



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

THE PEOPLE  
VS  
BRIGHTON MWEEMBA

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J U D G M E N T

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In this case the case the accused stands charged with Assault Occasioning Actual Bodily Harm contrary to section 248 of Cap 87. The particulars of the offence allege that BRIGHTON MWEEMBA on 18/03/18 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, did assault one INONGE MUZUNGU thereby occasioning her actual bodily harm.

The accused pleaded NOT GUILTY to the charge.

I warn myself at the outset that the onus to prove the case beyond reasonable doubt lies on the prosecution and there is no onus on the accused to prove his innocence. The accused is entitled to give and call evidence or say nothing at all and if they elect to say nothing this does not affect the burden on the prosecution. If after considering all of the evidence in this



case there is any doubt in my mind as to the guilt of the accused then the accused must be given the benefit of that doubt.

In order to establish the guilt of the accused the prosecution must satisfy me upon each and every ingredient of the offence charged. Turning to the count, section 248 of Cap 87 states that

**“any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years”.**

The prosecution therefore must establish;

1. That the complainant was assaulted
2. That it was the accused that assaulted her
3. That the accused was not allowed to assault her
4. That the assault was actual bodily harm

The prosecution has alleged that the accused did assault the complainant thereby occasioning her actual bodily harm.

Thus the prosecution has to prove that the complainant was assaulted. That it was the accused that assaulted her. That the accused was not allowed to assault her and that the assault was actual bodily harm.

I will now consider the evidence in this case. The prosecution called two witnesses. The accused elected to give sworn



evidence and called one witness.

PW1 was INONGE MUZUNGU the complainant in this case. On 18/03/18 accused her husband sent her to take eggs for hatching at her sister's place in Kabulonga. On her way back she called accused on his phones but they were off. She called him because she wanted the codes for the GOTV for her to pay. She then called accused's cousin who was at home who gave her the code. On her way accused called her and asked where she was and she told him that she was around SOS. SHE WAS asked to pick him at G3 along Gt. North road. She picked accused. In the vehicle she was with their three children. The moment accused got into the vehicle he started shouting at her and asked as to why she called his cousin and not him. All the way, accused was shouting and scolding at her. When they reached the house, the children dropped and went into the house. Accused stated beating her while she was down. She shouted for help and she was rescued by people around. She bled from the nose. She went into the car and drove to the police where she reported and was issued with medical report form. She went to the Clinic where she was attended to. She identified the medical report form marked P1. She went with the police to apprehend accused but was not found. She identified accused. She identified the medical report form marked P1. She also identified accused.

In XXN by Counsel, she told the court that accused was her former husband. She was assaulted on 18/03/17. Accused shouted at her when she was driving. It was not her who was shouting at her. In the vehicle were children. She knew CHRIS WAMUNDILA. On 18/03/17 CHRIS was at her place. It was not true that when she



reached home, the children went into the house and she remained attacking accused. She did not recall Chris restraining her from attacking accused. She did not know where accused was. She knew MISHECK MWEEMBA the elder brother to accused. She did not recall calling him to settle the marital issues. She knew Mrs. Mizinga. She attended a meeting at her place in Makeni. The meeting was for reconciliation. This was in March, 2017. After reconciliation she went back to stay with accused. The time that she moved back, they had a lot of problems. She was in school at the moment. It was true that in September, 2017 she left for School. While at school she spoke to accused. She was scheduled to close school in December, 2017. Before December, 2017 she came home with the knowledge of accused. She used to go home every after two weeks. She was not aware that on 13/11/17 the children told accused that she was at home. She recalled that on 13/11/17 accused asked her as to why she was coming home without telling him. It was not true that upon being asked as to where she was staying, she went to reopen the case. On 13/11/17 she went to Kabangwe Police. It was on 12/11/17 that she sued at the Local Court for divorce. They were divorced on 24/11/17. During marriage they acquitted property with accused and one such property was a farm in Nampundwe. She did not recall having called accused on 04/12/17 that she wanted to withdraw the matter. She called him to discuss property sharing and not a withdraw. She knew CHRISPIN MPOFU. He was not her man friend. The case took long to come to court not because they had reconciled but because she was at school. She sustained a swollen cheek. She was the one who felt the pain.



PW2 was KASONDE MPOROKOSO the arresting officer based at Kabangwe Police Post. On 13/11/17 the husband and sustained a swollen cheek and general body pains. Acting on the docket, she summoned accused and came to know him as Brighton MWEEMBA. He interviewed accused in connection with the offence but failed to give him a satisfactory reply and so he made up his mind to charge and arrest accused for Assault OABH. Under warn and caution statement in English the language that accused appeared to understand better he gave a free and voluntary reply denying the charge. He identified the accused. In the docket was a medical report form which he identified marked P1.

In XXN by Counsel, he told the court that he did conduct the investigations. The accused between accused and complainant was husband and wife. The alleged assault occurred on 18/03/17. The case was reported on 18/11/17. He came through P1 that was done in March, 2017. PW1 told him that she did not open the case that time because she was at school. He was not aware that at one time she withdrew the case. He was not aware that the parties were reconciled the reason for the withdraw. He did not conduct independent investigations apart from P1. He did not know that PW1 was the one that assaulted accused. He agreed that there was a dereliction of duty by him not going to that house to investigate. PW1 sustained a swollen cheek and general body pains.

The accused was put on defence. Accused elected to give sworn evidence and called one witness. According to him on 18/03/17 around 1t500hrs PW1 told him that she was going to visit her sister and so he asked her to also take eggs for hatching there. PW1 went with the children. He also gave her money to pay for



GOTV. He remained home with his Cousin Albert mweemba. Around 1600hrs he took Albert for a haircut. He left ALBERT at the barbershop and went to his friend Alfred Hachilensa. Around 1700hrs he called Albert who told him that he had rushed home because PW1 called him to give her the code for the GOTV. He then called PW1 to confirm and she agreed. He told her to pick him on her way home. He was picked and he asked her as to why she called ALBERT when he was around at home. He was told that his phone was not reachable. He was told that he had gone to see his girlfriend. He asked her not to say things in the presence of the children. He was accused of having gone to see his girlfriend which he refused and asked ALBERT to clarify which was done. The quarrel however, continued. He pulled her in the house but she got a pan brick and wanted to hit him. He grabbed her by holding her hands to get the pan brick. They both fell to the ground. His garden boy DW2 came and separated them. Wamundila Sikota the nephew to PW1 also came and separated PW1. PW1 went into the house and when she came out drove away. He also left the house. The following day, PW1 called him and apologised for what she did and called MISHECK the brother to accused to come and sit them down. He only went back home after two days when his brother came. They sat down in Makeni and were reconciled. They started living a normal life from March to November when PW1 left for school. On 13/11/17 he was asked by his son if he knew that PW1 was around. He then called PW1 to find out who admitted and said that she came to see the children. On the same day he received a call from Court that there was a case. He went to pick summons. Later he was called at the police where he went and was arrested for Assault OABH and that he had assaulted PW1. He was released on police

bond on 14/11/17. He identified the summons marked DDP1 and the Police bond marked DDP2. He denied to have assaulted PW1.

In XXN he told the court that on 18/03/17 PW1 went to visit her sister. He did not recall her telling court that she called him 3 times. They never quarreled in the vehicle. He did not know why she called his cousin and not him. It was not true that she did not call him because his phone was off. The quarrel was about her suspecting him to have gone to his girlfriends. The quarrel continued even at home. PW1 picked a pan brick when she was asking her to get into the house. They both fell down as he was trying to get a brick from her. It was not true that he used more force to get the brick the reason they fell down. It was the physical contact that made them fall. There was no force used. The force could make them injure themselves.

In REXN he told the Court that the force could have been there because he wanted to get the brick which was aimed at him.

DW2 was HINDERSON CHEELO. According to him accused and his wife did not fight. On 10/03/17 he was in 10 miles at accused's place when he two quarreled. Around 1900hrs he just heard some noise and when he came out he found accused holding the wife who had a block in her hands. He got the accused and the nephew to PW1 got her. PW1 entered the house and came out with car keys and left. She came back around 2200hrs. Accused went away and came after two days. Later all was well but later they divorced. He was taken to Nampundwe.

There was no XXN.

This is the evidence that I received. I now state my findings of fact. I find that PW1 was assaulted. I find that it was Accused that assaulted her. I find that the assault was actual bodily harm. I find that Accused was not allowed to assault her.

Having found the facts, I must now apply the law to those facts. I ask myself if on these facts the accused has in law committed the offence charged. Turning to the count, if the accused acted in the way alleged then certainly he would be guilty of assault OABH. But has the prosecution established beyond reasonable doubt that it was the accused person that assaulted PW1?

What evidence is there that he assaulted PW1? There is evidence to this and in particular that accused was the only person who had physical confrontation with PW1. It is clear from the evidence that PW1 was assaulted when accused wanted to find out as to why PW1 called his Cousin and not him on phone when he was at home. There is evidence from both PW1 and Accused that the Cousin to accused was called over the GOTV Code. This issue brought about issues because accused was not comfortable with PW1 calling his Cousin while PW1 was also not happy that accused did not respond to the phone and suspected him to have gone visiting his girlfriends. Further evidence shows that there was exchange of words in the vehicle until home which shows that tempers had arisen. At home after dropping from the vehicle, it shows that accused started beating PW1. The truth of the matter is that accused beat up PW1 because he was not happy that she called his cousin and not him. PW1 sustained injuries as per medical report form. Looking at the injuries it is clear that





the beating was intended by the accused. Accused in his defence denied to have assaulted PW1. The defence by accused that PW1 wanted to use a pan brick on him is neither here nor there because in XXN of PW1 this did not come out. To say that they fell to the ground because he wanted to get the pan brick is a lie aimed and misleading the court. It was accused who beat up PW1 for reasons best known to himself. The medical report form P1 shows that PW1 was assaulted. I wonder as to who assaulted her if it is not accused. It is impossible to believe that another person and not the accused assaulted her. Further it is impossible to believe that she inflicted those injuries on her own. Accused was the only person who had issues with PW1. Further DW2 identified accused as the one whom he saw holding each other with PW1 and he went there to separate them. I wonder why these two were being separated if they were just playing.

I have no difficulties to connect accused to the offence.

In the circumstances I find the case of Assault OABH contrary to Section 248 of Cap 87 proved beyond reasonable doubt. I find accused **Guilty** and I CONVICT him accordingly.

DELIVERED IN OPEN COURT THIS.....DAY OF.....2018

