

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

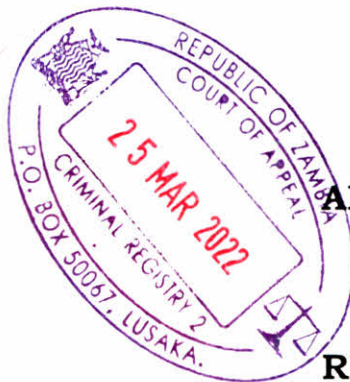
**APP NO.224/2020**

**BETWEEN:**

**KAUMBA SITENGE**

**AND**

**THE PEOPLE**



**APPELLANT**

**RESPONDENT**

***Coram: Kondolo, SC, Banda-Bobo and Muzenga JJA***  
***On the 22<sup>nd</sup> day of September, 2021 and 25<sup>th</sup> March, 2022.***

**For the Appellant:** Mr. C. Siatwinda, Legal Aid Counsel- Legal Aid Board

**For the Respondent:** Mrs. M. Miyoba-Chizongo, State Advocate, National Prosecutions Authority.

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## **JUDGMENT**

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**BANDA-BOBO, JA, delivered the Judgment of the Court**

**Cases referred to:**

1. *Angel Chibesa, Abel Banda v The People (Supreme Court of Zambia Appeal No. 46 of 2015)*
2. *Whiteson Simusokwe v The People (SCZ No. 15 of 2002)*
3. *Katebe v The People (1975) ZR 12 (SC)*
4. *Nzala v The People (1976) ZR 221*
5. *Valentine Shula Musakanya v The Attorney General (1981) ZR 1 (S.C)*
6. *Peter Yotamu Hamenda v The People (1977) ZR 184*
7. *Kambarage Mpundu Kaunda vs. The People (1990/92) Z.R. 91*
8. *Nyampande and Another v. The People (1988 – 1989) ZR 163*
9. *Simon Malambo Choka -Vs- The People (1978) ZR 243*

10. *Wilson Mwenya v. The People (1990) S.J (S.C.)*
11. *Ilunga Kalaba and John Masefu v. The People (1981) ZR 102*

**Legislation referred to:**

*The Penal Code Chapter 87 of the Laws of Zambia*

**1.0. INTRODUCTION**

- 1.1. This appeal arises from the judgment of Mweemba,J delivered in Mongu on 12<sup>th</sup> June, 2019.
- 1.2. The Appellant, Kaumba Sitenge, was convicted of murder, contrary to **section 200 of the Penal Code**, Chapter 87 of the Laws of Zambia and subsequently handed the ultimate sentence for a capital offence of death.
- 1.3. It was alleged that the Appellant on 8<sup>th</sup> March, 2019 at Limulunga, in the Limulunga District of the Western Province of the Republic of Zambia, murdered Alibandila Namiluko.

**2.0. EVIDENCE IN THE COURT BELOW**

- 2.1. The appellant's conviction was based on the evidence of four witnesses, namely **Mubukwanu Mubukwanu**, PW1; **Lungowe Nawa**, PW2; **Likezo Kutumba**, PW3 and **Detective Sergeant Syachuya Collins**, PW4.
- 2.2. The evidence of PW1, who was the brother to the deceased was that, he received a phone call informing him that his younger brother was dead. He found his brother's body between Lubili

area and Nasitoko village. He said he found the deceased's body lying face down, covered in blood, and that the body was wet, despite no rain having fallen that day. He testified that he was told by a child in that area that, the deceased was chased from PW2's court yard, and that he found the body of the deceased laying in PW2's court yard. He said that after gathering that information, and speaking to PW2 and her parents, who denied the allegation, he decided to call the officer in charge at Limulunga police station.

2.3. He said after investigations, the officer informed him that they had received information that there was a man who had beaten the deceased who had been in PW2's house. He testified that they proceeded to Limulunga Hospital where the body was deposited into the mortuary. He testified that a postmortem was conducted at Lewanika General Hospital and it revealed that the deceased had been beaten up badly such that, there was blood in his skull, skin, and bruises on both of his ribs.

2.4. PW2 was a former girlfriend to the Appellant, who testified that on the fateful night of 8<sup>th</sup> March, 2019, the deceased came from Machu drunk and staggered into her court yard whilst the Appellant was inside her house. She testified that the deceased was asking for alcohol, and, irritated with the noise outside, the

accused came out from her house and told the deceased to leave, but when there was no response, he launched into kicking him in the ribs until he fell to the ground. She said at this point, she observed that the deceased had become powerless, and that is how she called her brother PW3, to come and help. That her brother advised that they give the deceased time to rest since he was drunk. PW2 said after PW3 left, the accused got some water and poured it on the deceased and they proceeded to go back into her house to sleep, leaving the deceased laying outside with water poured on his body. She said that after some time, the accused left the house without explaining where he was going, and took a considerable time before he came back. Sometime later, she heard wailing from a nearby road and she went out to the road side, where the wailing was coming from, and that is when she realized that the deceased was not where he had been left sleeping. She told court that the accused left her without bidding her farewell. She said she when she got to the road side, where the wailing was coming from, she discovered that it was the deceased who was found dead, lying near the road.

2.5. It was her evidence that after the police officers arrived, a group of people including herself were questioned and she was asked to

