

IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

HP/145/2017

BETWEEN:

THE PEOPLE

VERSUS

GEOFFREY KACHECHE



Before: Hon. Lady Justice (Dr) W. S. Mwenda at Lusaka this 3rd day of November, 2017.

For the State: Mrs. M. H. Kayombo, Senior State Advocate,
National Prosecutions Authority

For the Accused: Mr. H. M. Mweemba, Principal Legal Aid Counsel,
Legal Aid Board.

RULING ON CASE TO ANSWER

Cases referred to:

1. *Mwewa Murolo v. The People* (2004) ZR. 207 (S.C).
2. *The People v. Japau* (1967) ZR 9.
3. *David Zulu v. The People* (1977) Z.R. 151(S.C.).
4. *Saluwema v. The People* (1965) Z.R. 5 (C.A.).
5. *Illunga Kabala and John Masefu v. The People* (1981) ZR 102.
6. *Madubula v. The People* (1993 - 1994) Z.R. 91 (S.C.).
7. *The People v. Winter Makowela and Robby Tayabunga* (1979) Z.R. 290 (H.C).
8. *The People v. Kombe Joseph Chimpako* (2010) Z.R. Vol 1, p. 25.
9. *Bhatt v. R.* (1957) EA 332.

10. *Machipisha Kombe v. The People SCZ Judgment No. 27 of 2009.*

11. *Kalebu Banda v. The People (1977) Z.R. 169 (S.C.).*

Legislation referred to:

1. *Penal Code Act, Chapter 87 of the Laws of Zambia.*
2. *Section 341 D (1) (2) (a) of the Penal Code (Amendment) Act No. 17 of 2007.*
3. *Section 206 of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia.*

The accused herein, Geoffrey Kacheche, stands charged with the offence of vandalism contrary to Section 341 D (1) & (2) (a) of the Penal Code, Chapter 87 of the Laws of Zambia as amended by the Penal Code (Amendment) Act No 17 of 2007.

The particulars of offence are that Geoffrey Kacheche between 26th and 27th day of September, 2016 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, did vandalise substation No. 238 situated at the old Olympic Swimming Pool by cutting off a 185mm² x 4 core cable valued at K11,060.42 from a feeder pillar inside the substation, the property of ZESCO Limited; a public property essential for or incidental to the provision of necessary supply of electricity to the public.

Section 341D of the Penal Code provides as follows:

341D. (1) Any person who for any purpose vandalises any public or private property essential for or incidental to the provision of a necessary service commits a felony.

(2) Where the property referred to in subsection (1) is -

(a) a cable, overhead line, power line, electricity pole, pylon, transformer, pole mounted substation, substation, generating station or other property essential for or incidental to the connection, installation, generation, supply or distribution or other use of electricity, notwithstanding the Electricity Act or any other written law, the offender is liable, on conviction -

(i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years, or

(ii) where the vandalism causes the death of any person, to imprisonment for life.

'Vandalising', as defined by section 341A, is:

"wilfully or maliciously destroying, damaging, defacing, disabling or in any way disrupting the functioning of or impairing public or private property and in the case of a computer includes, but is not limited to acts such as the interference with, interruption or obstruction of the lawful use of a computer by means of a computer virus or otherwise and the causing of a direct or indirect degradation, failure, or other impairment of function of a computerised system or any part thereof by means of a computer virus or otherwise."

From the above provisions, it is clear that the burden rests on the prosecution to prove that the accused did wilfully and maliciously destroy the Zambia Electricity Supply Corporation (ZESCO) cable, subject of the offence.

The prosecution case was supported by five (5) witnesses who gave sworn testimony. These were, Mabvuto Lungu, a Security Constable at ZESCO (PW1); Dennis Mumba, an Operations/Maintenance Officer at ZESCO Kabwata Branch

(PW2); Martin Sianemba Siankwilimba, a Police Officer (PW3); Bitwell Banda also a Police Officer (PW4); and Maxim Nkombalume, a Detective Inspector and arresting officer (PW5). Geoffrey Kacheche (hereinafter called "the Accused"), denied the charge.

PW1 testified that on a Tuesday in a month he could not remember, but between the 26th and 27th, he reported for duty around 18:00hrs and after midnight, the Coordinator for Faults called to tell him that a cable had been isolated from the GMT (A ZESCO transformer) located just outside the premises of Olympic Swimming Pool in Longacres. He said he was driven to the premises with a colleague by the name of Chileshe where they sat about 45 metres from the GMT observing what was going on. PW1 told Court that about an hour later they saw someone pass and that they were able to see him because of security lights coming from the wall fence where they sat across the road, opposite the GMT. He told Court that the person came back carrying some wood in his hands which he put where the cable was, lit it and waited for the cable to burn. After about 15 minutes, the person put out the fire and started hitting the cable with a stone. In the meantime, he (PW1) and his colleague phoned someone from Control at ZESCO to send two armed police officers. The officers arrived after about 25 - 30 minutes. PW1 further testified that when the police arrived, they shouted for that person to "halt" but the person started running away from the place. The officers chased him and he (PW1) and his colleague also joined in the chase. PW1 said they went around the fence and saw someone about to jump out from the Olympic Swimming Pool premises but the person jumped back inside when he saw

them. Then one police officer and PW1's colleague entered the Olympic Swimming Pool premises while PW1 and another police officer remained outside. He stated further that after sometime he (PW1) saw the officer and his colleague coming out with a man who was asked what he was doing there.

Thereafter, the man was taken to the other side of the wall fence where some guard guarding houses opposite the swimming pool was asked if he knew him. The guard said he knew the man as a person who washed cars and did other odd jobs nearby and not as a security guard for Olympic Swimming Pool. PW1 told the court that the person who was apprehended was later taken to the police by Inspectors Kachengo and Sapaulo.

PW1 further said that although it was dark and at a distance, the person looked short and was putting on black clothes and that he only saw that the man was dark complexioned when he was brought out of the Swimming Pool area. When asked if he could identify the person in court, PW1 said that he could not because time had passed but he just knew that the man was short and dark complexioned.

Under cross-examination, PW1 confirmed that he did not witness the apprehension of the person and that it took the two who followed the person some time before they could apprehend him; that they had to search for the individual whom they had lost sight of before he was apprehended. He further stated that after being apprehended when asked what he was doing, the accused said that he was assisting another person who was not there at the time.

PW2, an Electrical Technician at ZESCO, testified that a 185mm² x 4 core cable that was feeding the ZESCO Flats along Lukasu and Muteza Roads had been disconnected from the feeder pillar and had been burnt and almost cut. He said that it cost ZESCO a total of about K15, 000 to replace the vandalised cable. He described the cable as having four cores with colours ranging from yellow, red, blue and black and further that it had a black outer cover with red stripes, with wires and was about 7 metres long. He identified the cable and introduced it into evidence. The same was marked "ID1".

PW3, a Police Officer, testified that on 26th September, 2016 he was deployed at ZESCO Head Office and that in the night of 27th September around 02:00hrs they were called by ZESCO Security Office and informed that there was a person who was vandalising ZESCO cables at Olympic Swimming Pool. He told the court that he was with his colleague Bitwell Banda (PW4) and that the two of them went to the scene of crime. That upon reaching the place, he (PW3) saw a person vandalising a cable by hammering it; that he fired two warning shots in the air after which the person ran around the substation and went over the wall fence and into the Olympic Swimming Pool area. It was PW3's testimony that they presumed that the man jumped over the fence because the fence is long. He said that they then decided to split into two groups and that he (PW3) went in the eastern direction with a ZESCO employee by the name of Lungu while his colleague Bitwell Banda and the second ZESCO employee by the name of Chileshe went the other side.

PW3 further testified that he saw someone peeping and alerted his colleagues Bitwell Banda and Chileshe who went into the Olympic Swimming Pool area

and returned about twelve minutes later with a person. It was PW3's testimony that the lights at Olympic Swimming Pool were off due to the burning of the cable but that the lighting from the motor vehicle assisted and that he was able to see that the person was a bit short. PW3 testified in cross-examination that the person told them that he was there to guard the premises in place of someone and that from inception he told them that he was not the vandal but was there for a different reason.

PW4, a Police Officer of Lilayi Military Camp, testified that on the night of 26th November, 2016 he was deployed at ZESCO Head Office and around 02:00 hours he received a call saying that someone was vandalising ZESCO cables. PW4 said he went to the scene at the Substation which shares a wall fence with Olympic Swimming Pool in the company of Constable Martin Siankwilimba (PW3), where they found a person busy cutting a ZESCO cable.

It was PW4's evidence that the person had lit a fire and was burning the cable. He was also using a very big cutting saw. PW4 said that he fired a warning shot but the person ran away. He testified that his attention shifted from the person when two ZESCO security employees came from the other side and meanwhile, the person disappeared. PW4 said that after some time his colleague Martin Siankwilimba saw someone peep from Olympic Swimming Pool and that when they went in and searched from inside, the only person they found inside was Geoffrey Kacheche (the Accused) who was hiding behind grill doors in the changing room. He stated that when the accused was asked what he was doing there, he said that he was a guard but when they asked a person nearby, the man said the accused was not a guard for Olympic

Swimming Pool; that the man who was supposed to guard the Swimming Pool was not there because his child was sick.

PW4 further testified that he was able to see that a person was vandalising the cable because it was not very dark as there was some light coming from the flats opposite the place. He could not tell the distance from where the lights were coming from but that they were coming from behind them. When asked to describe the person vandalising the cable, PW4 said that he was about his height; that he was not big but was similar to him. He also testified that he could not tell his complexion and that about 10 - 15 minutes passed from the time the person run away and the time they apprehended him. He testified that inside the swimming pool there were no other persons apart from the accused. He identified the accused in the dock.

Under cross-examination, PW4 stated that even if he had not apprehended the accused and he was brought two days later, he would still have identified him because he saw him when he was firing the shot as he was facing him and there was light coming in from the OP Flats. When put to him that there were discrepancies between his testimony and that of PW3 who testified that the lights from OP Flats were not sufficient to enable them see the person, PW4 insisted that there were no discrepancies. When asked which version between his and PW3 the court should believe, PW4 said the court should believe both versions. In further cross-examination PW4 said that the person they talked to told them that they knew the accused as a Garden Boy who did piece work and that the person who was supposed to be on duty was not there. He

admitted that he presumed that the person who was peeping must have jumped the wall fence.

PW5 (Maxim Nkombalume), a Detective Inspector from Lusaka Division attached to ZESCO confirmed having handled a docket of vandalism in which the accused was Geoffrey Kacheche. He stated that when he interviewed the accused who was already in custody about his presence at the scene of crime, the accused told him that he had been allowed by Geoffrey Mwenya who is a guard at Olympic Swimming Pool to squat there as he (the accused) was having problems at home. He told the court that the accused had told him that around 18:00hours Geoffrey Mwenya left his point of duty leaving Geoffrey Kacheche (the Accused) and it was between 23:00hrs and 02:00hrs when the latter was apprehended by police officers.

PW5 testified further that during the course of his investigations he went to Kalingalinga where the accused was allegedly staying and upon enquiry was informed that the accused was not renting any house there but was being kept by his cousin who was renting the house. PW5 then charged and arrested the accused for the offence of vandalism. PW5 identified "ID1" which was then tendered into evidence and admitted as the People's Exhibit "P1".

In cross-examination, PW5 admitted that the accused was already apprehended when he (PW5) was given the docket and that he never talked to the landlord in Chilanga. He further admitted that it was just someone who told him that Geoffrey was being kept and that he wouldn't know if there was an arrangement between the accused and his cousin and he similarly would not know if the accused had issues with his cousin. PW5 admitted that

Geoffrey Mwenya, the guard of Olympic Swimming Pool told him that he had allowed the accused to be with him.

PW5 admitted further that Geoffrey Mwenya told him that the accused was helping him to guard the premises as a result of issues the accused had at home. He also admitted that nothing of essence was found on the accused apart from his clothes. PW5 admitted in addition that the accused was not apprehended from the point of vandalism and was apprehended about 20 minutes after the disappearance of the person who was seen vandalising the cable.

Both the defence and the State filed written submissions. I am indebted to counsel on both sides for the same. In their submissions, the defence submitted firstly, that based on the provisions of section 206 of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia, it is the duty of the court to assess whether on the evidence adduced thus far any reasonable tribunal could convict. Reference was made to the case of *Mwewa Murono v. The People*¹ wherein it was stated that a submission of no case to answer may properly be made: "(a) where there has been no evidence to prove the essential elements of the alleged offence; and (b) when the evidence adduced by the prosecution has been so discredited that no reasonable tribunal could safely convict on it."

The court was also referred to the case of *The People v. Japau*², an earlier case which held a similar view as that in the *Mwewa* case. The defence further submitted that there was no dispute that vandalism had occurred but that

there was no direct evidence but rather circumstantial evidence pointing to the accused as being the perpetrator of the offence. Reliance was placed on the case of *David Zulu v. The People*³ wherein it was stated thus:

"The Judge must ... in order to convict, be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains a degree of cogency which can permit only of an inference of guilty."

It was the defence's further submission that the accused could not be said to be the vandal as the prosecution only identified the accused as one who was in the area and not the vandal as the prosecution witnesses could not see properly under the lighting of the area. Further, that the accused gave an explanation of his presence in the area which explanation was, in the defence's view, reasonable. That on the basis of the accused's reasonable explanation, the prosecution cannot be said to have established a *prima facie* case. To this end, the defence cited the case of *Saluwema v. The People*⁴. It was the defence's contention that the arresting officer omitted to call as witnesses the people he had interviewed in Kalingalinga. That in the absence of key witnesses, several inferences could be drawn from the circumstances and not just an inference of guilty as gunshots were fired and the accused may have been scared and went into hiding just like any other person in similar circumstances would do. That in the circumstances, a *prima facie* case had not been made to warrant putting the accused on his defence.

In reply, the State submitted that it was indeed not in dispute that vandalism had occurred and that the only person who was in the vicinity of the crime

scene was the accused. The prosecution further submitted that the odd coincidences, namely, that the accused was firstly, the only person in the vicinity; secondly, he was hiding behind a door at the time of apprehension some ten (10) to fifteen (15) minutes from the pursuit; thirdly, that the accused is indeed of short stature as described by PW3 and PW4; fourthly, that the accused was not a security guard of the area thus raising questions as to his presence there and fifthly, that the investigating officer, PW5, did establish that the accused was not a tenant in Kalingalinga where he allegedly had problems with the landlord, are corroborative of PW4's testimony. On this point of argument, the court was referred to the case of ***Illunga Kabala and John Masefu v. The People***⁵ in which the Supreme Court stated that

"It is trite law that odd coincidences, if unexplained, may be supporting evidence. An explanation which cannot reasonably be true is in this connection no explanation."

It was the State's further submission that essential elements for the subject offence, viz, that a vandal was found in the area and pursued and apprehended minutes from the pursuit had been established and that any inconsistencies in the prosecution evidence did not take away the fact that a vandal was apprehended. In this regard, the case of ***The People vs. Japau*** (supra) was referred to in which the Supreme Court stated thus:

"There is a case to answer if the prosecution evidence is such that a reasonable tribunal might convict upon it if no explanation were offered by the defence. A submission of no case to answer may properly be upheld if an essential element of the alleged offence has not been proved or when the prosecution evidence

has been so discredited by cross examination or is so manifestly unreliable, that no reasonable tribunal can safely convict on it."

The State further referred the Court to the case of ***Madubula vs. The People***⁶ where it was stated that:

"minor discrepancies in the prosecution evidence that do not go to the root of the case are not fatal to the prosecution case."

In addition, the State submitted that a *prima facie* case is not evidence that would justify a conviction but rather would at law, justify an accused to have a word on the offence levelled against him. To augment this argument, reliance was placed on the cases of ***The People vs. Winter Makowela and Robby Tayabunga***⁷ and ***The People vs. Kombe Joseph Chimpako***⁸ where it was held that a case made out sufficiently to require putting an accused on his defence should not be equated to a case sufficient to warrant a conviction; that a *prima facie* case is made out if there is evidence to prove one of the ingredients. They urged the court to put the accused on his defence.

I have considered the prosecution evidence as well as the submissions by the defence and the State and I commend both counsel for their resourcefulness. I have been called upon to consider whether or not a case has been made out against the accused. It is trite that in every trial in which there has been a plea of not guilty, the court must decide whether there is sufficient evidence to justify calling upon the accused for his defence. In this regard the test to apply when considering whether an accused person has a case to answer is the

following: if the accused elected to remain silent could a reasonable tribunal properly directing itself convict the accused on the evidence so far placed before the court? If the answer is in the affirmative, then there is a case to answer. If, on the other hand, the answer is in the negative, then there is no case to answer (see the case of *Bhatt v. R*⁹). Closer to home, in the case of *The People v. Winter Makowela and Robby Tayabunga*, cited above, it was stated as follows:

"If, however, a submission is that there is no case to answer, the decision should depend not so much as to whether the adjudicating tribunal (compelled to do so) would at that stage convict or acquit, but whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal may convict on the evidence so far laid down before it, there is a case to answer."

From the authorities cited above, it is manifest that the burden placed on the State at this juncture is not to prove the case beyond reasonable doubt but merely to raise a *prima facie* case. A *prima facie* case will be deemed to have been made out if the evidence adduced so far is such that a reasonable tribunal might convict on it. From the evidence before court, it is not in dispute that ZESCO Substation No. 238 in Longacres was vandalised by cutting off a 185mm² x 4 core cable valued at K11,062.42; the property in question being public property and essential for or incidental to the provision of necessary supply of electricity to the public. What is in issue is whether the accused was the vandal. This brings to the fore the question of identification of the perpetrator of the offence.

The State has submitted that the accused was apprehended in the vicinity of the crime scene and that this was after a pursuit which lasted for some minutes and that during the said pursuit, the witnesses had not lost sight of the accused. On the other hand, the defence has submitted that the accused has given a reasonable explanation for his presence in the area and that based on this explanation, several inferences could be drawn apart from an inference of guilty.

I have carefully considered the evidence adduced. It is on record through the evidence of PW3 and PW4, that a person was seen vandalising a ZESCO cable and that when warning shots were fired, the person ran away and sight of him was lost when attention shifted to ZESCO security employees who had arrived at the crime scene. That it was at this point that the witnesses decided to split into two groups and that some ten (10) or so minutes later, the group that consisted of PW4 emerged with the accused.

The State referred the court to the case of *Illunga* (supra) which states that odd coincidences can, if unexplained, amount to corroboration. More recently, the case of *Machipisha Kombe vs. The People*¹⁰ has reaffirmed that odd coincidences do amount to corroboration of not only the commission of the offence but also that the accused committed it. However, as was held in the *Illunga* case, odd coincidences can only amount to corroboration if they are unexplained. The converse is also true, that, if the odd coincidences are explained and the explanation is reasonably true, then they do not amount to corroboration.

It is settled law that where an accused person proffers an explanation which is reasonably true, then that doubt should be ruled in favour of the accused. In the instant case, the accused gave an explanation that he had asked the security guard for Olympic Swimming Pool if he could spend a night with him as he was having problems at home. There is evidence on record that the said security officer did allow the accused to spend the night on the premises. The arresting officer confirmed in his testimony that he was informed that the accused was on the premises with the permission of the security guard of the said place who was at the material time not around as he had gone off to have some beer and left the premises in the care of the accused. This explanation, to me, dispels the assertion by the State that the accused was not the security guard for the area and therefore his presence there was questionable.

Quite apart from that, it was incumbent upon the State to have brought to court the security guard who was said to have left the accused on sentry duty on his behalf. The failure by the State to bring this key witness to court was, in my view, a dereliction of duty on its part. The named security guard should have been brought to court to prove or disprove the accused's assertion that he was at the premises with the permission of the said guard. In this respect, the Supreme Court's ruling in the case of *Kalebu Banda v. The People*,¹¹ essentially describes the position prevailing in the present case. In that case the Supreme Court stated that:

"Where evidence available only to the police is not placed before the court, it must be assumed that, had it been produced, it would have been favourable to the accused."

I am inclined to concur with the submission by defence Counsel that given the circumstances, it can be assumed that Geoffrey Mwenya was not brought to court because his testimony would have been favourable to the accused.

This notwithstanding, there is evidence that the accused was consistent with his assertion that he was present in the area where the offence happened on permission by one Geoffrey Mwenya. This assertion by the accused has not been discredited by the prosecution evidence. In addition, the fact that the investigating officer did establish that the accused was not a tenant in Kalingalinga where he said he had problems with landlord, but rather was just being kept by his cousin, does not, in my opinion, have any bearing on the explanation that the accused gave that he was having problems at home.

Having settled the issue of explanation of the accused's presence on the premises, I will now consider whether the evidence that the accused is said to have been apprehended whilst hiding behind a door is *prima facie* evidence that he is the vandal. Having formed the view that the explanation that the accused was there with the permission of the security guard for that area is reasonable, I agree with the submission by the defence that it is a normal reaction for a person to go into hiding in the wake of gunshot sounds at close range as happened in the case before me. Coupled with that, I hasten here to state that there is prosecution evidence that the cable in issue is very heavy. Indeed, the cable is so heavy that even the State could not easily bring it into the court room for identification but rather the court had to go and view the said cable from outside the court room where it was placed. The prosecution

maintained that the accused was the only one in the vicinity and since there was no other person there apart from him, he was the vandal. I have exercised my mind on this and have found it difficult to fathom how one man could have been expected to lift and carry a cable that a group of men found too heavy to lift and bring into court. The only logical conclusion, in my view, is that one man would not be able to do so.

Quite apart from that, when PW1 was asked during examination-in-chief to describe the person he saw burning the cable, he said that although it was dark and he was at a distance, the person looked short and was putting on black clothes. He also testified that it was only after the person was brought out of the Olympic Swimming Pool that he saw that he was dark complexioned. PW1 testified that he could not recognise the person if he saw him because time had passed but all he knew was that he was short and dark. However, with regards to PW3, he testified under cross-examination that there were no lights at the substation and the lights from OP flats were not sufficient to enable them see the person but that lights from the vehicle assisted. He conceded that he was able to identify the accused only because he was brought to him by his colleagues. PW4 testified that he was able to see the person vandalising the cable because there was some light, coming from the flats opposite. He testified further, that the person vandalising the cable was about his height, not big. He could not tell his complexion.

An analysis of the evidence shows discrepancies in the evidence relating to identification of the person who vandalised the cable. Learned Counsel for the State cited the case of ***Madubula v. The People*** (supra), where it was held that:

“Minor discrepancies in the prosecution evidence that do not go to the root of the case are not fatal to the prosecution case.”

Indeed, that is the decision of the Supreme Court in the *Madubula* case. However, it is my considered view that in the present case discrepancies with regard to lighting, which was an essential element in identifying the person who vandalised the cable, are far from being minor. In fact, they are major discrepancies which go to the root of the prosecution case and consequently, fatal to the same.

From the above exposition, I am inclined to agree with the submission by defence Counsel that with the kind of lighting on the premises on the date in question it was impossible for the witnesses to positively identify the accused as being the vandal. Indeed, there is no direct evidence pointing to the accused as being the vandal. The only evidence placing the accused at the premises is circumstantial. However, the circumstantial evidence in this case does not take it out of the realm of conjecture so that it attains such a degree of cogency which can permit only an inference of guilty in accordance with the decision in the case of ***David Zulu v. The People*** (supra). This is so because in this case the accused gave a plausible explanation for his presence at the premises on the night in question. The David Zulu case further states that where there is more than one inference that can be drawn from the facts, the inference that is more favourable to the accused should be picked. In the

present case the inference more favourable to the accused is that having found himself on the premises which are adjacent to the crime scene at the time the shots were fired, the accused got scared and went to hide in the changing room.

In my view, given the lack of positive identification of the accused as the person who vandalised the cable and the omission by the prosecution to bring key witnesses, the prosecution has not adduced sufficient evidence to establish a *prima facie* case against the accused person. Therefore, I find that the evidence adduced by the prosecution has been so discredited that no reasonable tribunal could safely convict on it.

In the *Mwewa Muroko* case, it was held that the court must acquit if a case is not made out and the accused person's evidence will not cure the gap. Section 206 of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia provides that: -

"If, at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him."

In accordance with Section 206 of the Criminal Procedure Code, I find that a *prima facie* case has not been made out against the accused to warrant putting him on his defence.

I, therefore, dismiss the case and acquit the accused.

Leave to appeal is granted.

Dated at Lusaka this 3rd day of November, 2017.



W. S. Mwenda (Dr)
HIGH COURT JUDGE