

IN THE SUBORDINATE COURT
OF THE 1ST CLASS FOR THE
LUSAKA DISTRICT, HOLDEN
AT LUSAKA

CASE NO.1P/A/129/2016

[Criminal Jurisdiction]

BEFORE MRS A.N WALUSIKU

THE PEOPLE

VS

PAUL MULENGA, ROBERT MUSHILI, NICHOLAS MUTENDA, STEPHEN MULENGA,
NELSON ZULU & MARTIN DUBE

J U D G M E N T

In this case the accused stands charged with 39 Counts of Theft Contrary to section 272 of the penal Code Chapter 87 of the Laws of Zambia.

The particulars of Count 1 allege that all the accused on unknown date but between 01/12/15 and 31/12/15 at Lusaka in the Lusaka province of the Republic of Zambia, jointly and whilst acting together, did steal K270-00 the property of SAMBWA CHITAMBO.

The particular of Count 2 allege that all the accused between 01/12/15 and 31/12/15 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K70 the property of SHARON KAKOMA.

The particulars of Count 3 allege that all the accused on 31/12/15 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K70 the property of ALICE CHINGOLE.

The particulars of Count 4 allege that all the accused on unknown date but between 31/12/15 and 30/05/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K90 the property of JULIET SIKALENGWE.

The particulars of Count 5 allege that all the accused on unknown date but between 01/01/16 and 31/01/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K160 the property of MATILDA PHIRI.

The particulars of Count 6 allege that all the accused on unknown date but between 01/01/16 and 31/01/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K220 the property of MAUREEN LUHANGA.

The particulars of Count 7 allege that all the accused on unknown date but between 01/01/16 and 31/01/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K270 the property of CHILESHE NGOMA.

The particulars of Count 8 allege that all the accused on unknown date but between 01/01/16 and 31/01/16 at Lusaka in the

Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K115 the property of CHAIKANGA KASONGO.

The particulars of Count 9 allege that all the accused on 08/01/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K150 the property of JANE MWENDA.

The particulars of Count 10 allege that all the accused on 25/01/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K128 the property of EUNICE BANDA.

The particulars of Count 11 allege that all the accused on unknown date but between 01/02/16 and 28/02/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K75 the property of PATRICK CHISULO.

The particulars of Count 12 allege that all the accused on unknown date but between 01/02/15 and 28/2/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K490 the property of MUTWALE FRANCINE.

The particulars of Count 13 allege that all the accused on 15/02/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K150 the property of BRIDGET NKHOMA.

The particulars of Count 14 allege that all the accused on

19/02/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K250 the property of ELIZABETH TEMBO.

The particulars of Count 15 allege that all the accused on 06/03/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K275 the property of MUSAMUDE CHIBANDA.

The particulars of Count 16 allege that all the accused on 08/03/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K1, 400 the property of MARY NANYANGWE.

The particulars of Count 17 allege that all the accused on 20/03/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K90 the property of WILLIAM SEKELETI.

The particulars of Count 18 allege that all the accused on unknown date but between 01/04/16 and 30/04/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K550 the property of LILIAN MUBANGA.

The particulars of Count 19 allege that all the accused on unknown date but between 01/05/16 and 30/05/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K140 the property of VIOLET KUMWENDA.

The particulars of Count 20 allege that all the accused on

unknown date but between 01/05/16 and 30/05/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K60 the property of DIASE LUNGU.

The particulars of Count 21 allege that all the accused on unknown date but between 01/05/16 and 30/05/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K70 the property of OLIVER LIATUMBA.

The particulars of Count 22 allege that all the accused on unknown date but between 01/05/16 and 30/05/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K60 the property of BIZWAYO SHAWA.

The particulars of Count 23 allege that all the accused on unknown date but between 25/05/16 and 30/05/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K60 the property of ALEX LIMBEMBE.

The particulars of Count 24 allege that all the accused on 29/05/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K160 the property of SIBONGILE GONDWE.

The particulars of Count 25 allege that all the accused on unknown date but between 01/05/16 and 33/05/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K60 the

property of DINGISWAYO SHAWA.

The particulars of Count 26 allege that all the accused on unknown date but between 01/06/16 and 30/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K80 the property of TENDAI MATAKALA.

The particulars of Count 27 allege that all the accused on unknown date but between 01/06/16 and 30/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K80 the property of MAKUNGU CHISHIMBA.

The particulars of Count 28 allege that all the accused on unknown date but between 01/06/16 and 30/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K60 the property of RONALD CHISHIMBA.

The particulars of Count 29 allege that all the accused on unknown date but between 01/06/16 and 30/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K80 the property of ANNIE SAMVU.

The particulars of Count 30 allege that all the accused on unknown date but between 01/06/16 and 30/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K80 the property of LASTON MWANZA.

The particulars of Count 31 allege that all the accused on unknown date but between 01/06/16 and 30/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K85 the property of FIDELIS CHISALA.

The particulars of Count 32 allege that all the accused on unknown date but between 01/06/16 and 30/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K180 the property of THERESA LUPENGA.

The particulars of Count 33 allege that all the accused on unknown date but between 01/06/16 and 30/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K60 the property of ALICK ZULU.

The particulars of Count 34 allege that all the accused on 17/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K60 the property of CHARLES MHONE.

The particulars of Count 35 allege that all the accused on 17/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K40 the property of KENNEDY MULENGA.

The particulars of Count 36 allege that all the accused on 17/06/16 at Lusaka in the Lusaka District of the Lusaka Province

of the Republic of Zambia, jointly and whilst acting together, did steal K40 the property of CATHERINE TEMBO.

The particulars of Count 37 allege that all the accused on 17/06/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K160 the property of ENOCK PHIRI.

The particulars of Count 38 allege that all the accused on unknown date between 01/07/2016 and 31/07/16 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K150 the property of BEATRICE KALEBUKA.

The particulars of Count 39 allege that all the accused on 06/07/2016 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, did steal K400 the property of MARTIN SILOMBA.

All the accused pleaded **NOT GUILTY** to all the counts.

I warn myself at the outset that the onus to prove the cases beyond reasonable doubt lies on the prosecution and there is no onus on the accused to prove their innocence. The accused are 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 offences charged. Turning to the count, section 272 of cap 87 states that **'any person who steals anything capable of being stolen is guilty of the felony termed "theft", and, unless owing to the circumstances or the nature of the thing stolen some other punishment is provided, is liable to imprisonment for five years'**.

The prosecution therefore must establish:

1. That the accused took the said cash;
2. That they were not allowed to take the said cash;
3. That their intention was to deprive the owners permanently;
4. That the accused had no claim of right to the said cash.

The prosecution has alleged that the accused did steal different amounts of cash from different complainants as per charge sheet.

Thus the prosecution has to prove that it was the accused that took the said cash. That they were not allowed to take the said cash. That their intention was to deprive the owners of the said cash permanently and that they had no claim of right to the said cash.

I will now consider the evidence in this case. The prosecutions called fourteen witnesses while the accused elected to give sworn evidence and called no witnesses.

PW1 was BAULENI DAKA a Tailor from Mtendere Market. On 02/02/16 he was introduced he was introduced to International Ministries Fellowship affiliated Churches by DORIS MBEWE who told him that they were giving out loans and that if one paid K250 they would

get K10,000. He went to Kamanga Compound where he was directed to A4 and A5. He was interviewed by A5 after a directive from A4. In the process A1 came and asked him to finish quickly for him to sign. After interviews he paid K250 and K20 for the identity card. He was told to be checking with them. Later he attended a meeting in Avondale where people from different provinces attended. A1 and others were present. He asked A5 on the issues of the loan but was referred to A1. A1 told him to be patient. Later they were put in groups of 10. The ones who were putting them in groups were the Vice President to A1, A4, A5, A2 and A6. In their group they chose DAVIS MBEWE as leader. They paid K40 for stationary to go for sensitization. The money was given to A2. They further paid a K20 for sensitization identity card. His group was to go to Petauke. Later he made a follow up and a last meeting was called at the Show grounds. A1 addressed the gathering and said that money had come and said that the group for PW1 would leave on Monday. However he did not leave. Later he was asked to photocopy his NTRC and for others so that they are made Polling Agents. They got hold of them and took them to the Police where he reported the case. They took 4 people to the police. He identified A1, A4, A5 and A2 and the Vice President to A1. In total he paid K330. K250 WAS for the loan and paid to A4. He was given a paper which was said to be a receipt. K40 was for sensitization and K40 for Identity Cards. He identified the identity cards marked P1. He identified the acceptance form marked P2 and the sensitization form P3.

In XXN by A1 he told the Court that K250 was to qualify to get a loan. The document talked of acceptance to get the loan. He was not aware that the document did not say that it was for a loan. He was not aware that among the groups some received the loans. His time to get the loan came. The proof he had was that

accused said he would give them loans. He did not know as to why he did not go for sensitization.

In XXN by A2 he told the Court that in February, 2016 he was not a member of IMFAC. He was told that he would be a member after paying. When A1 came he was told to do interviews. The officer told him that he qualified to get K10, 000. He did not have time to go through the document because it was explained to him. Accused was there at the meeting he attended. The signatures for WISEMAN and JOSEPH were on the awareness document.

In XXN by A3 he told the court that he did not know accused. He did not deal with accused.

In XXN by A4 he told the Court that accused was the one that explained with A5. He was swindled because he was not given the loan. He was told that the K40 was for sensitization. He did not see accused in the Show grounds.

In XXN by A5 he told the court that he was not given chance to read the paper. He did not read because A1 came and told him to do interviews quickly. Accused did tell him that A1 was the one signing. Accused was involved because he was dealing with him and A4.

IN xxn by A6 he told the court that he did not know accused and never dealt with him

PW2 was SHARON KAKOMA the complainant in Count 2. In January, 2016 she went to get a loan from a certain house in Mtendere. They found Sandra and she registered and also registered from her children and paid K1, 250 for the five of them. She paid to

Barbara and was given forms. They were taken to Avondale where she found A2 whom she asked as to where A1 was. She was allowed to see A1 and asked over loans and was assured of the payment. She was told to make a follow up the next Tuesday. The following week she went there but to no avail. Whilst there A2 told her about the Referendum and issues of sensitization. She got interested and asked to register. She registered herself and five of her children. She paid K40 per person. She also paid K40 for transport. She started making follow up. Later A2 and others were picked by Police. She paid a total of K2, 500. She identified A1 and A2. She identified the acceptance marked P4 and P5 respectively. She identified the introductory letter from Sharon marked P6 and P7 respectively. She identified the Identity card marked P8 and P9. Herself and her children did not go to Northwestern Province

In XXN by A1 she told the court that she did not pay any money to accused. She did not receive anything from accused. She told accused to give her her money. She did not sign anywhere when she paid the K40.

In XXN by A2 she told the Court that she knew accused through the office. Accused was involved because he was operating from that office. She paid K250 for each of the children. She paid K400 for dinner for 10 people. For civic education it was K40.

IN xxn BY A3 she told the court that she did not talk to accused. Accused was in that case because he was working with others. She did not know accused.

There was no XXN by A4.

In XXN by A5 she told the Court that she never talked to

accused.

In ~~XXN~~ by A6 he told the court that she never gave him any money.

PW3 was CHAIKANGA KASONGO a Complainant in Count 8. In March, 2016 his friend Stephen told him that IMFAC was giving out loans. He went there and approached A6. A6 explained to him on the loans and he paid K50 and later received the form and identity card, he started waiting for the loan. Later his group leader Clementina told him that there world sensitization campaign and was told to go to Chelstone. He went and registered and bought a uniform. At the meeting was A2 and A5. At the meeting in Show grounds was A1. They were told to wait for money buy ~~t~~ whilst there were told that cadres were coming and that teargas would be used and so they dispersed. Later he went to ask for his refund of K190 that he paid. He reported to Chelstone Police. He identified A1-A6. He identified the membership form marked P10, the two identity cards marked P11.

In XXN by A1 he told the court that he did read and understood the application form. He applied for a loan. The form indicated that it was for loans. If that was not true then he was crooked. He believed accused because accused came as a church. On the form there was no date when one was to get the loan.

In XXN by A2 he told the court that when he went to pay for loans accused was not there. Accused stole the money because he was an overseer and had the register.

In XXN by A3 he told the court that he was not aware that accused only joined the organization in June, 2016. Accused stole the money because he was in that organization.

In XXN by A4 he told the court that he saw accused in the office at Chelstone. Accused stole the money because he was in the same organization.

In XXN by A5 he told the court that accused was making identity cards.

In XXN by A6 he told the court that he went to register for loans. He was told that K25 was for membership and K50 for K3, 000 loan. Accused was the secretary at Njolwe.

PW4 was OLIVER LYATUMBA the complainant in Count 21. On 27/04/16 he was called by Clementina Mulenga and A2 who told him about loans and that if he paid K50 will get K3000 and K25 was for an identity card. He was told that A1 was the one empowering people and that he was being empowered by the current Republican President. He paid money and went for s meeting where he got forms and identity card. The meeting was led by A1. HE paid K75 and started waiting for money. Later he was called by A2 to go to the show grounds which he did. The meeting was chaired by A1 and that loans and sensitization money would be paid together. Days went by but to no avail and when he saw t6hat he reported to the police. He apprehended A4, A2 and another. He paid the total of K115. He identified the acceptance form marked P12 and the identity cards marked P13.

In XXN by A1 he told the court that he paid K25 for membership, K40 form sensitization. He did not pay anything to accused but to his workers.

In XXN by A2 he told the court that he did not know when accused

joined IMFAC.

In XXN by A3 he told the court that he did not know how accused stole. Accused was in a different group.

In XXN by A4 he told the court that accused was the one leading A1 at the show grounds.

In XXN by A6 he told the court that he did not know him.

PW5 was CHARLES MUHONE the complainant in Count 34. On 16/06/16 he was told by MILIKA ZULU that IMFAC in Avondale was recruiting people for sensitization of the Referendum. He went there and found A2 with others. A2 explained that they were recruiting people for sensitization and payment were K80 for acceptance and identity card. She paid K60. After three days she was given the document and identity card. Later he was told to inform the people in his group to go to show grounds where he was told that he would go to Nakonde. He went for a meeting where A1 addressed the meeting. On 18/07/16 all leaders met in Kaunda Square and he was there. They were addressed by A2, A3 and A4 and were told to write their names and phone numbers. He identified the sensitization document marked P14, the acceptance P15.

In XXN by A1 he told the court that he paid K60 to A2. No receipt was given.

In XXN by A2 he told the court that he paid the money on 17/06/16.

In XXN by A3 he told the court that he saw accused on 18/07/16. He did not know that accused did not know A2.

IN XXN by A4 he told the court that he paid to A2. Accused was one of those in the meeting.

In XXN by A5 he told the court that he knew accused but did not talk to each other.

In XXN by A6 he told the court that he knew accused. He knew him from Avondale. He never dealt with accused.

PW6 was BRIDGET NKHOMA the complainant in Count 13. On 15/02/16 Faides Tembo TOLD HER THAT THERE WERE LOANS given by the organisation for A1. On 17/02/17 she gave K150 to FAIDESS. On 27/02/17 a form was taken to her to fill in. she paid K26 for the identity card and started waiting for the loan. In June, 2016 a program of sensitization came and Mrs. Kamanga their coordinator told them to pay K60 which she did. The sensitization did not take place. She tried to contact Faides and Mrs. Kamanga but their phones were off. She only received a sensitization card. She knew A1 and A1 addressed a meeting in Chelstone on 19/04/16. She identified A1. She identified the acceptance form P16 and Identity card P17.

In XXN by A1 she told the court that accused told them the date of getting loans. The money she paid was for loan and sensitization. She did not deal with accused. Accused sent people to go round compounds. The money did reach accused.

In XXN by A2 she told the court that she did not give him any money.

In XXN by A3 she told the court that she gave the money to Faideess.

In XXN by A4 she told the court that she did not know accused.

In XXN by A5 she told the court that she had never seen accused before.

In XXN by A6 she told the court that she had never dealt with him before.

PW7 was FRANCIS AMANZI. Between May and June, 2016 he was requested to collect Affiliation fees in Linda and Mount Makulu area by a person who came from IMFAC Annette Chulu. He organized a small office and was getting money and forms and forwarded them to the Vice President Stephen Mulenga. He used to give the money to Mwale and was making him to sign for it. He was affiliated to be a member. Initially he paid K130 and paid more money which came to K280. Later the applicants came to ask for their refund. He went to IMFAC offices and reported but to no avail that he had to use his money to refund some. Later he went to report to Chelstone Police where he found IMFAC people held. In the group he only knew the President. He identified A1. Upon Affiliation he was given an acceptance form which he identified marked P18.

In XXN by A1 he told the Court that it was Fred Mwale under accused's authority who told him to open the office. Accused said that he was too busy. He did not have any letter of authorization. He did not meet accused in person. His membership was for 1 year.

In XXN by A2 he told the Court that he did not know accused.

In XXN by A3 he told the court that he did not know that accused

stole his money.

In XXN by A4 he told the court that he saw accused but he never talked to accused.

In XXN by A5 he told the court that he never dealt with accused.

In XXN by A6 he told the court that he did not know accused.

PW8 was MULUBWA CHISULO a complainant in Count 11. In February, 2016 Bishop Banda went to him and explained that there was an organisation called IMFAC and was giving out loans. He was told that there was a membership fee and loan fee of K500 and K250 which he paid but to no avail. He reported to Chelstone Police station. The Bishop told him that they were taking money to A1. HE was given an acceptance letter signed by the Bishop which he identified marked P19. He knew Apostle Mulenga whom he identified as A1.

In XXN by A1 he told the Court that he did not pay money to accused.

In XXN by A2 he told the court that he never dealt with accused.

In XXN by A3, A4, A5 and A6 he told the court that HE never dealt with them.

PW9 was ELIZABETH TEMBO the complainant in Count 14. In February, 2016 he was visited by Tembo, Sebastian Zulu and Martha who told her that they had been sent by their Church leaders from IMFAC to register people for loans and asked her to organize people. She mobilized 85 people. On 19/02/16 those

people came with a Pastor Chibwe and registration was done. Money in amounts of K250 and K26 was paid. She was given a form which they said was a receipt. On 19/04/16 they were called for a meeting where they were told that loans would be given by 28/04/16. A1 addressed that meeting. On 28/06/16 with others was also called and a program of sensitization was introduced. She went to Mrs. Banda with others had paid K60. IN Total she paid K286. She identified the document marked P20 and identity cards p21. She identified A1.

In XXN by A1 she told the court that she did not pay money to accused.

In XXN by A2 she told the court that he did not know accused.

In XXN by A3 he told the court that accused was working on the office. Accused was among the group.

In XXN by A4 he told the court that accused never went to her house.

In XXN by A5 he told the court that she never saw accused at her home.

In XXN by A6 he told the court that accused only gave her cards for sensitization.

PW10 was RONALD CHISHIMBA the complainant in Count 28. In June, 2016 IMFAC opened a Branch in Mtendere Kazimai market and that they would give out loans. They were different amounts of loans. He was approached by A2 who told him that they were giving loans. He paid K250 to A2 and also paid K25 for the

identity card. Later A2 told him that they were employing people for sensitization and was charged K40. He lost an ID AND paid K20. In total he paid K360. Nothing however happened. He identified the acceptance form marked P22, the IMFAC sensitization marked P23 and the Identity cards P24. He gave his monies to A2.

In XXN by A1 he told the court that he applied for a loan. There was an agreement on the date of getting the loans. The proof was the form. He did not go for sensitization because accused lied.

In XXN by A2 he told the Court that he went to Kazimai market on 22/02/16. He was not aware that in February, 2016 accused was not with IMFAC. Accused was the one that signed on the form. He was given an already signed form. The evidence he had was the form.

In XXN by A3 and A4 he told the court that he did not deal with them.

There was no XXN from A5 and A6.

In REXN he told the court that he paid money for the loan and sensitization to A2.

PW11 was BEATRICE KALEBUKA. In July, 2016 she was approached by Angel Mhango her Church mate who told her that they were looking for people to register and conduct elections. She got interested and went with her. She met the lady who was doing registration at comesa and registered her name. She also registered her son. Together they went to Kaunda Square for

cards. She paid K300 for the cards. She gave that money to Ban~~an~~ Mpundu who told her that she was going to pay to A2. After sometime they went to see Mr. Daka at IMFAC Offices in KAUNDA Square. At the office she met Mr. Daka and A2. She identified identity cards marked P25. She also identified A2 and A5.

In XXN by A1 she told the court that she did not the position for Bana Mpundu. She was just told that she was under A2. She did not have a document to show that she paid.

In XXN by A2 she told the Court that there was no money that she gave accused when they were discussing.

In XXN by A3 she told the court that she did not recall seeing him anywhere

In XXN by A4 she told the court that she never dealt with accused.

In XXN by A5 she told the court that there was no payment when they met.

In XXN by A6 she told the court that she never did business with accused at IMFAC.

In REXN she told the court that the cards were proof of payment.

PW12 was JIMMY MTAMIRA. According to him in April, 2016, He was visited by Bishop Banda and his wife at his house in Kaunda Square. He was told that there was Church Mother body that was giving out loans. He paid K250 and K26 for the identity card. He introduced 25 of his immediate family members and recruited

470 plus people. He was giving money to Bishop Banda and each time he came he would sign the form. Bishop Banda told him that he was handing over the money to A1. He met A1 and inquired over the money but A1 denied. The total money was K45, 000+ since that time Bishop Banda stopped going to his home and switched off the phone. He was given a form upon payment which he identified marked P26. He also indented A1.

In XXN by A1 he told the court that Bishop Banda was disciplined because of the funds that he did not remit.

There was no XXN from A2-A6.

PW13 was MWANSA CHINTU. According to her in March, 2016 she met ROZITA LISWANISO who told her that about loans. She went to Maposa area and met Mr. Mulenga and Shitima. He was told about the loans and sensitization. He paid K70 for membership and identity card. In May, 2016 they were put in groups and he was interviewed by A2. Later they were addressed by A1. In July, 2016 they were called and addressed by A1 and money was promised. He paid K130.00. He paid the money to Shitima. He identified A4. He identified the identity cards marked P27 and the acceptance form marked P28. He also identified A1.

In XXN by A1 he told the court that he paid K130. Accused did not tell him that it was non refundable. He was not given any application form when he joined. He dealt with Shitima. He did not pay anything to accused.

In XXN by A2 he told the court that he dealt with accused for sensitization. He never paid accused anything.

There was no XXN by A3, A5 and A6.

In XXN by A4 he told the court that he did not see accused at the Show grounds. He found accused with Shitima and accused directed him to Shitima.

PW14 was SERGE PHIRI a Police officer based at Chelstone Police station. On 03/08/16 a report was made to the Police by NICHOLAS ZULU that there was an organisation known as IMFAC which was collecting membership fees for registration so that the people could access soft loans. The time frame for the loans had elapsed and so people decided to report to the police. Suspects were brought by members of the public and these were A1 and A3 who were apprehended from a Lodge in Matero. He instituted investigations and handed over to Insp Kamfwa. Others apprehended was A2 and A6.

In XXN by A1 he told the court that he investigated the matter properly. He did not study their constitution. He did not know the date of getting the loans. He was aware that the organisation was registered. He did not know the charge that accused was given.

There was no XXN by A2.

In XXN by A3 he told the court that it was the arresting officer who made a decision to arrest accused.

In XXN by A4 he told the court that he recorded a warn and caution statement from accused.

There was no XXN by A5.

In XXN by A6 he told the court that he did not read the Constitution and did not know if accused was part of the Board.

PW15 was MULENGA KAMFWA JACKSON the Arresting officer based at Chelstone Police station. On 04/07/16 he was on duty when he was allocated a docket of case of Obtaining Money by false pretences in which Mr. Bauleni and Sharon Kaoma complained on behalf of others that there was a group of people who had informed an organization called IMFAC and obtained monies in excess of K50,000. Acting on the docket the complainants came with suspects and came to know them as ROBERT MUSHILI, STEPHEN MULENGA and MARTIN DUBE and NELSON ZULU. He interviewed A2 WHO TOLD HIM THAT he was also a member who also wanted a loan from IMFAC and was given a task to collect money from fellow members. A2 also told him that he was also looking for a loan. A5 and A6 also informed him that they were tasked to collect money from members and also needed loans. Further he was told that after collecting the money they were taking it to A1 who was the owner of the organization and also to the General Secretary Wezy and Vice President MANDA. He later apprehended A1 and A3. A3 told him that he was also a member from Chisamba and that when he came to collect loans he was given a task of collecting money from people in the Copper belt and that he handed over the money to A1. HE THEN MADE UP HIS MIND TO Charge and arrest all the accused jointly for Obtaining money by false pretences. Under warn and caution statement in English and Nyanja the languages that the accused appeared to understand better they gave a free and voluntary reply denying to the charge. A1 further told him that his organisation was ready to pay back from the people he collected money from. A1 denied to have taken the money but admitted to have handed over the money he collected to the Vice President Manda. A4 admitted to have collected the money and

handed it over to A1. . A5 admitted to have collected the money and handed it over to A1. A6 admitted to have collected the money and handed it over to A1. He interviewed over 60 people. From Sharon KAAKOMA, Musonda Mofya, Bob Chibeza, Royd Mofya, Mike Kabale he got documents such as Acceptance form, membership and identity cards. The witnesses informed him that they were repaying K50 and K250 for them to get loans and sensitization campaigns for the 2016 elections. He identified P4, P8, P5, P6.P7, and P9. He also identified A1, A2, A3, A4, A5 and A6. No one had been paid back his/her money.

In XXN by A1 he told the court that he did investigate the matter properly. What was collected was in excess of K50, 000. The vice president for A1 ran away with the book that had amounts. Accused told him that he was going to pay back the money. Accused did not say the date of payment. Accused did not tell anyone of the date of payment. Accused did not tell anyone of the date of payment. The forms were paid for. He did not know if the money was not refundable. He did not know how long the organization existed. The people were paying to accused's agents. He was sure that A2 collected money from Mtendere and took it to Accused.

In XXN by A2 HE TOLD THE COURT That accused had a document for membership. Accused told him that he gave money to A1 and his Vice President.

In XXN by A3 he told the court that accused told him that he was given a task of organizing the Copperbelt and that he handed over money to A1 and his Vice and was given a letter to be Coordinator for Zambia. Accused told him that firstly he was a member and needed a loan. Accused told him that he was

depositing money through Zoonaa money transfer and the other money he took it himself to A1.

In XXN by A4 he told the court that accused went there to get a loan as a member. Later accused was given a task to organize people and collected money from fellow members.

In XXN by A5 He told the court that accused went there on behalf of members who had asked him to go and ask for loans.

In XXM by A6 he told the court that accused told him that he used to collect money and hand it to A1.

The accused were put on their defence. They all elected to give sworn evidence and called no witnesses.

According to DW1 IMFAC was a registered organization and was registered with Registrar of Societies. The organization spoke for the poor, the voiceless and those who had been denied justice, fought poverty and participated in National Development, sponsored orphans in terms of education and trained Pastors. In 2016 they started mobilizing people to join the organization and empower them. Application forms were filled in and people agreed to be members for one year and to get soft loans. Others received while others did not. These that did not receive was because his office was still verifying whether the money for membership and renewal fees had reached his office. It was during that time that himself, A2 and A5 and others discovered that money did not come. They told the members that they would sort out the issue with the one that collected. Some members went into the field to do physical awareness. For soft loans some got while others did not. Whilst

waiting for the right time to come for payments he was apprehended by the Police. It was neither his problem nor that for the organization that the loans were not given. Some of the people who came to testify were paid. He did not have the book where he put the names for those who were paid.

In xxn by A2 he told the court that they were waiting for renewals, membership fees to pay the people. The money he was waiting for was from the well-wishers and donors. Accused was receiving affiliation money. Accused was in administration and had something to do with the money. Accused was in Kaunda Square office. Accused was appointed provincial coordinator. Mtamira and other were the ones that ran the Kaunda Square office. Accused was the one that went into the field and active people. As IMFAC President he knew accused was in the field and collected money. There was documentation to that effect. In the documentation was a renewal. He was not the one that appointed accused as Provincial Coordinator. Accused was not reporting directly to him. It was the senior people that employed accused. One of them was the Chairman Wiseman Manda. Accused was reporting to him ever since he was operating from the Kaunda Square office. Wiseman had never appeared in court. Chanda Kabwe the DC visited him at the Police station. Accused told the DC that the money would be paid to the people. He denied to have said that if he was released from custody he would pay. He said that the organisation would pay after verification. He was the head of the organisation. The secretary General was Pastor Dickson. It was necessary for him to get documentation from the Secretary General.

There was no XXN from A3, A4 and A6.

In XXN by A5 he told the court that it was membership fee that he was waiting from accused that people were paying to accused. People were going to the office to see accused. There were forms that accused was signing when people paid. Accused was appointed as Coordinator at the office. People who pointed at accuse~~d~~were proof to show that accused was getting their money. He was not dealing with accused and could not go down to look for accused. The leaders were there and accused was reporting to Kalumba and Wiseman Banda.

In XXN by the state he told the court in 2016 a program was launched and they went country wide to recruit. A number of people were recruited. The said people paid ad some did not. According to the witnesses they paid. They were issued with identification cards. People were not paying money for loans. He heard witnesses testifying that they paid in anticipation of getting loans. The witnesses pointed at him that at the show grounds he told them that time had come for them to get loans. This did not confirm that they paid money. Those who testified none of their money reached headquarters.

According to DW2 in February, 2016 Pastor Chabala and Bishop Kafula visited him and told him that IMFAC was giving soft loans. On 22/02/16 he went to IMFAC offices in Mtendere and found Pastor Chabala in the office. He also found people making payments for the loans. He paid K225 for the loan and identity card. He felt in a form and was assured that money would be paid by 29/02/16. However he was not given the money and was told that money was there but that cadres had brought confusion. He was given another two weeks to wait. On 02/05/16 he went to Mtendere office where a bus was hired and people were taken to the Headquarters for IMFAC. There he found A1 and his

executive. He identified A1. On that date only 10 people were given loans, some other people were given mealy meal. In June, 2016 he received a text message from the Secretary General for a meeting and he went and they were addressed by A1. A1 told them that there was another program for campaigns to assist the government of the day and that he was told to recruit 1,500 people. The number there was less than 660 and so A1 asked accused and others to lead the people to different districts and asked them to recruit more people. He recruited his sister, brother and church mates. A1 called another meeting at the show grounds and told people that they would be empowered. A1 asked people to split in groups but whilst there information was received that there were cadres coming to attack them and they were all dispersed. A1 called another meeting in Kaunda Square and said money had been given by the donors but people needed to pay K40 for Civic Education. Accused and others with A4 and A5 were appointed to help collect money for sensitization and people started paying. The money was given to A1 and his vice President. The Vice President was collecting money received on a daily basis and each day used to come with a new book for payments. Accused stopped attending IMFAC meetings. ON 04/08/16 he was at home when a mob visited his house and picked him and took him to the Police. He identified the membership form for IMFAC marked DDP2.

In XXN by A1 he told the court that accused was the one that appointed him as Coordinator. There was no letter that was given. Accused was the one that added them on awareness. He did not know as to who signed on the documents that accused was given. It was Pastor Chabala and another who recruited accused through accused's directive.

There was no XXN by A3, A4, A5 and A6.

In XXN by the state he told the court that a mob visited him at home and took him to the Police. None of his people sent to a district went. Those people were not residents of Kaunda Square. Those people followed him because they wanted to know where A1 was. Those people followed him because they saw him at the gathering addressed by A1 and he was also a team leader for Shiwang'andu. He dealt with two witnesses on Civic education. They paid K40 which A1 demanded. He gave that money to A1 through a book. More than 100 people paid. The money was given to A1. HE WAAS not handling the book but all the money went to A1.

The evidence of DW3 was that on 19/04/16 he went to visit his Pastor in Chi samba who told him that there was an organisation that was giving loans to all church members. A few minutes later the church was full and three people from Lusaka came and this was Pastor Kalezhi with two women. They said that they came from IMFAC and their aim was to reduce poverty and were there to empower people. On 26/04/16 those came back with Pastor Kamono. He registered with his wife. Ladies were given every two days to register. Later Pastor Chanda was sent to be registering people due to distance. Later he was asked to be helping Pastor Chanda. On 06/05/16 Pastor Chanda left for Kabwe and accused remained and collected K10, 260. He was given a number for someone from IMFAC Pastor Peter Chibwe who said was the secretary General. He was asked to go to Lusaka and went and met A1 and handed over the money and he requested A1 and the Secretary General to go to Chisamba and explain more to the people. The following day A1 wert and addressed the people and people contained to register and A1 told them that the date for

giving money had been extended to 29/05/16. A1 told him to go to his office the following day which he did and he took K4, 900 to A1. A1 told him that there was another program for those who needed K80, 000 AND asked him to organize the people which he did and A1 came to address them. 7 people attended and A1 asked them to pay K2, 500 each and K7, 500 was paid. Accused was asked to add K500 on the K200 he had paid. Accused left. When coming back from Mporokoso A1 asked him if he had something and he told A1 that he had K12, 000. A1 TOLD HIM to call the Secretary General to come and collect. The money was collected and he was given K250 as an allowance. Later he was called with the District leaders by A1 and A1 appointed the District leaders. They were told that there was a program of campaigning for the Government and he was told to mobilize 200 youths which he did. He also introduced his church in Luanshya and A1 told him that was to pay K1, 000 for affiliation and 7 churches paid and another money which came to K18, 000 and gave the secretary General. And was given a copy of the Constitution which he identified marked DDP4 and Certificate if registration DDP3. A1 asked whom to recruit people which he did and the people paid K60 for T-Shirts and K20 for IDS. He took about K80, 000. He recruited K4, 780 people and was told to come to Lusaka. He booked at MCF Lodge and was told to delay for a week. He ran out of money and asked from the Secretary General who told him to organize a room for A1 and he paid K150. Around 0400hrs he was called to go to the road side and when he went there he was picked by the police. He identified his application form marked DDP5.

There was no XXN by all the accused.

In XXN by the state he told the court that he collected a lot of

money. He was told to bring that money to Lusaka. He met both A1 and the Secretary Gnarl. He was told to put the money on A1's table. A1 WAS the first one to collect the money. They made him sign in a book. The book was with the Secretary General. He was CLIVE. He did not give the book to the police because he was only made to sign in it. Todate he did not know as to why he was jointly charged with others.

The evidence of DW4 was that on unknown date in January, 2016 he was called by Mpala to go to Eliza's place. He asked what was there and he was told that there was an organisation that was giving loans. Together they went to Kalaba's place where people were getting the loans. At that place in Chamba Valley he found a lot of people. Whilst there he saw the Vice President Wiseman Manda come and started explaining that they were helping people to get loans. The Vice President first prayed and removed documents. Those who were able to read were asked to read through and that they had donors who were assisting them and were working with the Govt. accused paid to Wiseman Manda and was told to photocopy the form. After 6 days he was called by Kalaba and when he went he was told that they wanted someone to work with. He met the Vice President who asked him to work with him. He was given a table and a book and he started registering the people. His job was just to fill in the forms. A new branch was opened in Ng'ombe compound. A5 and another were brought to work with him. Later A1 came and told him that all the money he was collecting was to be given to A1 and in his absence to Wiseman. In March, 2016 people started coming to ask for their money. He reported that issue to A1 who told him to ask the problematic ones to meet him the following day. The following day people gathered and met A1. A1 promised the people that they would be paid in 1st week of May. In the first week of

May, people were given mealy meal, kapenta and others money. On 13/06/16 A1 called for a meeting and informed people that there was a civic education to sensitize people on the referendum and that all those who wanted to participate was to pay K40 for identity cards. . The following day A4 started collecting money and 17 people paid. Later he learnt that A1 was on a trip to Luapula. People claimed for their money. After a week A1 called for a meeting and said that he was going to get papers from Electoral Commission of Zambia. On 04/08/16 he was with A5 when he was called by his wife that there were police officers at his home. His wife was picked and he met her at the police. He identified an acceptance letter and Identity card marked P5 and P6.

In XXN by A1 he told the court that the evidence that he had that accused was collecting money was the book. The book was only kept by A1 and the vice president. Accused registered to Wiseman and A1 signed on the form. A1 was the one that accepted accused in the organisation.

There was no XXN by A2, A3, A5 and A6.

In XXN by the state he told the court that A1 asked him to work with him. It was at Kalaba's house in Chamba Valley. Accused was collecting money and was handing that money over to the vice President or A1. He was not there at the showground. At that time he was in Chibombo where he went to collect cattle for A1. The animal was slaughtered and they took meat to A1. He did explain to the police as to where they were taking that money to. He gave about K2, 500 to A1 and K1, 50 to the vice President.

The evidence of DW5 was that on 02/01/16 he received VISTO KALABA and others who told him that they were sent by an organisation to inform people that they were giving loans. He went with them to Chamba Valley and found a lot of people registering to Wiseman Manda. He was given the form and he read through and he decided to be a member. He paid K250 and was given a form which he identified marked DDP7. He also paid K20 for the ID marked DDP8. He started making follow ups and in the process the Vice President asked him if he could assist the organisation on account that he would not pay interest on the loan. He agreed and started working with A4 and others. In the process they were addressed by A1. He identified A1. He told them to recruit 1,500 people which they did but people started asking for their money in February, 2016 his colleagues were taken to Headquarters and he remained there. On 01/05/16 A1 called him with others to go and get money. They waited for the money but there was nothing. On 03/08/16 he was with A4 and wanted to see A1 but failed. On 04/08/16 he was again with A4 When his wife called and told him that there were people at his home who wanted IMFAC money. On his way home he was apprehended and taken to the police. He explained his role to the police.

In XXN by A1 he told the court that he was not aware that he was not on the list of people to get loans. It was A1 who knew the reason. He had an acceptance form where A1 signed. It was A1 who knew if the form was for membership. He read the form. The form talked of benefits and the loan. He did not know that he was considered as a leader and not an applicant. He was recruited by the vice President though there was nowhere to sign. It was A1 who knew why his names were not appearing in the membership list.

There was no XXN by A3, A4, and A6.

In XXN by the state he told the court that he did work at IMFAC Chamba Valley. It was A1 and his vice who signed on the form. Accused paid K250. He was entitled to get a loan. He never handled any money. He was just registering people. It was not true that he caused delayment for the people to get loans. The one who was collecting money at the office was A4.

The evidence of DW6 was that he was a Pastor in Kamanga. One day they were praying when A1 and his vice President Manda went there. A1 TOLD them that they had an organisation called IMFAC and dealt in evangelization and empowerment. They were shown the Certificate and the Constitution and they were told that for one to be a member they were to pay. People started registering. Accused did not register. A branch was opened. On 01/05/16 there was a meeting for IMFAC in Avondale which accused attended and it was for sensitization. Accused was chosen to go to Luapula with A1. ON 07/07/16 he was given a letter of appointment as Coordinator for Swaziland and that he would be paid between K10, 000 and K25, 000. He identified that letter marked DDP9. PEOPLE WERE not given their money. On 04/08/16 he saw a mob coming and they apprehended him and took him to Chelstone Police.

There was no XXN by A1, A2, A3, A4 and A5

In XXN by the state he told the court that he was offered a position to go to Swaziland. He did not go to SWAZILAND. He never received any money. He never collected any money from anyone. He was on the part of Pastors for IMFAC. They were evangelizing and opening centers. He went to Luapula with A1 for a week. He did not attend any political meeting. It was

people that apprehended him in Kaunda Square.

This is the evidence that I received. Before I proceed I would like to state that for counts 1, 3, 4, 5, 6, 7, 9, 10, 12, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 35, 36, 37, 38 and 39 no evidence to that effect was led. In short the state did not offer evidence and as such all the accused persons have been ACQUITTED in the said Counts.

I now state my findings of facts in the counts where evidence was offered.

For Count 2, 8, 11, 13, 14, 21, 28 and 34 I find that K2, 800, K115, K75, K150, K250, K70, K60 and K60 was not stolen from PW2, PW3, PW6, PW8, PW9, PW4, PW10 and PW5 by all the accused.

Having found the facts I must now apply the law to those facts. I ask myself if on these facts the accused persons have committed the offence charged.

What evidence is there that all the accused stole? There is no evidence to this and in particular that no money was stolen from PW2, PW3, PW6, PW8, PW9, PW4, PW10 and PW5 as all the complainants took the money there on their own. Again when you look at A2-A5 they also paid monies for loans on their own and I wonder how they could have stolen what belonged to them. They all had membership and acceptance forms. They also had identity cards just like any other. Further that the Arresting officer charged and arrested the accused for obtaining money by false pretences and not Theft. Evidence before court shows no evidence of Theft. Section 265 of Cap 87 defines Theft as **265(1) A person who fraudulently and without claim of right takes**

anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing.

The above definition shows a situation where accused takes something capable of being stolen. In this case the accused did not take but was given by the complainants which makes a charge of Theft to fail.

In light of the above I find the case of Theft C/S 272 of Cap 87 of the Laws of Zambia not proved beyond reasonable doubt. I find all the accused **NOT GUILTY** and **I ACQUIT** them of Count 2, 8, 11, 13, 14, 21, 28 and 34 accordingly.

However, I find that I find that IMFAC through A1 received K2, 800, K115, K75, K150, K250, K70, K60 and K60 from PW2, PW3, PW8, PW6PW9, PW4PW10 and PW5. I find that accused intended to get the said cash. I find that he got the said cash by way of false pretenses. I find accused and his organisation had no capacity to give out loans. I find that accused had no claim of right to the said cash.

Section 309 of Cap 87 of the Laws of Zambia provides that "**309. Any person who, by any false pretence and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is guilty of a misdemeanour and is liable to imprisonment for three years.**"

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 obtaining money by false pretences. But has the prosecution established beyond reasonable doubt that the accused obtained the said cash by false pretences?

What evidence is there that the accused obtained the cash by way of false pretences? There is evidence to this and in particular that accused the President of IMFAC was receiving the said cash from the accused persons he engaged to be collecting money from the unsuspecting members of the public. It was A1 who had book for collections where monies were recorded. Further accused had no capacity to give out loans. Accused invited and recruited a lot of people and asked the people to pay certain amounts for them to get loans. He further employed people such as A2, A3, A4 and A5 to be collecting money on his behalf which they did and the money was handed over to A1 and his Vice President. A1 and his Vice President were also clever by not leaving the collection book with the people who were collecting so as to destroy evidence. The witnesses responded by buying acceptance forms and identity cards. However, none was paid their money or even the promised loans and the sensitization program conducted for reasons best known by accused. A1 kept on promising payment of loans and inconvenienced witnesses by attending fruitless meetings. To date no loan has been paid neither has fees been refunded.

For the offence of Obtaining goods by false pretences to qualify as an offence it must be a promise on the past or present facts. There must be false representations of the material past or present facts, known by the wrong doer to be false, and made with the intent to defraud a victim into passing title in

property to the wrong doer. In this case accused transacted in issues of loans and sensitization and showed PW2, PW3, PW4, PW5, PW6, PW8, PW9, PW10 that he was a genuine person and that he had the capacity to give out loans when fact not. Accused made the witnesses to believe that what he said was the truth and yet accused knew it to be false. A representation must be false at the time the potential victim is about to pass title. A false representation supporting false pretences must be about material facts. A material fact is one that would be important to the victim in his or her decision-making process. There were material facts of accused being able to provide loans when he did not have the capacity. When a representation is false, the wrongdoer must know it is false. Accused knew that what he told all the witnesses was false. In this case the accused told a lie to PW2, PW3, PW5, and thus intended the false representation. Accused intended to defraud PW2, PW3, PW5, PW6, PW9, PW4, PW10, PW5 and planned to unjustly acquire title to the witnesses' money by means of the untruth. Accused was well aware that the presentation of a story that he would give out loans could attract the witnesses and so looked for ways and means to have the cash and so he falsely represented himself to PW2, PW3, PW6, PW8, PW9, PW4, PW10 and PW5. Accused planned the false representation in advance and calculated to deceive the said witnesses into transferring property in the cash by way of false statement. PW2, PW3, PW5, PW4, PW6, PW8, PW9, PW10 relied on the false representation and it was the reason or one of the reasons that made them to pass property in the cash to accused. From the evidence it is very clear that accused got the said cash by way of false pretences. To say that time for getting loans had not yet come and the witnesses needed a refund is an afterthought which this Court cannot believe. To also say that the loans were not given because there was still verification on

the monies collected by A2, A3, A4, A5 and A6 and that the said money had not been received is also a blue lie. No document of verification was brought forthwith to prove that such was going on during the said period. To also say that others got their loans is also a lie. There has been no document showing that some people received the said loans and how much each received. Further that he was working with the Government is also a lie as no one from the Government came to back him. The truth is that accused had an intention of getting cash by way of false pretences from the unsuspecting members of the public and also took advantage of the desperation of people. This court therefore treats A1's evidence as an afterthought and aimed at misleading the Court. A2, A3, A4, A5 and A6 have clearly shown that they were just agents of A1 and paid all what they collected to A1. Again the defence that monies were paid to IMFAC and not to accused as an individual is correct. However IMFAC is an organization which operates through human being and those human beings were accused and others unknown. In the case of **BP VS INTERLAND (2001) ZLR 37** it was held that;

"As a metaphysical entity or fiction of law which only has legal, but no physical existence, a company (though being a separate and distinct legal person members or shareholders), can only act through the humans charged with its management and conduct of its affairs".

In this case before me accused is not separate from IMFAC and can be sued in his individual capacity as President of the said society. it is clear that after the organization received monies, the said monies were received and handed over to accused and used by accused not on the activity of the organization but his own use. In the premises, having carefully considered the evidence on record, I am satisfied that I have taken all the evidence before me into consideration in arriving at my

decision.

Section 188. (1) of Cap 88 of the Laws of Zambia provides that
 "When a person is charged with stealing anything and-
 Alternative verdicts in charges of stealing and kindred
 offences.

(a) the facts proved amount to an offence under subsection (1) of section three hundred and eighteen of the Penal Code, he may be convicted of the offence under that section although he was not charged with it; Cap. 87

(b) it is proved that he obtained the thing in any such manner as would amount, under the provisions of the Penal Code, to obtaining it by false pretences with intent to defraud, he may be convicted of the offence of obtaining it by false pretences although he was not charged with it;

(c) the facts proved amount to an offence under section three hundred and nineteen of the Penal Code, he may be convicted of the offence under that section although he was not charged with it.

(2) When a person is charged with obtaining anything capable of being stolen by false pretences with intent to defraud, and it is proved that he stole the thing, he may be convicted of the offence of stealing although he was not charged with it".

In the case before me facts have shown that accused did not steal but obtained the said cash by way of false pretences which offence is lesser than Theft. In light of the above provision, I have no possible defences for A1. I have no difficulties to connect A1 to the offence.

In light of the above I find the cases of obtaining money by false pretences contrary to section 309 of the penal code chapter 87 of the Laws of Zambia in Counts 2, 8, 11, 13, 14, 21, 28, 34 proved beyond reasonable doubt. I find **A1 GUILTY** and **I CONVICT** him accordingly.

HON.A.N. WALUSIKU

MAGISTRATE I