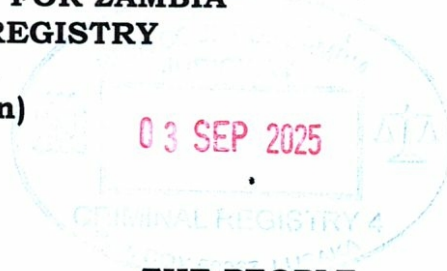


1 T
IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

HP/266/2025

BETWEEN:



THE PEOPLE

V

WILSON CHIBANDIKA

Before: Hon. Mr. Justice L. Mwanabo on 3rd September, 2025

For the State: Mrs. G. M. Muhambi, State Advocate with Ms. S. Malundu, State Advocate- National Prosecutions Authority

For the Accused: Mr. I. Yambwa, Senior Legal Aid Counsel with Mr. J.K. Matende, Legal Aid Counsel, Mrs. B. Chipasha- Sialundu, Pro-bono Legal Aid Counsel and Mr. B. Kangwa, Pro-bono Legal Aid Counsel- Legal Aid Board

JUDGMENT

Cases referred to:

1. *Mwewa Muroso v The People* (2004) ZR 207
2. *The People v Njobvu* (1968) ZR 132 (HC)
3. *Director of Public Prosecution v Lukwasho* (1966) ZR 14
4. *Yokonia Mwale v The People SCZ Appeal No. 285 of 2017*
5. *R v Mohan* (1979) QB1
6. *R v Woollin* (1998) 3WLR 382
7. *David Zulu v The People* (1977) ZR 151 (SC)
8. *Saidi Banda v The People SCZ Selected Judgment No. of 30 of 2015*
9. *Kalebu Banda v The People* (1977) ZR 169 (SC)
10. *Lukolongo and Others v. The People* (1986) ZR 115 (SC)
11. *Mourice Mweene v. The People CAZ Appeal No. 112/2019*
12. *Bwalya v The People* (1975) ZR 125
13. *Valentine Shula Musakanya v the Attorney General*
[1981] ZR 14
14. *Edward Sinyama v the People* (1993-1994) ZR 16

Legislation referred to:

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

Other Works referred to:

1. *Blacks' Law Dictionary, 11th Edition, Bryan A. Garner, Thomson Reuters 2019*
2. *Archbold, Criminal Pleading, Evidence and Practice London, Sweet & Maxwell, 2007 at pages 1373 to 1374, paragraph 11-78*

1.0 INTRODUCTION

1.1 The accused herein stands charged with the offence of murder contrary to **Section 200 of the Penal Code**¹. Particulars of the offence are that WILSON CHIBANDIKA, on the 8th day of August, 2022 at Chongwe in the Chongwe District of the Lusaka Province of the Republic of Zambia did murder MOFFAT MUNAMBWILI. The accused pleaded not guilty to the charge.

1.2 The burden of proof to establish the charge against the accused is on the prosecution and the standard of proof which must be attained before there can be any conviction is one that should satisfy me of the accused's guilty beyond all reasonable. The accused bears no burden of proving his innocence. If, after considering the evidence adduced in this case I entertain some doubt in my mind as to the guilt of the accused, then he must be given the benefit of that doubt and must be acquitted. The case **Mwewa Murono v. The People**¹ is very instructive.

2.0 Evidence and Submissions by the Prosecution

2.1 The Prosecution called six witnesses who adduced evidence relating to the offence. PW1 was Jan Munambwili, the son to Moffat Munambwili (the deceased). He testified that on 9th May, 2022 he was at his house in Lukata Village, where he used to live before relocating to Kafue. Around 16:00 to 17:00 hours, he heard a sound that he thought was a sound of goats. When he

went outside to check what was happening, he saw the deceased who was stained in blood. According to PW1, blood was flowing from the head to the chest of the deceased and had covered his face. PW1 asked the deceased what the problem was and he answered that, ***“Willy axed me!”***

- 2.2 According to PW1, the deceased did not know the reason he was hacked when he was asked but explained that he thought Willy was a customer when he saw him. It was testified that the deceased had a K3,000.00 in his pocket and Willy took it. PW1 then took the deceased to Mulalika Clinic which was nearest from his home. At the clinic they were told to go Chongwe District Hospital because the clinic did not have capacity render any help.
- 2.3 Afterwards a relative Paul Mwakawele came and released some money for transport. PW1 testified further that he and Watson Munambwili and Daniel Mwakawele found a vehicle and took the deceased to Chongwe District Hospital after passing through Chongwe Police. The deceased was examined at Chongwe District Hospital and was referred to Levy Mwanawasa Hospital. PW1 testified that the deceased stayed at Chongwe District Hospital for three days before being taken to Levy Mwanawasa Hospital.
- 2.4 The deceased was later discharged to go and recover from home and that when the deceased went for the first review he was advised to continue exercising and was given a second date for review. However, before the second review, he died.
- 2.5 Under XXN by Mr. Kangwa, PW1 admitted that there was a previous conflict between him and the accused. He indicated that he saw the accused with an axe the day the deceased was hacked but admitted that he did not see any blood stains on the axe as the accused was at a distance. PW1 indicated that he did not know how many times the deceased was hacked. Concerning the K3,000.00, PW1 admitted not telling the Court what his father was selling.

- 2.6 In further XXN by Mr. Yambwa, PW1 confirmed that his father was advanced in age. When asked about the sight of the deceased, PW1 indicated that the deceased had good eye sight. PW1 could not confirm the number of people in his village. When asked whether there was any other person who saw the deceased being hacked, PW1 mentioned Francis Musabula. PW1 confirmed that Francis Musabula did not testify before court. However, he indicated that he told the Police.
- 2.7 PW1 admitted that in his area there were many people called Willy. He indicated that the deceased and himself never lived in harmony with the accused. He alleged that the accused once stole 5 litres of petrol from the deceased and a bag of charcoal from his house. That when the accused was approached over the charcoal he said he sold it and would give PW1 the money. PW1 also confirmed that he once took the accused to Court because of the insults he was subjected to by the accused. He denied the issue of the accused being suspicious of him having an affair with the accused's wife.
- 2.8 PW1 disclosed that his children were with him when the deceased said that he was hacked by Willy and that the Police did not take any statement from the children. He further confirmed that he did not tell the Court what the deceased was wearing on the day of the attack. It was admitted by PW1 that the accused is someone he lived with in the village. PW1 told the Court that he was not aware that at some point the accused's wife was taken to Mumbwa by her parents. However, he did confirm that the accused's wife came from Mumbwa. It was denied by PW1 that the accused was in Mumbwa on 9th May, 2022, the day, PW1's father was hacked. Under further XXN by Mrs. Siulanda, stated that it was not common for people in his village to carry an axe in the road.
- 2.9 PW2 was Paul Mwakawele, the Senior Headman at Lukata Village. He testified that in May 2022, he received a call from

Pyson Munambwili, son of the deceased. He told the Court that he learnt that the deceased had been hacked by someone and he was asked to go to his premises and see. He went there with his wife, Loveness Mwakawele but did not find him. That they found a gentleman who told them that the deceased had been rushed to Mulalika Clinic. PW2 and his wife then rushed to Mulalika Clinic and they found the deceased who told them that Wilson Chibandika hacked him on the head using an axe.

- 2.10 PW2 hurriedly organised transport for the deceased to go to the hospital. He found managed to find a vehicle and paid K1200.00. It was testified by PW2 that the deceased was able to talk at the time despite having bled so much. However, PW2 said that he personally did not see the wound.
- 2.11 According to PW2's testimony, there were about 77 households in Lukata Village. He stated that the deceased's mother was the sister to his father and that the deceased was a businessman and herbalist. PW2 also told the Court that the deceased used to be the Treasurer of a Cooperative Committee. He stated that the accused was his grandson who was born in Lukata Village.
- 2.12 Under XXN by Mrs. Siulanda, PW2 indicated that he did not have a problem with the accused. Further, under XXN by Mr. Kangwa, PW2 confirmed that he did not ask for the axe that was allegedly used to hack the deceased. However, he indicated that he did not have the power to handle Police cases. PW2 said that the accused travelled to Mumbwa after the incident.
- 2.13 PW2 confirmed that the deceased was hacked during the day. He said he did not find out if there was anyone in the village who saw the accused being hacked because the matter was being handled by the Police. He confirmed that when he went to see the deceased at the hospital, the deceased told him that he was hacked by the accused. He told the Court that the accused's first name was also shortened as Willy.

- 2.14 Further, PW2 indicated that the deceased informed him about the K3000.00 that was taken from him and that it was never recovered. He confirmed that he was never told by anyone that the accused and the deceased were seen quarrelling on the day the deceased was hacked. PW2 confirmed that the parents of the accused's wife went to get her and the accused. He stated that when the accused went to Mumbwa, he never reported to him that he had returned to the village. However, PW2 confirmed that he did not see the accused two days before the incident. He also confirmed hearing reports that the accused and PW1 did not have a good relationship. There was no RXN.
- 2.15 The Prosecution's third witness (PW3) was Ireen Malisani of Chabwali Village, Chongwe. She narrated that on 12th November, 2023, she was seated at her home in Chibwali Village with her daughter Bertha Munambwili (PW4) and her other younger children. That the accused arrived at her place and he started telling her that he liked her and she also used to like him but then hates him. That the reason she hated him was because at the time of the deceased's funeral she was talking a lot. He then asked whether she knows that he is a "**Kabula Moyo**", meaning someone who kills people. PW3 testified that she told the accused to stop addressing those issues at her place.
- 2.16 PW3 indicated that her older daughter PW4 was washing and listening to the conversation when the accused said he was a *Kabula Moyo* and that he hit the deceased with an axe. Bertha Munambwili then told the accused that she heard him say that he got money from the deceased and asked how much it was. That the accused answered he got K3,000.00 from the deceased's pocket. When asked what he did with the money, the accused said he used it for transport to where he was going.
- 2.17 According to PW3, the accused said he had sharpened the axe he used to axe the deceased and that he hid it under his bed at his house in Lukata Village and it is was waiting for someone else.

- PW3 then asked the accused to leave. PW3 stated that Chabwali Village where she lived was near to Lukata Village. She informed the Court that she had known the accused since he was born.
- 2.18 Under XXN by Mr. Yambwa, PW3 confirmed that the deceased was her uncle and that she was not happy with how he died. She also confirmed that the deceased was the grandfather to her daughter Bertha Munambwili and that she did not have another evidence to prove what she claims the accused said apart from her daughter. PW3 indicated that she told the Police that the accused told her that he put the axe under his bed after he was apprehended. There was no RXN.
- 2.19 PW4 was Bertha Munambwili, the daughter of PW3. Her evidence was similar to that of PW3 and will not be repeated. Under XXN, PW4 confirmed that at the time the accused went to their place, it was just her and her mother who were listening to the accused. PW4 confirmed that she did not have any independent evidence to confirm what the accused allegedly said. She also indicated that she did not go to the Police. PW4 denied fabricating the story and admitted that she was not happy with the manner her grandfather died because she knew that her mother who was older would tell others what the accused allegedly told them. PW4 indicated that they were scared to go to the accused's house after he allegedly told them that he put the axe under his bed.
- 2.20 PW5 was Dr. Cordilia Maria Himwaze, a State Forensic Pathologist at the Office of State Pathologist and Consultant Anatomical Pathologist at the University Teaching Hospital. PW5 testified that on 10th August, 2022, she received an order to undertake a post-mortem through a Coroner to conduct an examination on the deceased. After a review of the circumstances of the death, she started with the external examination and of significance was a sutured wound on top of the deceased.
- 2.21 Upon opening the head, there was blood stain on the left side of the brain and on top of the head was a fracture, which was on

healing stage. When she opened the chest, there were a lot of fractured ribs (4-8th ribs), which were also on their healing stage. However, the lungs were consolidated, meaning pneumonia had developed in that place. When she opened the abdomen, there were no significant abnormalities and collected tissue samples to confirm her diagnosis.

- 2.22 PW5 went on to testify that the heart of the deceased showed hypertensive changes. The brain altered blood (hemosiderin) and the liver showed portal-portal fibrosis due to hyper changes in the body. PW5 then went on to testify that the cause of death of the deceased was complications of sharp and blunt trauma to the head and chest due to or as a result of assault. According to PW5, the sutured head of the deceased contributed to blood in the brain and the injured chest opened up for bacteria leading to pneumonia which led to the complications causing the death of the deceased. PW5's Post-mortem Examination Report was produced and marked as **"P1"**.
- 2.23 Under XXN by Mr. Yambwa, PW5 indicated that the stated age for the deceased was 83 years. She confirmed that people at that age suffered complications due to old age. However, she denied that some of challenges included pneumonia. When referred to Section 13.0 (Summary and Opinion) of the Post-mortem Report on the second paragraph where she stated that the head showed a healed sutured laceration, healed fracture, subdural and subarachnoid hemosiderin staining, PW5 confirmed that the deceased's head healed.
- 2.24 PW5 was asked why she used the word **"may"** on the part under Section 13.0 where she stated that, ***"The pneumonia in this case is a complication of chronic ill health which may have been cause by prolonged morbidity due to trauma to the chest and head."*** She explained that when a person becomes morbid, their condition deteriorates and that it is a breeding space for infections. Further, that when someone is injured again

that is also a breeding space for infections. She indicated that she used the word **“may”** because she could not tear the two apart. PW5 confirmed that the accused had a chronic illness.

- 2.25 PW5 confirmed that her examination could not determine what was used to cause the injuries on the deceased. She also revealed that the deceased’s body was not in decomposed state. PW5 ruled out the suggestion put to her that the brain haemorrhage could have been caused by hypertension or a stroke.
- 2.26 Detective Sergeant Muyabango Susiku, the Arresting Officer, was PW6. He testified that he was allocated a docket involving the case in May 2022. Acting on the matter, he undertook investigations and searched for the accused. The accused was not in the village. PW6 continued to look for the accused but could not find him. About two months later he was informed that Moffat Munambwili (the deceased) who was hacked had died. He narrated that when he received the Post-mortem Report, the accused was still at large until he was apprehended in November 2023. PW6 said that the accused was apprehended by members of the public who took him to Chongwe Police Station.
- 2.27 PW6 testified that he interviewed the accused in connection with the case of murder which he changed after the death of the deceased from unlawful wounding. The confirmed that the accused told him that he was in Mumbwa where he went to pick up his wife when the deceased was hacked. He indicated that under warn and caution statement administered to the accused in Nyanja, the accused freely and voluntarily denied the charge. PW6 also produced a medical report for the deceased which was marked **“P2”**.
- 2.28 Under XXN, PW6 confirmed that according to the witnesses he interviewed the attack on the deceased happened during the day and there was no one who saw the deceased being axed. It was confirmed by PW6 that the deceased was old. When asked on the number of people who lived in Lukuta Village, PW6 indicated that

he did not know the number. PW6 confirmed that he never saw the accused running away. He testified that he was not aware about the differences between PW1 and the accused.

- 2.29 It was confirmed by PW6 that he was told that the accused went to Mumbwa to follow his wife. He denied being told by the accused that the accused was living with his in-law in Kamilambo village by the name of Esther Shimbetu. PW6 admitted that he did not go to Mumbwa to find out whether what the accused said was true. Further, PW6 confirmed that he did not get a statement from the accused's wife. He also indicated that he did not talk to the Headman, PW2, to confirm that the accused took his wife to Mumbwa.
- 2.30 PW6 conceded that he did not see the accused fleeing the scene and that he did not conduct a search at his house. He confirmed not finding other witnesses who were not family members of the deceased. That marked the close of the Prosecution's case.
- 2.31 The Prosecution filed in their final submissions on 1st September, 2025. **Section 200 of the Penal Code**¹ that provides for the offence of murder was reproduced and its elements were outlined as follows:
- i) That the deceased died
 - ii) That the accused person caused the death of the deceased person with malice aforethought and that;
 - iii) He had no lawful justification to cause the death of the deceased person.
- 2.32 It was submitted that what seems to be in dispute is whether the accused murdered the deceased and under what circumstances. Counsel quoted **Section 204 of the Penal Code**¹, which explains *mens rea* for murder and called to aid the case of **The People v Njobvu**², where it was held that to establish malice aforethought, the prosecution must prove whether that the accused had an actual intention to kill or to cause grievous harm to the deceased, or that the accused knew that his actions would be likely to cause

death or grievous harm to someone. It was contended that the evidence of PW1 as corroborated by that of PW2 and that the evidence establishes malice aforethought on the part of the accused.

2.33 Further, the case of **Director of Public Prosecution v Lukwasho**³ was adverted to where it was held that:

“In evaluating the evidence to see whether it establishes malice in the Accused, it is logical to make use of an objective test; must a reasonable man doing what the accused did, have foreseen that the probable results would be death or grievous harm to someone?”

2.34 It was asserted that the evidence of PW3 and PW4 show that the accused committed the offence. It was submitted that the fact that two were said to be relatives of the deceased does not automatically make them witnesses with an interest to serve unless there is something on record to that effect. Counsel relied on the case of **Yokonia Mwale v The People**⁴, where it was held that a witness should not be said to be a witness with an interest to serve merely because they are relatives of the victim, and that there should be something in the evidence that tends to show that such a witness would be inclined to falsely implicate the accused. Counsel contended that there is nothing on record to show that PW3 would falsely implicate the accused.

2.35 On the defence given by the accused, Counsel for the Prosecution disputed the explanation that the accused was in Mumbwa at the time that incident happened. It was argued that PW1’s evidence that he saw the accused with an axe on his shoulder the very of the incident was not disputed. It was further argued that the accused did not produce any ticket or any evidence to show that he had travelled to Mumbwa before the incident happened. Counsel went on to refer to the evidence of PW6 which shows that the deceased died of complications of sharp and blunt impact trauma to the head and chest due to assault. That PW6 went

further to say that the deceased died out of the injuries he suffered due to assault and that it was not pneumonia that led to his death. It was submitted that the accused's testimony was an afterthought.

- 2.36 Finally, Counsel submitted that the Prosecution have shown that the deceased sustained a stab wound, which with malice aforethought, the accused inflicted on him thereby causing his death. The cases of **R v Mohan**⁵ and **R v Woollin**⁶ were relied upon to argue that the accused had the intention to cause the death of the accused. I was urged to discount the accused's evidence as an afterthought and find him guilty of murder and convict him accordingly.

3.0 Evidence and Submission by the Defence

- 3.1 The accused was found with a case to answer and was put on his defence. He gave sworn evidence but did not call any witnesses. His defence was that on 6th April, 2022, he lost his child who was one year two months, Hernia Chibandika. He testified that he called his in-law, Esther Shimbetu who told him that if he did not pay K5,000.00, they would not bury the child. The accused indicated that he did not have the money to pay but the Headman (PW2) and the accused's father, Alex Chibandika, talked with his in-law and the child was buried after agreeing that issues of payment should come later. The accused testified that after the burial of his wife his in-law got his wife, Lamiwe Shimbetu, and went with her to Mumbwa District, at Kamilabo Village under Chief Shakumbila after burial on 9th April, 2022.
- 3.2 The brothers to the accused, Teddy Kabimbi and Luckson Kabimbi, also decided to go with the accused him. The accused further narrated that he spent a night at Luckson Kabimbi's place in Korex, Chongwe and the following day on 10th April, 2022, he went to Mumbwa following the wife. He testified that after living with his in-laws for three months, he requested that he and his

wife be allowed to go back home but the in-laws gave a condition that he could not leave with the wife unless he pays K5,000.00 the remaining money for dowry. PW6 further testified that he fled with his wife from Mumbwa without notifying his in-laws on 22nd February, 2023 after his mother sent him K600.00 and returned to Lukata Village. That on 20th November, 2023 after attending a funeral at Mulalika Primary School, he went to play a game of Pool in the company of his uncle, Memory Mutalange where he was arrested around 16:00 hours. He denied hacking Moffat Munambwili, the deceased and stealing K3,000.00 from him.

- 3.3 Under XXN by Ms. Malundu, the accused confirmed that he lived in Lukata Village before being incarcerated and that he had lived there from the time he was born. He confirmed not showing the Court a ticket for the bus he used when going to Mumbwa. The accused admitted that he did not bring a telephone call print out to prove that he spoke to his mother from Mumbwa when his in-laws asked for the K5,000.00.
- 3.4 The accused indicated that he was accused of hacking the deceased because of the differences he had with PW1. He confirmed hearing the evidence of PW3 and PW5. He indicated that he never had any issues with PW3 and PW4 and also that he never had any problems with the deceased. That marked the close of the Defence's case.
- 3.5 The Defence did not file any submissions.

4.0 Analysis and Decision

- 4.1 I have considered the evidence and submission of both the prosecution and defence. The accused stands charged with one count of the offence of murder contrary to **Sections 200 of the Penal Code**¹ which provide as follows:

“200 Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.”

Section 204 of the Penal Code¹ defines malice aforethought as follows:

“204 Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

- (a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;***
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;***
- (c) an intent to commit a felony;***
- (d) an intention by an act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.”***

4.2 Blagden, CJ, as he then was, in the case of **The People v. Njovu** (*supra*) stated that:

“To establish “malice aforethought” the prosecution must prove either that the accused had the actual intention to kill or to cause grievous harm to the deceased... or that he knew that what he was doing would be likely to cause death or grievous harm to someone.”

4.3 Therefore, in order for the accused to be convicted of the offence charged, I must be satisfied of the following:

- (a) That the accused caused the death of MOFFAT MUNAMBWILI;**
- (b) by an unlawful act; and**
- (c) with malice aforethought.**

4.4 According to the evidence adduced herein, the following issues are not in dispute:

- a. That the deceased was hacked with an axe on 9th May, 2022;
- b. After being hacked he went to PW1's house and told him that he was hacked by Willy;
- c. The deceased also informed PW2 that he was hacked by Wilson Chibandika;
- d. No witness who could have witnessed the hacking was brought to court;
- e. The deceased was first rushed to Mulalika Clinic and then was referred to Chongwe District Hospital. He was examined at Chongwe District Hospital before being referred to Levy Mwanawasa Hospital;
- f. The deceased was discharged from Levy Mwanawasa Hospital and died before going for his second review on 8th August, 2022; and
- g. A post-mortem examination was conducted and the cause of death indicates complications from sharp and blunt impact trauma to the head and chest due to or as the consequence of assault.

4.5 The evidence adduced by the Prosecution shows that there was no one present at the scene who witnessed the hacking of the deceased. The evidence connecting accused to the commission of the offence is from PW1 who testified that the deceased after being hacked on 9th May 2022 he went to his house while bleeding and blood was coming from his head to his chest covering his face. PW1's evidence was that the deceased told him that the accused hacked him with an axe. The evidence was repeated by PW2 who told the court that when he went to see the deceased at Mulalika Clinic, the deceased told him that the accused hacked him using an axe. Furthermore, the evidence of PW3 and PW4 was that when the accused visited their house after

telling PW3 that he loved here but he was not happy with what PW3 was alleged to have said at the funeral of the deceased, the accused mentioned that he had an axe which he had sharpened and was waiting for someone else. PW3 and PW4 further told the court that the accused told them that he was the one who killed Moffat Mwanambwili and got ZMW3,000.00 which he used to go where he had been. Evidence was given to the effect that from the time the deceased was hacked the accused could not be found in Lukata Village.

4.6 I have noted from the Post-Mortem Examination Report and the evidence of PW5 that the cause of death of the deceased indicates complications of sharp and blunt impact trauma to the head and chest due to or as the consequence of assault. Therefore, it can be inferred from this evidence that grievous harm was inflicted on the deceased leading to his death.

4.7 The accused's evidence in defence was that he went to Mumbwa on 10th April, 2022 to get his wife and was staying with his in laws until 22nd February, 2023 when he ran away with his wife back to Lukata village. According to the accused, he was not in Lukata village when Moffat Mwanambwili was hacked. In the case of **Mourice Mweene v. The People**¹¹, it was held that:

"The law is settled that an alibi must be properly raised by an accused person at the earliest opportunity and that such an allegation can only be investigated if the accused provides details as to witnesses who could vouch for him, when an alibi is properly raised it is the prosecution's onus to negative it."

4.8 Further, in the case of **Bwalya v The People**¹², the Court guided that:

"Simply to say "I was in Kabwe at the time" does not place a duty on the police to investigate; this is tantamount to saying that every time an accused says

“I was not there” he puts forward an alibi which it is the duty of the police to investigate. If the appellant had given the names or addresses of the people in Kabwe in whose company he alleged to have been on the day in question it would have been the duty of the police to investigate; but the appellant not having done so, there was no dereliction of duty on the part of the police.”

- 4.9 PW5 in response to a question put to him by Mr. Yambwa in cross examination denied being told by the accused that the accused was at Kamilambo village with his in-law Esther Shabeta. The accused’s warn and caution statement was not produced or referred to in cross examination to show that the details of the exact place and the person he was staying on the material day was given to the police. The accused’s evidence on the address of his alibi and the person he was staying with only appears at trial. Moreover, it was not shown that during the period in issue the accused was incapable of leaving Mumbwa and travelling to Lukata village. In other words, it was not shown that he had no opportunity to commit the crime during that period. It was not made to appear that the accused was in some kind of confinement in Mumbwa such that he could not travel out of Mumbwa during the whole of that period. I ground my stance on the case of **Valentine Shula Musakanya v the Attorney General**¹³ where it was held that:

“Unless a detainee is able to adduce credible evidence of alibi covering the whole of the period stated in the grounds, he cannot be said to have put forward an alibi.”

- 4.10 I am of the considered view that alibi raised by accused cannot insulate him from the possible commission of the offence in issue.
- 4.11 Of the four witnesses that gave evidence connecting the accused to the commission of the offence, only PW1 was shown to have a

possible bias against the accused. There was nothing raised against PW2, PW3 and PW4 to have a motive to falsely implicate the accused. I find their evidence to be credible. The issue of them being related to the deceased alone does not make their evidence less credible. In any case, PW2 is also closely related to the accused.

- 4.12 In the case cited by the prosecution of **Yokonia Mwale v The People** (supra) it was held, *inter alia*, that a witness should not be said to be a witness with an interest to serve merely because they are related to the victim firms up my position. It was the position of the Supreme Court in that case that a conviction would be safe if based on uncorroborated evidence of witnesses who are friends and relatives of the deceased or the victim provided that on the evidence before court, those witnesses could not be said to have had a bias or motive to falsely implicate the accused, or any other interest of their own to serve. That, what is key is for the Court to satisfy itself that there was no danger for false implication. Further, there was also no evidence to show that the deceased had a motive of his own to have mentioned the accused as the assailant to PW1 and PW2 separately. In fact, the deceased is said to have lived for about three months after the hacking before eventually dying from the consequential complications. I must pause here to just condemn the behavior of the dealing officer in this matter, PW6, for failing to be assertive in the matter to record a statement from the deceased or even to see the deceased before his death for a period of about three months to the death of the deceased. The dealing officer in this matter was aware of the serious injury suffered by the deceased and was even seeking to arrest the accused for the offence of unlawful wounding. If peradventure, something had happened to PW2 making him unavailable to testify and corroborate the evidence of PW1 and also if the accused did not reveal to PW3 in the presence of PW4 what he did, the case would have suffered a

serious blow when that could have been taken care of by visiting the victim and recording a statement from him. This level of indifference is appalling to say the least.

- 4.13 However, taking into account the totality of the evidence adduced by the prosecution and having established that the accused's *alibi* has failed, I find that the accused is linked to the death of Moffat Munambwili. Although the evidence of PW1 and PW2 linking the accused to the offence falls in the realm of hearsay evidence, I find their evidence admissible under the principle of *res gestae*. In the case of **Edward Sinyama v the People**¹⁴ the Supreme Court dealt with the principle of *res gestae* and held, *inter alia*, as follows:

“We have considered the submissions. The issue of res gestae has been considered by our courts in a number of cases, the leading one at the High Court level being that of The People v John Nguni [1] which we approved in Chisoni Banda v The People [2]. We have also considered the res gestae principle as elaborated in cases like Ratten v R. [3] and R. v Andrews [4] and the discussion to be found in paras.11-23 to 11-25 of Archbold Criminal Pleading, Evidence and Practice, 43rd ed. It is apparent from the authorities that the test of admissibility is not that the statement must have been made in conditions of the exact contemporaneity as part of the transaction or event causing harm, as argued by Mr Mwanamwambwa. It is also not correct that a statement will be ineligible to be treated as part of the res gestae if a question has been asked and the victim has replied or if the victim has run for half a kilometre to make the report. If the statement has otherwise been made in conditions of approximate, though not exact, contemporaneity by a person so intensely involved and so in the throes of the

event that there is no opportunity for concoction or distortion to the disadvantage of the defendant or the advantage of the maker, then the true test and the primary concern of the Court must be whether the possibility of concoction or distortion should actually be disregarded in the particular case. The possibility has to be considered against the circumstances in which the statement was made. In the case at hand, the event was certainly unusual or dramatic or traumatic.

When the deceased rushed back to her uncle's place and explained what had just happened, her statement was sufficiently spontaneous and the time factor involved was short enough to have enabled any court to find that the deceased did not have any real opportunity for reasoned reflection. The evidence speaks for itself and we find that the deceased made explanation, in answer to the inquiry by concerned relatives, while labouring under the compelling pressure of the event and as part of the event. It follows that we do not uphold the ground of appeal in this respect.”

4.14 Further, **Blacks’ Law Dictionary, 11th Edition**¹, states thus on the ambit of *res gestae*:

“The res gestae embraces not only the actual facts of the transaction and the circumstances surrounding it, but the matters immediately antecedent to and having a direct causal connection with it, as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence.”

4.15 I also found useful resource on the application of the principle of *res gestae* in **Archbold, Criminal Pleading, Evidence and**

Practice² at pages 1373 to 1374, paragraph 11-78 stating as follows:

“The House of Lords in R. v. Andrews (D.) [1987] A.C. 281, applied the decision in Ratten. Lord Ackner, with whose speech the remainder of their Lordships concurred, having reviewed the authorities, summarised the position which confronts the trial judge when faced in a criminal case with an application under the res gestae doctrine to admit evidence of statements, with a view to establishing the truth of some fact thus narrated such evidence being truly categorized as ‘hearsay evidence’”

1. *The primary question which the judge must ask himself is – can the possibility of concoction or distortion be disregarded?*
2. *To answer that question the judge must first consider the circumstances in which the particular statement was made, in order to satisfy himself that the event was so unusual or startling or dramatic as to dominate the thoughts of the victim, so that his utterance was an instinctive reaction to that event thus giving no real opportunity for reasoned reflection. In such a situation the judge would be entitled to conclude that the involvement or the pressure of the event would exclude the possibility of concoction or distortion, providing that the statement was made in conditions of approximate but not exact contemporaneity.*
3. *In order for the statement to be sufficiently ‘spontaneous’ it must be so closely associated with the event which has excited the statement, that it can be fairly stated that the mind of the*

declarant was still dominated by the event. Thus the judge must be satisfied that the event, which provided the trigger mechanism for the statement, was still operating. The fact that the statement was made in answer to a question is but one factor to consider under this heading.

- 4. Quite apart from the time factor, there may be special features in the case, which relate to the possibility of concoction or distortion.... The judge must be satisfied that the circumstances were such that having regard to the special feature of malice there was no possibility of any concoction or distortion to the advantage of the maker or the disadvantage of the accused.*
- 5. As to the possibility of error in the facts narrated in the statement, if only the ordinary fallibility of human recollection its relied upon, this goes to the weight to be attached to and not to the admissibility of the statement and is therefore a matter for the jury. However, here again there may be special features that may give raise to the possibility of error. In the instant case there was evidence that the deceased had drank in excess.... Another example would be where the identification was made in circumstances of particular difficulty or where the declarant suffered from defective eye sight. In such circumstances the trial judge must consider whether he can exclude the possibility of error”*

His Lordship added that once the trial judge had ruled that the statement was admissible it was his duty to make it clear to the jury that it was for them to decide what was said and to be sure that the witnesses were

not mistaken in what they believed had been said to them. Further, they must be satisfied that the declarant did not concoct or distort to his advantage or disadvantage of the accused the statement relied upon and where there was material to raise the issue, that he was not actuated by any malice ill will. Where there were special features that bear on the possibility of mistake then the jury's attention must be invited to those matters."

I have taken into account the circumstances under which the deceased made a statement to PW1 and PW2 and I am satisfied that there was no possibility of any concoction or distortion to the advantage of the maker or the disadvantage of the accused. The circumstances show that deceased made the statement to PW1 which he repeated to PW2 when asked by PW2 on what happened, the event, which provided the trigger mechanism for the statement was still operating him. The event was certainly unusual and traumatic and the statement was made in conditions of approximate, though not exact, contemporaneity.

- 4.16 As regards the malice aforethought, I am of the view that the nature of the injury inflicted proves malice aforethought as death was likely result of such injury. The case of **The People v. Njovu** (supra) is very instructive to that effect. Based on the evidence adduced herein, I am satisfied that the prosecution has proved the case of murder against the accused and I accordingly find him guilty of the offence of murder contrary to **section 200 of the Penal Code**¹. I consequently, convict the accused accordingly of the subject offence.

Delivered at Lusaka on the 2nd September, 2025

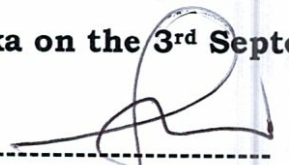
Lastone Mwanabo
HIGH COURT JUDGE

not mistaken in what they believed had been said to them. Further, they must be satisfied that the declarant did not concoct or distort to his advantage or disadvantage of the accused the statement relied upon and where there was material to raise the issue, that he was not actuated by any malice ill will. Where there were special features that bear on the possibility of mistake then the jury's attention must be invited to those matters."

I have taken into account the circumstances under which the deceased made a statement to PW1 and PW2 and I am satisfied that there was no possibility of any concoction or distortion to the advantage of the maker or the disadvantage of the accused. The circumstances show that deceased made the statement to PW1 which he repeated to PW2 when asked by PW2 on what happened, the event, which provided the trigger mechanism for the statement was still operating him. The event was certainly unusual and traumatic and the statement was made in conditions of approximate, though not exact, contemporaneity.

4.16 As regards the malice aforethought, I am of the view that the nature of the injury inflicted proves malice aforethought as death was likely result of such injury. The case of **The People v. Njovu** (supra) is very instructive to that effect. Based on the evidence adduced herein, I am satisfied that the prosecution has proved the case of murder against the accused and I accordingly find him guilty of the offence of murder contrary to **section 200 of the Penal Code**¹. I consequently, convict the accused accordingly of the subject offence.

Delivered at Lusaka on the 3rd September, 2025



**Lastone Mwanabo
HIGH COURT JUDGE**