upon to reason in staged approach. The court must find that the prosecution evidence has established certain basic facts. Those facts do not have to be proved beyond reasonable doubt. Taken by themselves, those facts cannot, therefore, prove the guilt of the accused person. The court should then infer or conclude from a combination of those established facts that a further fact or facts exist. Drawing conclusions from one set of established facts to find that another fact or facts are proved clearly involves a logical and rational process or reasoning. It is not a matter of casting any onus on the accused, but a conclusion of guilt a court is entitled to draw on the weight of circumstantial evidence adduced before it.**

- 9.7. Using the staged approach in the case before us we ask ourselves in the first place whether the evidence adduced by the prosecution has established certain basic facts and in what respects such evidence does not prove the guilt of

the appellant. Second, from the established facts what further fact or facts can we infer exist.

**9.8.** The prosecution in this case adduced evidence showing that the appellant and the deceased had travelled as lorry-mates in the same lorry on the 24<sup>th</sup> April 2015, from Kabwe to Kapiri Mposhi. The duo were alone in the lorry which was driven by the deceased. There was also evidence that the two were captured by CCTV at Kapiri Mposhi making a payment of weigh bridge toll fees and that the receipt was given to the appellant (according to PW3, Augustine Musonda). The two then left together.

**9.9.** It was also established through the evidence of PW5, (Richard Munayimbo) that at Kapiri Mposhi, after the deceased and the appellant had completed their payment for toll fees, he called the deceased who confirmed that all was okay and that although he did not see the two enter the lorry he saw the doors open and close and the lorry pull on to the road.

- 9.10.** The prosecution's evidence further established that at the time the appellant and the deceased transacted at the toll weigh bridge between 17:11 and 17:17 hours, the appellant was then wearing a T/shirt. He paid the toll fees on a lorry registration number ACR 8256 that was driven by Richard Munayimbo, rather than the lorry driven by the deceased i.e. registration No. ACV 7784. The appellant readily admitted this fact.
- 9.11.** Munayimbo and his crew member had meanwhile paid toll fees for the same lorry registration No. ACR 8256 earlier on at 16:58 hours. The clean (unstained) receipt issued for the payment made at 16:58 hours was in the truck driven by Munayimbo which he handed over to the police and was later produced in court. The one for the payment made by the appellant and the deceased between 17:11 and 17:17 hours also in respect of the lorry registration No. ACR 8256 was blood stained and found in the lorry driven by the deceased and was equally produced in court.

- 9.12.** The further basic facts that were established by the prosecution evidence were that upon being informed by Chenze of the finding that the deceased was dead in his lorry, Munayimbo called the appellant who was in the Kafulafuta area. The appellant had not yet reached Ndola at that stage and he eventually joined Munayimbo at Indeni Police Check Point just before Ndola town from where they drove backwards (as in away from Ndola towards Kapiri Mposhi) to the scene of the incidence.
- 9.13.** The appellant claimed that he had been left behind in Kapiri Mposhi paying toll fees. According to PW5, the appellant even showed him K120.00 which he should have used to pay toll fees. This evidence was not controverted.
- 9.14.** At the time the appellant joined Munayimbo (PW5) at Indeni Police Check Point he was wearing a vest and black safety boots. He apparently showed no shock or surprise when they arrived at the scene and saw what had been discovered. According to Chenze (PW6) the appellant

confirmed at that stage that the stained flip flops found in the vicinity of the lorry were his.

9.15. These basic facts established by the prosecution taken by themselves clearly do not prove the appellant guilty beyond reasonable doubt. The court, using the approach we suggested in **Saidi Banda**<sup>(2)</sup> should then infer from those established facts that further facts exist. What are those further facts?

9.16. In our view, the further facts that exists and which must be inferred are that the killer of the deceased should have been in the lorry with the deceased when the attack happened. The prosecution evidence did not establish who the attacker was though the primary suspect was the appellant because he was the lorry-mate of the deceased expected to have been with the deceased at all times during the journey. Yet the appellant denied having gone beyond the Kapiri Mposhi weigh bridge with the deceased in the lorry.

- 9.17.** We have time and again stressed that the quality of evidence that the prosecution adduces at trial, invariably determines whether the burden of proof which is incumbent upon the prosecution to prove the accused guilty beyond reasonable doubt, has been discharged.
- 9.18.** To be clear, the appellant had no onus to prove his innocence. However, the explanation he gave in his defence is not without relevance in the consideration of his own account which, if accepted by the trial court, should have exonerated him.
- 9.19.** He testified that he did not travel with the deceased beyond Kapiri Mposhi and that he remained in a restaurant eating nshima as the deceased drove off, either alone or in the company of a woman that the appellant claims to have seen the deceased with. The appellant found his way to Ndola through the generosity of a Tanzanian lorry driver who gave him a lift.

**9.20.** Our view is that, when an accused person choses to give evidence in his defence, as did the appellant in this case, the court is not precluded from drawing inferences properly flowing from the accused's own evidence, to support what would otherwise be an incomplete tale making up the prosecution's case premised on circumstantial evidence.

**9.21.** Yet, the appellant's own evidence in our considered view fortifies the inference that it was he that travelled with the deceased between Kapiri Mposhi and Masangano area where the deceased appears to have been attacked. On many accounts, the narration of the appellant contradicted evidence established by the prosecution which was not shaken either by cross-examination or the adduction of credible evidence to the contrary. The effect this had is not only that of eroding the credibility of the appellant's testimony but quite plainly selling the appellant away.

- 9.22.** While it was established that at the time of paying the toll fee at Kapiri Mposhi, the appellant was wearing a T/shirt and flip flops, there is hardly any explanation why he only had a vest and safety boots at the time he turned up at the scene of the crime later that day, particularly bearing in mind that this was before he even had the opportunity to get home to change. Why did he reject his own blood-stained flip flop found near the crime scene when the CCTV footage showed him wearing them and when he had initially admitted they were his? Why did he lie to Munayimbo that the deceased had left him at Kapiri Mposhi paying toll fees and showed the latter K120 as being the unpaid fee when he was captured on CCTV paying the fee along with the deceased?
- 9.23.** Other questions indeed do not appear to have received any satisfactory responses in the reaction of the appellant during investigations or in his defence before the trial court. Why did the appellant tell Munayimbo that he did

not pay the toll fee only to tell the court later that he did pay?

**9.24.** And so, we ask in this case: was the circumstantial evidence sufficient to render the conviction of the appellant safe? Did it reach the beyond reasonable doubt threshold?

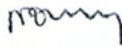
**9.25.** We agree with the appellant's counsel that there is no evidence that the appellant was the last person to be seen in the truck in which the deceased's body was found. We equally agree that there was a possibility that someone else in the Masangano area could have been responsible for the sordid deed. Yet, the doubt introduced by these gaps in the evidence can only remain reasonable if it is impossible to make proper inferences which link the appellant to the crime.

**9.26.** In our view, all circumstances considered, the available evidence not only lead to the logical conclusion that the appellant was guilty of murdering the deceased, but also excluded the possibility that the deceased met his tragic

death through a set of circumstances explainable on any hypothesis consistent with the innocence of the appellant.

9.27. Although the learned lower court judge did not expressly state the approach he used to come to the conclusion he did, he nonetheless reached the correct decision. We do not think he can be faulted.

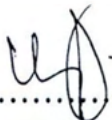
9.28. We uphold the trial court's judgment and thus dismiss this appeal.



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Mumba Malila  
**SUPREME COURT JUDGE**



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R. M. C. Kaoma  
**SUPREME COURT JUDGE**



.....  
J. Chinyama  
**SUPREME COURT JUDGE**