

**IN THE COURT OF APPEAL OF ZAMBIA**  
**HOLDEN AT NDOLA**  
(Criminal Jurisdiction)

**APPEAL NO. 84, 85, 86/2021**

**BETWEEN:**

**DENNIS KANYEPA**  
**CHARLES SIPESHA**  
**PRESTON KANANGA**



**AND**

**THE PEOPLE**

**RESPONDENT**

**Coram: Makungu, Sichinga and Muzenga, JJJA**

**On the 14<sup>th</sup> February, 2022 and 25<sup>th</sup> day of March, 2022**

*For the Appellants: Mr. M. Kapukutula - Legal Aid board*

*For the Respondent: Ms. C. Soko Deputy Chief State Advocate -  
National Prosecution Authority*

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## **JUDGMENT**

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*Makungu JA delivered the Judgment of the Court*

### **CASES REFERRED TO:**

1. *David Zulu v The People* (1977) ZR 151
2. *Machobane v The People* (1972) ZR 101
3. *Donald Fumbelo v The People* SCZ Appeal No. 476 of 2013
4. *Joe Mulenga and others v The People*
5. *Haonga v The People* (1976) ZR
6. *Dorothy Mutale and Another v The People* SCZ No. 51 (1997)
7. *Ernest Yoombwe v The People* SCZ Selected Judgment No.15 of 2019

## **LEGISLATION REFERRED TO:**

1. The Penal Code Chapter 87 of the Laws of Zambia.

### **1.0 INTRODUCTION**

1.1 At the outset we must state that the 1<sup>st</sup> appellant is the only appellant herein as we were informed by his Counsel Mr. Kapukutula that the 2<sup>nd</sup> and 3<sup>rd</sup> appellant were cited in error. That the 2<sup>nd</sup> appellant was detained during the president's pleasure as he was a juvenile at the time the offence was committed and is unwilling to appeal. The third appellant was acquitted and inevitably will not appeal.

1.2 The appellant was tried and convicted of the murder of Wisdom Chitengi contrary to **section 200** of the **Penal Code Chapter 87** of the **Laws of Zambia** and sentenced to death by E. Pengele J.

1.3 This appeal is against conviction and sentence.

### **2.0 EVIDENCE IN THE COURT BELOW**

2.1 The key evidence against the appellant came from PW1, PW2, PW4 and PW7. PW1, Gift Mukimwa testified that on 15<sup>th</sup> October, 2018, in Kasempa District he was sent to Fikonka Bar

to buy cigarettes for his uncle. He found the appellant with accused No. 2 who is cited herein as 2<sup>nd</sup> appellant. Wisdom Chitengi (the deceased) sat with a lit candle on the veranda of the bar. As he was leaving, he saw the appellant grab the candle from the deceased and give it to A2. When the deceased asked why they had done so and pleaded with them to hand it back the appellant slapped him causing blood to come out of his nose. The duo then, forcefully removed the deceased from the veranda and took him across Kasempa Road to a place near City Mall Bar where A3, the one cited in error as 3<sup>rd</sup> appellant joined them.

2.2 PW2, Lisa Mbelenga, the bar lady at Fikonka Bar testified that around 21:00 hours on the material day the appellant and, one Patrick Tumbama started fighting at the bar. Shortly thereafter the appellant and Patrick reconciled. The deceased entered the bar and sat near a speaker without buying beer. When it was time to close the bar at around 22:00 hours, she requested the door bouncers; the appellant and A2 to remove the deceased from the bar.

- 2.3 Patrick Tumbama got the deceased and took him to the veranda where he started slapping and kicking him with A1 and A2. At the time that PW2 knocked off, she left Patrick, A1, A2, Gift, PW1, Bobo and Mbuyu at the bar.
- 2.4 The following morning, she learnt of the death of the deceased. She went to the bar where she noticed blood stains, a shoe and some bricks on the veranda. She maintained that the appellant and A2 were the ones she saw slapping and kicking the deceased and that A3 was just standing. In cross-examination, PW2 admitted that she was detained by the police for 3 days as a suspect.
- 2.5 PW4, Enock Simunyola, the owner of Fikonka Bar, testified that on 16<sup>th</sup> October, 2018, around 06:00, he met police officers who requested him to take them to his bar. At the bar, he observed some blood drops on the veranda and a full and half burnt brick. On request by the police, he handed his door bouncers the appellant and A2 to them.
- 2.6 PW7, Detective Constable Kalizya Nyachiu investigated the matter. He was among the police officers who visited the crime scene located behind City Mall Bar.

