

IN THE SUBORDINATE COURT OF THE

2SPD/051/2015

FIRST CLASS FOR THE LUSAKA DISTRICT

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

BETWEEN:



THE PEOPLE

VERSUS

EMMANUEL BANDA

*Before the Hon. Magistrate Mr. Humphrey Matuta Chitalu, at 09:00 hours this 15<sup>th</sup> day of August, 2017.*

*For the People: Munenga (Public Prosecutor)*

*For the Accused: In person*

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**JUDGMENT**

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STATUTES REFERRED TO:

1. *Constitution of Zambia, Cap 1, Art 18*
2. *Penal Code, Cap 87 as read with Act No. 15 of 2005 and Act No 2 of 2011, ss, 131A and 138(1)*
3. *Juveniles (Amendment) Act No. 3 of 2011, s 122*

CASES REFERRED TO:

1. *Woolmington v. DPP (1935) ALL E.R 1*
2. *Mwewa Murolo v. The People SCZ Judgment No. 23 of 2004*
3. *R v Chapman (1952) 1 QB 100*

4. *R. v Chinjamba* 5 N.R.L.R. 384.
5. *Hughes* (1841) 9 C & C
6. *R v Baskerville* [1916] 2 KB 658
7. *Shamwana and 7 Others v. The People* (1985) Z.R. 41 (S.C.)
8. *David Zulu v The People* (1977) ZR 151 SC

OTHER AUTHORITIES:

1. **OXFORD ADVANCED LEARNER'S DICTIONARY 7<sup>th</sup> edn Oxford University Press at page 215**

In this case the accused, Emmanuel Banda stand charged with one count of defilement of a child contrary to section 138(1) of the Penal Code, Chapter 87 as read with Act No. 15 of 2005 of the Laws of Zambia. The particulars of the offence allege that on 6<sup>th</sup> March, 2015 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, the accused had unlawful carnal knowledge of Catherine Phiri a girl under the age of 16 years.

The accused pleaded not guilty.

I warn myself at the onset that the onus is upon the prosecution to prove their case beyond all reasonable doubt and there is no onus on the accused to prove his innocence. The landmark decision in the case of **Woolmington v. DPP** (1935) ALL E.R 1, held that:

***"In criminal cases it is the duty of the prosecution to prove the accused's guilt beyond all reasonable doubt."***

This doctrine is lucidly entrenched in our **Zambian Republican Constitution, Chapter 1 of the Laws of Zambia** which states in **Article 18(2) (a)**:

***"Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty."***

In this regard the Supreme Court made its pronouncement in the case of **Mwewa Murono v. The People SCZ Judgment No. 23 of 2004** when it held:



***“In criminal cases, the rule is that the legal burden of proving every element of the offence charged, and consequently the guilt of the accused lies from the beginning to the end on the prosecution. The standard of proof must be beyond all reasonable doubt.”***

The accused is entitled to call and give evidence or say nothing at all. If he elects to remain silent this does not affect the burden on the prosecution to prove the guilt of the accused to the required standard. If, after considering all the evidence, there is any doubt in my mind as to the guilt of the accused then the accused must be given a benefit of that doubt.

The ***Penal Code (Amendment) Act No. 15 of 2005 in section 138(1)*** constitutes the offence of defilement of a child and it is written in the following terms:

***“Any person who unlawfully and carnally knows any child commits a felony and is liable, upon conviction, to a term of imprisonment of not less than fifteen years and may be liable to imprisonment for life.”***

***Section 131A*** of the said enactment defines “***child***” means, “***a person below the age of sixteen years.***”

It appears from the above provisions the victim of the offence of child defilement could either be male or female. Similarly, the accused could either be male or female depending on the circumstances. In the circumstance therefore, in order for the prosecution to secure a conviction on the charge of child defilement the following elements must be proved namely that the accused:-

- 1. Had unlawful carnal knowledge***
- 2. of a child***

The ***proviso to section 138(1)*** which was reintroduced by the ***Penal Code (Amendment) Act No. 2 of 2011*** is written in the following terms:

***“Provided that it shall be a defence for a person charged with an offence under this section to show that the person had reasonable cause to believe, and did in fact believe, that the child against whom the offence was committed was of, or above, the age of sixteen.”***

It follows therefore, that reasonable belief that the child is of or over sixteen years is a defence on the charge of child defilement. Furthermore, arising from the use of the concept ***“unlawful carnal knowledge”***, it appears the offence of child defilement cannot be committed by a husband on his wife aged below 16 years as marital carnal knowledge is lawful. In the case of ***R v Chapman*** (1952) 1 QB 100, the word ***“unlawful”*** in the definition was held to apply to intercourse outside the bonds of marriage. This was the position in the case of ***R. v Chinjamba*** 5 N.R.L.R. 384.

According to ***OXFORD ADVANCED LEARNER’S DICTIONARY 7<sup>th</sup> edition Oxford University Press at page 215***, the phrase ***“Carnal knowledge”*** means sexual intercourse. By law sexual intercourse is deemed complete upon proof of penetration only. In the case of ***Hughes*** (1841) 9 C & C, it was held:

***“Penetration is established on proof of slightest entry of the accused’s penis into the victim’s vagina; the hymen need not rupture. Slightest penetration is sufficient to constitute sexual intercourse.”***

Having laid down the legal principles applicable for analysis of the offence of child defilement, I now in turn consider the evidence in this matter. The prosecution called two witnesses. The first prosecution witness PW1, was Lilian Monica Kapandula the mother to the alleged prosecutrix in this matter. According to this witness she is married and a mother of three children namely: Dixon Phiri, a male born on the 4<sup>th</sup> October, 2000; Catherine Phiri, a girl born on 29<sup>th</sup> January, 2012 aged 3 years and Maria Phiri a girl born on 11<sup>th</sup> July, 2014, aged 9 months.



According to PW1, she recalled on the 6<sup>th</sup> March, 2015 at around 07 30 hours she took Catherine Phiri to school namely Temwani School situated in Ng'ombe compound. That at around 12 30 hours PW1 went to collect the child from school. It was submitted that the witness went to the girl's classroom. That the teacher called the child that came and hugged the mother. According to PW1 by the entrance to the class the child told her that the teacher had beaten her. It was submitted that PW1 did not pay attention to what the child was telling her. That as PW1 was waiting for the child's bag to be given to her, she observed the child had no socks on both legs despite having the shoes on. PW1 stated that the child continued saying she was beaten by the teacher. That at home at around 16 30 hours, PW1 decided to bath the child. It was submitted that as the child was put in a bathing dish, she cried and said her private parts were painful. That PW1 observed the child's vagina and anal area were swollen. PW1 stated that she called the father who also checked the child. It was submitted that the child explained that she was beaten with a stick on the swollen private parts by a teacher.

According to PW1, on the 7<sup>th</sup> March, 2015 she went to school and found a caretaker who directed her to a certain female teacher at some home. That two female teachers came at that home and checked the child. It was submitted that some bruises were observed on the child's buttocks. That the child's class teacher one Mrs. Banda was called. It was asserted that Mrs. Banda checked the child. That the teacher asked the child if she knew the person who did that to her. That the child's response was in the affirmative. It was asserted that the child led Mrs. Banda to a school toilet where the child said she was assaulted from. It was submitted that all the teachers at the school were called. That the other teacher one Mr. Banda also came but complained that he was called at the weekend. It was submitted that when Mr. Banda entered the class room the child started crying. PW1 stated that the child could not point at any person. It was asserted that the child was taken at Ng'ombe clinic and the matter was referred to Le Soleil Police Post where the child was issued with a

medical report form. It was submitted that the child was referred to the University Teaching Hospital (UTH). PW1 submitted that later the child told her it was teacher Banda who assaulted her. It was further submitted that the child asserted that she could not point at the teacher as he had threatened to take the child at police if she shouted for help. It was stated that PW1 did not know teacher Banda the first time the name was mentioned to her. That PW1 only came to know teacher Banda at the time he was apprehended.

PW1 stated that she had an under-five clinic card to show proof of the age of the child. The card was produced into evidence as exhibit P3. According to the under-five clinic card, the child Catherine Phiri was born on 29<sup>th</sup> January, 2012.

In cross examination PW1 stated that when the accused was called to come to school he complained that it was a weekend. It was further submitted that the accused complained that he did not work at the weekends. PW1 stated that when the child first complained she just said, "the teacher beat me." PW1 submitted that she did not know the nature of the assault when the child first complained. It was submitted that the child knew the teacher who assaulted her. According to PW1 the other teachers called the accused so that the child could be given the opportunity to identify the teacher who assaulted her. PW1 stated that the child did not say that the accused defiled her but that when the accused entered the classroom the child started crying. It was submitted that police apprehended two persons from school namely the accused and the caretaker in connection with the alleged sexual assault on the child. PW1 submitted that the child said it was teacher Banda and on that basis police apprehended the accused. It was submitted that there are two teachers at the school, a male and female named as Banda. That the child's class teacher was also called Banda.

The second prosecution witness PW2, was detective constable Makafi Sharon, the dealing officer in this matter. The witness recalled that on the 15<sup>th</sup> March,



2015 she was on duty at Le' Soleil Police Post when she received a docket of case of child defilement. It was asserted that PW1 on behalf of her daughter one Catherine Phiri aged 3 years complained that the child was defiled at school namely Temwani Private School on the 6<sup>th</sup> March, 2015. PW2 submitted that she interviewed the child who said teacher Banda had put a stick on her private parts. That PW1 confirmed what the child had told PW2 about the incident.

PW2 stated that teacher Banda was apprehended from school on the 19<sup>th</sup> March, 2015. That the accused was charged and arrested for the subject offence. Under warn and caution statement, the accused gave a free and voluntary reply denying the charge. It was submitted that there were two medical reports on the docket. The medical reports were produced in evidence as exhibits P1 and P2.

In cross examination PW2 stated that teacher Banda assaulted the child. PW2 submitted that she inquired from the school head teacher as to how many teachers at the school were named Banda. According to PW2 there is a male and female teacher at the school named Banda. PW2 stated that she visited the school premises and observed that the crime was committed near a toilet. The witness could not recall the names of the teachers she spoke to and that it was not important to get the names of those teachers. PW2 said she did not see or interview the class teacher of the child as it was not necessary. PW2 further submitted that she did not talk or record a statement from female teacher Banda. It was submitted that there are four teachers at the said school. That the witness talked to the head teacher of the school but that no person was willing to give a statement at police. PW2 submitted that the teachers came to visit the accused when he was in police custody. That all the teachers refused to be witnesses. Further it was submitted that PW2 did not interview or record a statement from the male caretaker. It was submitted that PW2 apprehended the accused and the caretaker in connection with the offence. That the witness

could not remember the name of the caretaker. PW2 stated she did not interview the caretaker.

The accused in his defence gave evidence on oath and he called two witnesses. The first defence witness DW1, was the accused himself. According to the accused at around 07 30 hours on 5<sup>th</sup> March, 2015 he reported for work at Temwani Private School. That after the morning devotion the teachers went into their respective classes. It was submitted that the accused started teaching his grade 2 pupils until 11 30 hours when he was informed by Mrs. Siame to wind up on the lessons as the Director of the school was coming to have a meeting with the teachers at 14 00 hours. The accused further stated that he was instructed to make sure his pupils were collected by their parents before 14 00 hours. That at around 12 00 hours the parents started arriving and by 12 40 hours all the children in the accused's class had left. According to the accused as he waited for the arrival of the Director he started preparing his work plan. That at around 13 30 hours the Director one Bitson Sakala came and the meeting started. It was stated that the meeting went on up to 16 00 hours. That at the end of the meeting the accused left for Olympia in the company of the Director to go and get his salary.

It was asserted that the following day on Saturday, the accused went to town. That whilst in town, he received a call from a fellow teacher one Musonda. It was submitted that the Director also called the accused to report at school. According to the accused when he reached the school he found his fellow teachers had gathered and among them was PW1. It was submitted that the accused inquired why he was called to come to school on a Saturday. That the accused had spent money coming to school. The accused asserted that PW1 asked Mrs. Musonda why he was annoyed. According to the accused PW1 accused him of knowing something. That the accused was told that on Friday the 5<sup>th</sup> March, 2015 a child by the name of Catherine Phiri was defiled by a teacher. That all the teachers had been called for purposes of the child identifying the teacher who sexually assaulted her. It was submitted that PW1



was asked to name the teacher that defiled the child. That PW1 stated that the child had told her that it was teacher Banda. According to the accused, he was taken by female teacher Banda into the room where the child was. That female teacher Banda asked the child to identify or point at the accused and the school cleaner one male Lastone. That the child did not identify or point at any of the two. It was submitted that PW1 at point quickly walked out protesting that the child could not point at any person because the accused was annoyed.

At the scene of crime the accused showed court the location of his grade 2 class. That the class was about 20 meters away from the baby class (class for the prosecutrix). That the child throughout the period at school would be in the care and custody of four members of staff assigned to her namely Mrs. Siame, Mrs. Banda the class teacher, a maid and a lady caretaker the accused could not recall. The accused submitted that he did not know why female teacher Banda resigned immediately after the incident. It was further submitted that if the accused took the child to the place it is alleged she was defiled from the four members of staff assigned to the child would have queried. The accused asserted that even the alleged crime scene is an open place where everyone including the teachers would have seen the accused committing the crime. That no one saw the accused committing the crime as he was so busy with his class on the material day.

In cross examination the accused stated that he had seen the medical reports or exhibits P1 and P2. That according to the doctors they observed fresh tears on the hymen meaning the child was defiled. It was asserted that the accused was with Mrs. Siame when PW1 came to collect the child. That it was alleged that the offence was committed in the toilet. It was submitted that the accused is the only male teacher at the school. That at the time of the alleged defilement there was another female teacher Banda as such she could not defile the child because she is female. The accused stated the child did not identify or point at any person as perpetrator of the offence but that the mother stated that the child told her teacher Banda had beaten her.

The second defence witness DW2, was Manase Kunda, a teacher by occupation. According to this witness the school received a new girl by the name of Catherine who was brought to school by her mother. That the witness received the child in the morning and was handed over to her class teacher one Mrs. Banda. According to DW2 some pupils from Mrs. Banda's class would pass through her class. That the school building was originally a dwelling house and as such the classrooms were rooms in the house. It was submitted that the Director told the teachers to release the pupils early because a meeting was scheduled to be held at 12 00 hours that day. That parents were called to collect the pupils from school. That at 12 00 hours all the children were collected by their parents. The meeting was held. It was submitted that on Saturday the 7<sup>th</sup> March, 2015 the witness saw PW1 in the company of a friend. It was submitted that PW1 said that her child the previous day complained that teacher Banda had inserted a stick in her anus. It was submitted that DW2 took the child and checked the child's anus where it had pointed that someone had put a stick. According to DW2 she observed the child was just okay but that the mother said she was not okay. It was submitted that in the night the child had complained of stomach pains. According to DW2 she called the child's class teacher Mrs. Banda who asked the child to show her where the incident took place. It was asserted that the child pointed at a place outside the classroom. That Mrs. Banda called the other teachers to come. It was submitted that among the teachers that came was Mr. Banda the accused in this matter. That when the accused came he was so furious that his Saturday program was disturbed. It was submitted that PW1 got offended and started shouting at the teachers. According to DW2 there were only two male persons at the school namely the accused and Lastone, the male maid. That the rest of the teachers were females. DW2 stated the child was taken to where the accused and Lastone were but she did not point at any person. That when she came back she started crying. According to DW2 the child was asked if any of the two males entered a stick in her anus, which the child refused.



In cross examination DW2 stated that as a teacher who was on duty she did not see any problem when the child was picked by the mother. It was submitted that DW2 did not see the accused defile the child and neither did she observe any injury or bruises on the child's vagina. That the child did not say who inserted the stick in her vagina. It was further submitted that there were two teachers in the name of teacher Banda one male and the other female. It was submitted that the witness could see the child being picked by the mother because she was the teacher on duty. That DW2 checked the child's anus. That the same was okay. DW2 stated that it could be correct to state that the child was defiled if the doctor said so. It was stated that the child upon seeing the two males the accused and Lastone came out of the classroom crying. It was submitted that the child had been at that school for 1 month.

The third prosecution witness DW3, was Martha Bwalya Siame, a teacher at Temwani School. According to DW3 she recalled on the 6<sup>th</sup> March, 2015 she reported for work at the said school. That the child Catherine was new at that school. That the child was brought in DW3's class. It was submitted that there were two teachers in that class. That the other teacher was Mrs. Banda the class teacher. According to DW3 she is usually found in the office but at that time she was helping with baby class to control the children as they ran up and down whilst Mrs. Banda was teaching. It was submitted that the other person assigned to the baby class was Aunt Mervis the maid. That the maid was responsible for taking the children to the toilet. That on the material day lessons were given from 08 00 hours to 09 30 hours when the babies went on break. It was stated that after break all the children were collected by their parents. It was stated that PW1 came early and picked the child. That the child was okay the whole day and she did not cry. That when it was picked by its mother the child was found playing in the corner of the class with the accused's daughter who was also in baby class.

It was submitted that on Saturday in the morning the witness received a call from the mother to the child saying that the child complained that a teacher

had beaten her. It was submitted that PW1 said that the child was beaten by the teacher on the buttocks. That PW1 saw the child on Sunday. That there was no abuse or bruises on the anus of the child.

In cross examination PW1 stated that according to the medical reports the child was defiled.

Having heard all the witnesses in this matter, I now make a finding of facts. It is not in dispute that Catherine Phiri the prosecutrix in this matter is a child below the age of sixteen years. The under-five clinic card or Exhibit P3 indicates that she was born on the 29<sup>th</sup> January, 2012. The medical reports or exhibits P1 and P2 clearly indicate that the child sustained fresh hymenal injuries on her vagina. However, Medical Officer who examined the child was not called as a witness.

I examined the child's suitability of giving evidence in this court in accordance with **section 122 of Juveniles (Amendment) Act No. 3 of 2011**. My finding was that the child of tender age understood the obligation to speak the truth and that she was possessed with sufficient intelligence. The child was sworn but she became mute and could not speak a word. The matter was adjourned to another date to allow the child another chance to testify in this matter. When the matter came on the adjourned date, the same scenario of muteness and lack of communication characterized the child witness. The prosecution urged this court to disqualify the witness which application I had no option but to grant. Apparently the only evidence on record connecting the accused to the alleged defilement is that of PW1, the mother to the prosecutrix who said that the child told her that teacher Banda had beaten the child on the private parts with a stick. It is a fact that at the time of the incident two teachers were answering to the name of Banda, one male and the other female. According to PW1, the offence could have been committed by male teacher Banda because when he was called to come to school on Saturday the 7<sup>th</sup> March, 2015 for purpose of identification of the perpetrator of the offence, the accused was so



annoyed complaining that his weekend was disturbed and that when the child saw him she started crying. The defence alleges that in fact the accused and another male maid one Lastone were kept in separate classroom and the child was led to the classroom by the child's class female teacher Banda to point at who assaulted her between the two. It is not in dispute the child could not point at or identify any person but that the child came back crying. That meant no one could tell whether the child cried because she saw male teacher Banda or male Lastone the maid. PW1 alleged that the child demonstrated that the incident happened in the toilet while the defence witnesses stated that the child pointed at an open place outside the toilet. The arresting officer claimed that she visited the crime scene and that the incident happened outside the classroom. The arresting officer did not interview all the teachers at this school. According to her it was not necessary to do so. She decided to apprehend the accused because he was the only male teacher at this school. In her wisdom, it was also not necessary to interview or collect statements from female teacher Banda or male Lastone the maid. There is also evidence on record that female teacher Banda resigned immediately after the incident. These are the facts in brief.

I have carefully considered the accused's final submissions and I am greatly indebted to his resourcefulness. The accused has argued that there is no corroborative evidence to support his conviction as required by practice in sexual offences. According to the accused the matter was poorly investigated. The accused has urged this court to ensure that the prosecution discharges its burden of proof.

Having made a finding of facts, I now apply the law to the facts. The principle applicable to cases of this kind is, as is well known, as follows: On the one hand, it is of the utmost importance that little children should be protected against conduct of the kind which is here alleged to have taken place; the conduct of the accused, if the PW1's story is to be believed, was indeed of the most filthy and revolting character. That is one side of the matter. On the

other hand, this is a charge which it is easy for the child or its mother to bring, and difficult for the man against whom it is brought to refute. Therefore, it has been long laid down, not as a rule of law but as a rule of practice that it is unsafe for the court to convict on the evidence of the child alone. In the case of **R v Baskerville** [1916] 2 KB 658, Lord Reading said:

***“Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, corroboration would exist to show not only that the crime was committed but that it was committed by the accused.”***

I have carefully considered the facts of this case. In my view the following the issues that must be resolved namely:

1. Whether or not court must believe the testimony of PW1, the mother to child;
2. Whether or not in sexual offences court can act on circumstantial evidence alone; and
3. Whether or not the offence was committed and that it was committed by the accused.

The first question becomes in issue because there is no direct evidence from the child, the alleged prosecutrix in this matter. PW1 stated that the child told her that teacher Banda had beaten her on the private parts with a stick. In the case of **Shamwana and 7 Others v. The People** (1985) Z.R. 41 (S.C.) Silungwe CJ. delivering the judgment of the court stated:

***“It is a fundamental rule of evidence that hearsay evidence, whether oral or written, common law and statutory exceptions apart, is inadmissible in criminal proceedings. Although the rule lacks a comprehensive judicial formulation, the formulation of the Privy Council in the celebrated case of Subramanian v Republic Prosecutor 1 W.L.R.***



**965, has gained wide acceptance. The formulation, which appears at page 970, is in these terms:**

***"Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made."***

It is very clear that this court would fall in grave error if it believed as truth the statement told by the child who herself did not testify in this matter but whose statement is repeated by her mother. The moment PW1 persuaded this court to believe the said statement as truth, it became hearsay and therefore, inadmissible.

On the second issue of court acting on circumstantial evidence, it must be noted that circumstantial evidence conditionally upon meeting established legal safeguards is not inferior to direct evidence. The prosecution contended that the accused committed the offence because he was annoyed and complained that his weekend was disturbed when he was called for purposes of identification of the perpetrator of the crime. It was further argued that when the accused entered the classroom the child started crying. Professor Nokes observed in his book entitled **AN INTRODUCTION OF EVIDENCE, 2<sup>nd</sup> Edition at page 467:**

***"The possible defects in circumstantial evidence may.....include not only those which occur in direct evidence such as falsehood, bias or mistake on the part of the witnesses, but also the effect of erroneous inference."***

In the case of **David Zulu v The People** (1977) ZR 151 SC, the Supreme Court held:

***“It is therefore incumbent on the trial judge that he should guard against drawing wrong inferences from the circumstantial evidence at his disposal before he can feel safe to convict. The judge in our view must, in order to feel safe to convict, be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of congruency which can permit only an inference of guilt.”***

Has the circumstantial evidence regarding the alleged child defilement at my disposal passed the test espoused by the **David Zulu case**? In my considered opinion, the answer is in the negative. It is not unusual for employees to complain when suddenly called to attend to unplanned and unpaid for duties over the weekends. Further there is undisputed evidence that in fact the child was taken to a classroom where she was asked to identify the perpetrator between the accused and one Lastone. That she could not do so but came out of the classroom crying. It would be erroneous for me to conclude that the child cried upon seeing male teacher Banda when there were two persons in the classroom.

On the final question of whether or not the offence was committed and that it was committed by the accused, I have serious reservations. Firstly, it is alleged that teacher Banda beat the child on her private parts using a stick. It must be remembered that there two teachers answering to the name of Banda one male and the other female. Suppose I literally construe the allegation as it stands, the medical reports becomes irrelevant to the charge of defilement in that they do not specify whether the fresh hymenal tears were due to penetrative sexual intercourse or mere assault using using a stick. It follows therefore, that it was crucial for the arresting officer to interview or record a statement from female teacher Banda as she is a potential suspect for the offence of child. Female teacher Banda may have inflicted the fresh hymenal tears on the vagina of the child by beating it with a stick. This hypothesis is logical on the ground that



female teacher Banda for unknown reasons resigned immediately after the incident.

With those few remarks in my considered opinion, there is no independent evidence connecting, or implicating the accused or confirming in some material particular not only that a crime has been committed but also that the accused committed it. In the circumstances I have doubts in my mind and I find the accused not guilty as charged of the offence of child defilement contrary to section 138(1) of the Penal Code Chapter 87 as read with Act No. 15 of 2005 of the Laws of Zambia and I acquit him accordingly.

I direct that he be set at liberty forthwith.

**Delivered in Open Court this 15<sup>th</sup> day of August, 2017.**

  
**HUMPHREY MATUTA CHITALU**

**ACTING SENIOR RESIDENT MAGISTRATE.**

