

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

**APP NO.200/2022**

**BETWEEN:**

**CHRISSY LUBASI**

**VS**

**THE PEOPLE**



**APPELLANT**

**RESPONDENT**

*Coram: Mchenga, DJP, Banda-Bobo and Sharpe-Phiri, JJA  
On the 10<sup>th</sup> day of October 2023 and 14<sup>th</sup> November, 2023.*

**For the Appellant: Mrs. M. Makayi, Legal Aid Counsel of Messrs Legal  
Aid Board**

**For the Respondent: Mr. B. Siafwa, Acting Senior State Advocate of Messrs  
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. Kachingwe Daka v. The People (App. No. 158/2021)
2. Nyambe Martin Nyambe and Four Others v. Konkola Copper Mines Plc (In Liquidation) SCZ Appeal No. 2 of 2022

**Legislation referred to:**

- The Penal Code (Amendment) Act No. 23 of 2022
- The Interpretation and General Provisions Act Cap. 2 of the Laws of Zambia
- Bennion on Statutory Interpretation, 6<sup>th</sup> Edition, Jones, O, at page 291

## 1.0 **Introduction**

1.1 This is an appeal against the Judgment of Lady Justice Chawatama, delivered at Mongu High Court on 24<sup>th</sup> February, 2022.

## 2.0 **Background**

2.1 The Appellant herein was arraigned on a charge of murder. It was alleged that on 14<sup>th</sup> September, 2020 at Mongu, he murdered one, Miyamui Mukubesa; his then girlfriend. He denied the charge.

2.2 The evidence before Court, briefly, was that on the night of 12<sup>th</sup> September 2020, witnesses heard a person shouting that “you are killing me”. They woke up and went to the source of the noise. One of them had a torch, which when he flashed, he saw the deceased lying down while the Appellant attempted to run away, but was captured. The Appellant was seen with a metal off cut from a fan. He was thus apprehended.

2.3 The deceased’s relatives, upon reaching the scene, found the deceased lying on the ground naked. The Appellant had been apprehended by the responders who arrived first on the scene.

2.4 In his evidence, the Appellant alleged that he had been on his way to the deceased's house when he was accosted by one of the witnesses who asked him where he was going and if he knew what had transpired to his girlfriend. His explanation was not accepted and he was apprehended and taken to the police.

2.5 The lower court after due trial, convicted the Appellant based on circumstantial evidence, as no one had seen him commit the crime. He was sentenced to death.

### 3.0 **The Appeal**

3.1 Dissatisfied with the decision, the Appellant launched this appeal, essentially against sentence. The sole ground of appeal is crafted thus:

**“The lower court erred in law and fact when it sentenced the Appellant to death contrary to the Penal Code (Amendment) Act No. 23 of 2022.**

### 4.0 **Arguments**

4.1 In support of the sole ground of appeal, the Appellant's counsel filed heads of arguments. Counsel submitted that the appeal would only be argued on sentence only. That as the appeal is being heard now, the law applicable at this point in time is the

Penal Code Amendment Act No. 23 of 2022. That since the appeal on conviction had been abandoned, this Court should not uphold the death sentence passed on the Appellant in light of the Penal Code (Amendment) Act No. 23 of 2022. Instead this Court should impose a sentence of life imprisonment. Our attention was called to Section 14 of the Penal Code Act No. 23 of 2022, which is couched thus:-

**“14 – Section 201 of the Principal Act is amended by the –**

**(a) deletion of subsection (1) and the substitution thereof of the following:**

**(1)A person convicted of murder shall be sentenced to life imprisonment, or where there are extenuating circumstances, a sentence other than life imprisonment”**

4.2 Counsel contended that this Court had interpreted the above provision in the case of **Kachingwe Daka v. The People**<sup>1</sup> where we stated that:-

**“we note that at the time the Appellant was tried, capital punishment was the mandatory penalty where a person was convicted of the offence of murder and there were no extenuating circumstances. However, following the Penal Code Amendment Act No. 23 of**

**2022, the courts no longer have the power to impose such a punishment. This is the position even in cases where capital punishment was the penalty at the time the offence was committed or the accused person was arraigned for trial. This being the case, we sentence the Appellant to life imprisonment.”**

- 4.3 Based on the above, we were urged to set aside the death sentence and impose a sentence of life imprisonment.
- 4.4 The Respondent robustly opposed the appeal, and filed heads of arguments in opposition. Counsel began by stating that the Appellant was convicted for the offence of murder on 24<sup>th</sup> February 2022 and was sentenced to death, as at that time, that was the available punishment for the said offence.
- 4.5 That on 23<sup>rd</sup> December 2022, the President assented into law the Penal Code (Amendment) Act No. 23 of 2022, which abolished the death penalty.
- 4.6 In arguing against the appeal substantively, counsel contended that the amendment to the Penal Code became law on the date it was assented to on 23<sup>rd</sup> December 2022. That this was ten (10) months after the Appellant was convicted, and before the death penalty was abolished.

- 4.7 That there was no error on the part of the trial Judge in sentencing the Appellant to death for the offence of murder as that was the sentence available then. That the Penal Code (Amendment) Act was not yet Law as at 24<sup>th</sup> February 2022, when the sentence was meted out.
- 4.8 As regards the **Kachingwe Daka**<sup>1</sup> case relied upon by the Appellant in support of the appeal, counsel opined that the same had been wrongly applied, as the facts are slightly different from this matter.
- 4.9 Counsel went on to state that in the **Daka**<sup>1</sup> case, the punishment available for the offence of murder at the time of commission of the offence was death. However, before judgment could be rendered, the law was amended and assented to, in which the death sentence was abolished.
- 4.10 That despite the abolishment of the death sentence, the trial Court still proceeded to sentence the Appellant to death. That the trial Court had reasoned that that was the sentence which was available at the time the offence was committed.
- 4.11 That in contrast, in *casu*, the offence was committed and the sentence meted before the amendment. That therefore the trial

Court cannot be said to have breached the law which was non-existent. That the law does not apply retrospectively.

4.12 To buttress, our attention was drawn to **Section 14 (3) of the Interpretation and General Provisions Act Cap. 2 of the Laws of Zambia**, with respect to an amended written law and the effect of repealing such written law.

4.13 Counsel submitted that in view of the above cited law, and in particular, Section 14(3) of the Interpretation and General Provisions Act, this appeal lacked merit. That this Court should uphold the sentence imposed by the lower court.

## 5.0 **Analysis and Decision**

5.1 We have carefully considered the record of appeal and the arguments by counsel for the parties herein. As we understand it, the Appellant's argument is that he was alleged to have murdered Miyamui Mukubesa on 14<sup>th</sup> September, 2020 at Mongu. He was tried and convicted for the said offence and sentenced to death on 24<sup>th</sup> February 2022. That this sentence was wrong, because the death penalty had been abolished; and the court had no powers to impose the death penalty at that time.

- 5.2 The Respondent's argument is that it is not about the time the offence was committed but the time when judgment was passed. That in *casu*, the Appellant was sentenced 10 months prior to the death penalty being abolished.
- 5.3 We are satisfied that one thing that is prominent and not in dispute is that the **Penal Code (Amendment) Act No. 23 of 2022** became Law on 23<sup>rd</sup> December 2022. With that amendment, the death penalty was abolished.
- 5.4 In our view, **Section 14(3) of the Interpretation and General Provisions Act**, cited to us by the Respondent is clear on the effect of repealing an existing law or provision of an Act. Of particular interest in this matter is Section 14(3) (d) which reads that:-
- “d. affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any written law so repealed.”**
- 5.5 In the case of **Nyambe Martin Nyambe and Four Others v. Konkola Copper Mines Plc<sup>2</sup>**, the Supreme Court guided on this issue in a majority decision read by Wood, JS the Court considered whether the new mandatory retirement age of sixty



five as provided in Amendment Act No. 7 of 2015 was retrospectively applicable to the Appellants. To answer the question, the Court relied on the learned author of Bennion on Statutory Interpretation, where it was said:-

**“The true principle is that *lex propicit non respicit* (Law looks forward and not back). Retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.”**

5.6 The court went on to hold, in the same case, while referring to its past decisions, that:-

**“It is a well settled presumption that any legislation is not intended to operate retrospectively, but prospectively”**

5.7 Against that guidance, namely that the law generally does not apply retrospectively, the evidence on record is that the Appellant was alleged to have on 14<sup>th</sup> September 2020 murdered Miyamui Mukubesa, a charge he denied. The matter proceeded to trial, and he was convicted. On 24<sup>th</sup> February

2022, he was sentenced to death. It is worth stating that the penalty for murder at the time the Appellant was sentenced upon conviction for the offence of murder was the death penalty. It was only ten (10) months later on 23<sup>rd</sup> December 2022 that the penalty was changed, namely from death to life imprisonment. This was by way of the amendment to the Penal Code by way of the **Penal Code (Amendment) Act 2022**.

5.8 It follows therefore that any sentence for murder post the amendment would be life imprisonment, except where there are extenuating circumstances, in which case it would be any other sentence.


5.9 We believe the Appellant's reliance on the **Kachingwe Daka**<sup>1</sup> case is misplaced and that the facts of that case were misapprehended by the Appellant herein.

5.10 Just to restate, we made it clear in the **Kachingwe Daka**<sup>1</sup> case that the basis for faulting the Judge in that case was that at the time the Appellant was tried, the capital punishment was the mandatory sentence for anyone convicted of murder. However that following the **Penal Code (Amendment) Act No. 23 of 2022**, courts no longer had the power to impose such a

punishment. We said:- **“This is the position even in cases where capital punishment was the penalty at the time the offence was committed or the accused person was arraigned for trial...”**

5.11 In this case, having already been sentenced at the time the amendment to the law was made, the same cannot apply to benefit the Appellant. As guided, the Law cannot apply retrospectively; as at the time the Appellant was sentenced, the penalty that existed for the offence of murder was death. Only those who got to be sentenced post the amendment would benefit. We can therefore not fault the lower court for sentencing the Appellant as was done.

5.12 We find no merit in the appeal and we dismiss it accordingly.



**C. F. R. MCHENGA**  
**DEPUTY JUDGE PRESIDENT**



**A. M. BANDA-BOBO**  
**COURT OF APPEAL JUDGE**



**N. A. SHARPE-PHIRI**  
**COURT OF APPEAL JUDGE**