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CASE NO.1PA/160/2017

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

THE PEOPLE  
VS  
SHELDEN MWAANGA

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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 GRIEVOUS BODILY HARM contrary to section 229 of Cap 87. The particulars of the offence allege that accused on 23/06/16 at Lusaka in the Lusaka District of the Lusaka province of the Republic of Zambia did grievously harm VIOLET MBAO.

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 are entitled to give and call evidence or say nothing at all and if he elects 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 229 of Cap 87 states**

**"Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for seven years"**.

The prosecution therefore must establish;

1. That the complainant was injured
2. That it was the accused that injured her
3. That the accused was not allowed to injure her
4. That the injury was grievous bodily harm

The prosecution has alleged that the accused did cause grievous bodily harm.

Thus the prosecution has to prove that the complainant was injured. That it was the accused that injured her. That the accused was not allowed to injure her and that the injury was grievous bodily harm.

I will now consider the evidence in this case. The prosecution called four witnesses. Accused elected to give sworn evidence and called one witness.

PW1 was VIOLET MBAO the complainant in this matter. On 23/06/16 she went to the house of PW2 within the village. She entered

the house and told her that she was going to 10 miles. Whilst there accused came and told them that she had heard them discussing her and asked her if her son was sleeping with accused. She kept quiet. Accused then went to the kitchen and came back with a white bucket and went outside. PW1 then went out of the house and found accused outside at the door. Accused then hit her with a bucket on her back and she turned. Her hand was broken. She told accused that accused had broken her hand. Accused pushed her and she fell down. Accused climbed on her top and bit her on top of her eye. She screamed for help and two people came to her rescue. PW1 failed to wake up and was just helped. She then reported to the police and found accused already at the police. She was issued with a medical report form and she went to UTH. She sustained a broken right hand and a human bite on the right eye. She identified the medical report form marked P1. She also identified accused.

In XXN she told the court that it was accused that hit her with a bucket. Accused hit her with a bucket.

PW2 was MONICA CHISOMPOLA. ON 23/06/16 SHE WAS AT HER HOME when she was visited by PW1. Accused was also in the other room. PW1 and PW2 started chatting when accused came out of the room and told them that they were talking about her. PW1 told her that they were not gossiping. Accused came out of the house and said that they iron out the matter. Since PW2 was not properly dressed she went to dress up in her bedroom. When she went outside she found accused on top of PW1 and was beating her. She asked accused to leave PW1 as she was an elderly person. She identified accused.



In XXN she told the court that when she came out she found accused and PW1 down and accused was on top of PW1. When accused moved away, PW1 complained that accused had hurt her hand. She did not see the object that accused used to injure her.

PW3 was LOVENESS MBAO. On 23/06/16 accused beat up her mother PW1. She was in the house with PW1, PW2 and Ireen Likubo when accused came and said that they were gossiping her. Accused then went to the kitchen and went outside. PW1 then went out and whilst in the house she heard PW1 scream for help. She rushed outside and found PW1 lying on the ground facing upwards and accused held PW1'S head and banging it on the ground. She held accused and moved her away. PW1 could not wake up and stand on her own. The right hand was twisted and looked like it was fractured. She identified accused.

In XXN she told the court that she was in the house when she heard PW1 scream for help. She found accused on top of PW1 and beating her. Accused used her hands to grab PW1 and bang her head. She was the one that moved accused away from PW1. PW1 sustained a broken hand. Accused broke PW1's hand when she was in the house. She only saw a bucket lying nearby.

PW4 was JUDITH SIMULUBWA the arresting officer based at Moomba Police post. On 23/06/16 she was on duty when she received a report in which PW1 reported that she was assaulted by her daughter in law the now accused. She interviewed accused with her witnesses. She also interviewed accused who did not give her a satisfactory reply and so she charged and arrested the

accused for Grievous Bodily harm. Under warn and caution statement in Nyanja the language she appeared to understand better she denied to the charge. She identified the accused. In the docket was a medical report form which she identified marked P1.

There was no XXN.

The accused was put on her defence. She elected to give unsworn evidence and called one witness.

According to her on 23//06/16 she entered the house of her mother in law when she heard PW1 tell PW2 that accused was inciting PW1's daughter in law. She told them that she did not want to be accused of anything. PW1 came out of the bedroom. As accused wanted to go out, PW1 grabbed her on her back and told her to get back. Accused was scared of being pulled and so she turned and PW1 fell down and fell accused fell on her top. Accused was removed by PW2 as PW1 held on to her. PW1 sustained a fractured arm. Accused went to report to the police that she had injured someone at home. She was detained and later came to court.

DW2 was IREEN LIKUBO. On 23/06/16 she was in the house of PW2 when PW1 was complaining of her daughter in law. PW1 complained that her daughter in law was being influenced to misbehave. Accused then said that she had heard them talk about her. PW1 came out and they started shouting at each other. The accused came out and PW1 pulled her so that they talk. The accused then turned and grabbed PW1 and pushed her to the ground. PW1

sustained an injury on the hand.

In XXN by accused she told the court that it was PW3 who removed accused from PW1.

In XXN she told the court that it was accused that caused injury on PW1. PW1 did not allow accused to push her down.

This is the evidence that I received. I now state my findings of fact. I find that PW1 was injured. I find that it was accused who injured her. I find that the injury was Assault OABH. I find that accused was not allowed to assault PW1.

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 she would be guilty of causing grievous harm. But has the prosecution established beyond reasonable doubt that accused caused grievous harm on PW1?

What evidence is there that she caused grievous harm on PW1? There is no evidence to this and in particular that the injury sustained could be repaired. Section 4 of Cap 87 provides that **"Grievous harm" means any harm which endangers life or which amounts to a maim or which seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;** in this case the medical report form stated that the complainant sustained a fracture and a plaster of Paris was applied.

In light of the above I find the case of Causing Grievous Bodily Harm C/S 229 of Cap 87 of the Laws of Zambia not proved beyond



reasonable doubt. I find accused NOT GUILTY and I ACQUIT her accordingly.

However, I find that the complainant was injured. I find that the injury was Assault Occasioning actual Bodily harm. I find that it was accused that injured her. I find that accused was not allowed to injure her.


It is clear from the evidence that PW1 was injured when she was hit with a bucket by accused on her back and she fell to the ground where accused further continued beating and biting her. PW1 sustained a broken arm. The injury sustained according to the medical report form amounts to Assault OABH. To say that accused was pulled by PW1 so that they talk and that accused feared and so turned which made PW1 to fell down as a blue lie which this court cannot believe. It is an afterthought which this court cannot believe. Accused was the one who beat up the complainant because she was not happy with PW1 reporting of her behavior to PW2. Accused knew what she was doing and that she intended to injure PW1 as per medical report form P1.

I have no possible defence for accused.

In the circumstances I find the case of Assault OABH contrary to Section 248 of Cap 87 proved beyond reasonable doubt.

I find accused person **Guilty** and I **convict her** accordingly.

DEKIVERED IN OPEN COURT THIS 23<sup>rd</sup> DAY OF MAR 2017

  
REPUBLIC OF ZAMBIA  
HON A.N WALUSIKU  
MAGISTRATE I  
MAGISTRATE CLASS I  
P.O. BOX 31279, LISAKA