

**IN THE SUBORDINATE COURT OF THE FIRST CLASS**  
**FOR THE LUSAKA DISTRICT**  
**HOLDEN AT LUSAKA**  
(Criminal Jurisdiction)

**1SPG/001/2017**

**THE PEOPLE**

**VS.**

**JUDITH KAPAMA**

**BEFORE: HON. G. MALUMANI**  
**(SENIOR RESIDENT MAGISTRATE)**

FOR THE PEOPLE: MR. A. YANGANANI, PUBLIC PROSECUTOR

FOR THE ACCUSED: MS. M. BANDA OF LEGAL AID BOARD

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

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**CASE LAW REFERRED TO:**

1. The people V. Maiba and another High Court appeal No. 15 of 2010
2. Chimbini V. The people (1973) ZR
3. Maxwell Chanda V. The people (1971) ZR

**LEGISLATION REFERRED TO:**

1. Sections 4, 248 of the penal code Cap 87 of the Laws of Zambia.
2. Section 207 of the CPC Cap 88 of the Laws of Zambia.

In this case, the accused stands charged with one count of Assault Occasioning Actual Bodily Harm contrary to section 248 of the penal code Cap 87 of the Laws of Zambia. The particulars of offence are as per charge sheet. The accused denied the charge.

I warn myself at the outset, that the burden lies with the prosecution to prove the guilt of the accused beyond all reasonable doubt. The accused has no onus to prove her innocence. Any doubt cast in my mind upon considering all of the evidence may be treated for her benefit.

On a charge of Assault Occasioning Actual Bodily Harm contrary to section 248 of the penal code Cap 87, the following elements must be satisfied from what can be deciphered:

1. That the complainant was assaulted.
2. That the assault occasioned actual bodily harm.
3. That it is the accused who assaulted the complainant.

The evidence in support of the prosecution case in brief is this:

PW1 **BELINDA SHELENYI** who was the complainant testified on oath that on 12/11/2016 in the morning, her husband told her that the mother to Derick (referring to the accused) was telling him about her debt at the bar. She responded that she knew about it. She then went to see her around 17 to 18 hours. She recalled that they greeted and said sorry about the money and that she would pay.

PW1 deposed that the accused instead started shouting. When the husband heard, he came out of the bar and asked why she was too loud when the friend was low.

While waiting to tell her what she followed, she turned on her and poked something in her eye. She felt pain and blood came out of her eye. She reported the matter to police and later received treatment at UTH.

PW1 identified her medical report form in court.

Under cross examination by PW1 she told the court that she knew about the business transaction of putting money together for self help they had with the accused. But denied borrowing K1,600 and K600 from her. She said she only knew of K64, K40 for the business arrangement and K24 for beer.

PW2 was **MARTHA MUNENGA** a police officer constable by rank from Emmasdale Police Station. She testified on oath that on 14/11/2016 while on duty at the station, she was allocated with a docket of Assault Occasioning Actual Bodily Harm to investigate.

In the docket, she found a medical report form. On the findings of the medical officer, she saw that it was stated that they were consistent with the alleged offence. She interviewed the complainant and later the suspect now accused. She was told that when she went to the accused she poked her in the left eye using a sharp metal though she did not see it.

According to her, the accused did not give her a satisfactory response when she interviewed her. Adding that on a warn and caution statement administered in Bemba language the accused knew better, she freely and voluntarily denied the charge. In support of the prosecution case, PW2 identified the complainant's medical report form produced in evidence and marked exhibit P1.

Under cross examination by the defence counsel, PW2 told the court that she knew of the debt in issue during investigations. She disputed the notion that the complainant brought up this case in order to escape the debt. She acknowledged the attempted reconciliation before the matter was brought to court.

At the close of the prosecution case, the accused was found with a first case to answer and placed on defence. She chose to speak on oath pursuant to section 207 of the CPC Cap 88 of the Laws of Zambia. She led no other evidence. Her



evidence in brief was this: on 12/11/2016, Shelenyi (referring to the complainant) went to her asking that they start a money self help business. She agreed. She raised K600. In addition she borrowed K1,600 to pay in 2 weeks. She got a book cover to write, which she identified and produced. It is exhibit D.1 on record.

She recalled that she later saw the husband when he passed through the shop (referring to the complainant's husband). After 3 days, she went to her bar. She asked why she told her husband about the money and said she was not going to give her.

After about 40 minutes, she got back with 2 neighbourhood people and a police officer. They asked what happened. They apprehended her and later charged her for this offence. She denied having poked something on the complainant's eye at her bar at the material time.

Under cross examination by the learned public prosecutor, the accused admitted that she runs a bar. She however denied that the complainant got beer on credit.

This is the evidence as a whole in brief.

At the close of the prosecution case, no final submissions were filed.

I have examined all the evidence on record. From the evidence I find the following facts not in dispute:

1. The complainant and the accused knew each before. They had been doing what can be described as a self help initiative business arrangement. So, identity of the accused is not in issue, more so that the incident is alleged to have occurred in the morning.
2. The difference between the two arose when the complainant visited the accused at her bar following remarks she made to her husband about some money she was owing.

3. It is not in dispute that the complainant visited the accused on 12/11/2016 and this is the same date when the complaint of Assault Occasioning Actual Bodily Harm was made at police. The accused was picked on the same date infact shortly after the two had an exchange.

The dispute is on whether or not the accused attacked the complainant by poking her with an object in the left eye.

From the evidence adduced and cross examination conducted through the defence counsel, the defence being raised is that of plain denial, that the accused did not do the act complained of. It has been argued, that the complainant is trying to use this case to avoid paying the debt she is owing the accused.

I have addressed my mind to the defence raised. It would appear the defence tends to believe that the complainant was never injured on the left eye at all. She just claimed of an imaginary assault and went to police. And the police believed her.

As the trial court, I had the privilege to observe the demeanour of all the witnesses when they testified. What I noted is that PW1 was quite consistent in her evidence. I found her to be a creditworthy witness. She testified that after her husband told her about what the accused said on the money she was owing, she went to see her. The accused in her evidence acknowledged seeing her husband when he passed through. PW1 testified that at the time she went to see the accused at her bar, she said sorry about the money she was owing. After she was attacked, she went to report to police and the police went to pick the accused on the same day 12/11/2016. The accused does acknowledge in her evidence that she was picked by police on this same day after an exchange with the complainant.



The scenario exhibited tends to establish consistency on the prosecution case, that the complainant had reason to go to the accused at the material time. And the moment she was attacked she immediately reported to police.

I bear in mind however, that in a case where evidence rests entirely on one witness like in this case, the court is guided to apply the question of credibility. That is to what extent can the complainant be believed. This is a principle illuminated in the case of *The people V. Maiba* and another high court appeal No. 15 of 2010 (1).

But the question is, is it competent for a court to convict on evidence of a single witness. In the case of *Chimbini V. The people* (2), the principle established is that it is always competent to convict on evidence of a single witness if that evidence is clear and satisfactory in every respect.

On the matter before me, as hitherto alluded, identification is not in dispute. Prosecution evidence shows that the complainant had reason to go and see the accused. I perceive nothing to discredit the evidence of the complainant. It is on this basis that I found her to be a credit worthy witness and placed reliance on her testimony.

The notion that the complainant has a motive to implicate the accused so that she cannot pay the money owing sounds hollow. From the evidence adduced, it has been shown that what the complainant admits is a less sum of money. Be that as it may, the criminal case cannot be an avenue to escape civil liability or breach of contract. There is a long established principle that criminal prosecution is not a bar to civil liability and vice versa. So, the purported notion cannot hold.

I will to his effect make a finding that the complainant did poke an object in the complainant's eye in the morning of 12/11/2016.

The law on assault occasioning actual bodily harm contrary to section 248 of the penal code Cap 87 of the Laws of Zambia is very clear. It criminalises any infliction of bodily harm on another person without excuse.

The key factor is the meaning of Occasioning actual bodily "harm". Harm in terms of section 4 of the penal code Cap 87 (interpretation section) means any bodily hurt, disease or disorder whether permanent or temporary. As can be noted, the moment a person inflicts any bodily hurt in devoid of excuse, the aspect of Occasioning harm is satisfied.

Having regard to the fact that the accused did not have any excuse for her act of poking an object on the complainant's eye, the harm requirement is satisfied.

Further, it should be noted, that the medical report form exhibit P1 does confirm the injury suffered by the complainant on the eye. It is stated that the findings were consistent with the offence committed.

In the case of Maxwell Chanda V. The People (3) it was held that in a case of assault causing actual bodily harm, medical evidence is necessary only when the defence denies injury and the same is in issue. On the matter before me, exhibits P1 the medical report form is no doubt necessary. As shown it forms corroboration on the prosecution case that the complainant was injured, and there being no dispute on the identity of the accused, I will dismiss the purported defence. I view it as a hollow attempt to mislead this court.

The evidence is overwhelming in this matter. It has been established that the accused did poke an object in the complainant's left eye at the time. She had no excuse for this conduct. It has been proved that she had the intention for what she did because she was not happy that the complainant talked to her about the debt she owed. All the elements have been satisfied. The complainant was assaulted, the assault occasioned actual bodily harm as the medical report shows and it is the accused who assaulted her.

I will thus hold that the prosecution have proved the guilt of the accused beyond all reasonable doubt. I find her guilty of Assault Occasioning Actual Bodily Harm contrary to section 248 of the penal code Cap 87 of the Laws of Zambia. I Convict her accordingly.

**DELIVERED AT LUSAKA IN OPEN COURT THIS 29<sup>TH</sup> DAY OF MARCH, 2017.**

**G. MALUMANI**

**SENIOR RESIDENT MAGISTRATE**

