

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

HP/268/2025

BETWEEN:

THE PEOPLE

V

EDWIN DONACIANI MASANSA

Before: Hon. Mr. Justice L. Mwanabo on 2ND 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. *Jackson Sakala v The People* (SCZ 60/2021)
3. *Mugala v The People* (1975) ZR 282
4. *Abraham Sinkamba v The People* CAZ App No. 70 of 2022
5. *Winfred Sakala v The People* (1987) ZR 23 (SC)
6. *Steward Mudenda and Another v The People* Appeal No. 142, 143/2021
7. *James Kundu v The People* SCZ 235/2017
8. *The People v Fariiss Mwaanga* (2018) 2 ZR 106
9. *Kenneth Mtonga and Another v The People* (2000) ZR 33
10. *Darius Chanda Nkole and 2 Others v The People* Selected Judgment No. 8 of 2019 (Appeal No. 230, 231, 232/2017)
11. *R v Aves* [1950] 2 ALL ER 330
12. *Abedinegal Kapesh and Best Kanyakula v The People* Selected Judgment No. 35 of 2017
13. *Boswell Kapepe v The People* SCZ Appeal No. 45/2017

Legislation referred to:

1. *The Penal Code, Chapter 87 of the Laws of Zambia*
2. *The Criminal Procedure Code, Chapter 88 of the Laws of Zambia*
3. *The Penal Code (Amendment) Act, 2022*
4. *The Firearm Act, Chapter 110 of the Laws of Zambia*

Other Materials referred to:

1. *Simon E. Kulusika, Criminal Law in Zambia: Doctrine Theory and Practice (Chribwa Publishers, 2020)*

1.0 INTRODUCTION

1.1 The accused herein stands charged with three counts of AGGRAVATED ROBBERY contrary to **Section 294 (1) of the Penal Code**¹. The particulars of the offence are that:

Count One

EDWIN DONACIANI MASANSA on the 2nd day of December, 2024 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together with other persons unknown, did steal one Techno Spark 20 phone valued at K3,500.00 and cash money amounting to K15,000.00 altogether valued at K18,500.00 the property of THEONESS HAMAMNS and at immediately before or immediately after the time of such stealing did use or threatened to use actual violence on THEONESS HAMAMNS in order to obtain or retain the things stolen or to prevent or overcome resistance to its being stolen or retained.

Count Two

EDWIN DONACIANI MASANSA on the 2nd day of December, 2024 at Lusaka in the Lusaka District of Lusaka Province of the Republic of Zambia, jointly and whilst acting together with other persons unknown, did steal one Techno Pop 9 phone valued at

K2,500.00 the property of RACHEAL NSHIMWE and at immediately before or immediately after the time of such stealing did use or threatened to use actual violence on RACHEAL NSHIMWE in order to obtain or retain the things stolen or to prevent or overcome resistance to its being stolen or retained.

Count Three

EDWIN DONACIANA MASANSA on the 2nd day of December, 2024 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together with other persons unknown, did steal one Celus phone valued at K250.00 the property of EMIRIAH KALONGA and at immediately before or immediately after the time of such stealing did use or threatened to use actual violence on EMIRIAH KALONGA in order to obtain or retain the things stolen or prevent or overcome resistance to its being stolen or retained.

The accused pleaded not guilty to all three counts.

- 1.2 I warn myself that the Prosecution bears the burden of proving all the elements of the offence of Aggravated Robbery which the accused stands charged beyond reasonable doubt. 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 the accused must be given the benefit of that doubt and must be acquitted. I am fortified by the case of **Mwewa Murono v. The People**¹, which gives useful guidance on the burden of proof resting on the prosecution.

2.0 Evidence and Submissions by the Prosecution

- 2.1 The Prosecution called three witnesses who adduced evidence relating to the alleged offence. I will not give a verbatim account of this evidence but will simply give a summarised version.
- 2.2 PW1 was Rachael Nshimwe, the 1st complainant. According to her evidence in chief, on 2nd December, 2024 around 15:00 hours,

she was in the sitting room while her children were outside the house. PW1 then saw six people through the window enter the gate. The six men went inside the house with her children. The men told PW1 that they were there for investigations because they heard that they deal in cocaine. PW1 responded that she did not know cocaine and one of the men got her Techno Pop 9 phone valued at K2,500.00.

- 2.3 She narrated that the men asked where PW1's husband was and she told them that he was not around, although he was sleeping in the bedroom. PW1 told the court that some of the men were in the kitchen with the children and others in the bedroom with her husband. That the ones who went in the bedroom informed the others in English that PW1's husband was around and that PW1 was lying.
- 2.4 The assailants then took everyone in the bedroom where they started searching and asked PW1's husband where the money was. According to PW1, there were three men in the bedroom and the one who was speaking to her husband was the boss. When PW1's husband said that there was no money, he was taken in the passage where he was beaten. It was further testified that two remained in the bedroom and the others were in the other rooms. The men proceeded to search in the bedroom and one of them got a bag with K15,000.00 cash.
- 2.5 PW1 described the one who got the bag as tall with a bald head and a defective eye. When PW1 asked the men to give her the bag since they came for cocaine, one of the men pointed a gun at her and asked her whether she was ready to die. As a result, PW1 sat down. It was PW1's narration that as the assailants were beating her husband, she heard voices outside saying, **"Police, Police!"**
- 2.6 She stated that the men then left the house and she saw one of the men attempting to climb the wall fence. PW1 tried to grab his leg but he overpowered her. However, the Police managed to apprehend the man who jumped over the wall fence. The Police

- asked PW1 to identify the man who jumped over the wall fence and she did. She described the man with a bald head and a defective right eye. After some time, PW1 was called by the Police to attend an identification Parade where she identified the accused among the eight people who were paraded.
- 2.7 PW1 informed the Court that her phone and the bag that contained the K15,000.00 were not recovered. Only the phone for Emiriah Kalonga was recovered.
- 2.8 Under XXN by Mr. Matende, PW1 explained that the people started shouting outside the house after 25 minutes. She clarified that the people who were shouting were the surrounding neighbours. However, PW1 could not inform the Court how many these people were. When asked how many people were tall and had a bald head, PW1 insisted that the accused was the only person she saw.
- 2.9 PW1 confirmed that she did not see the person who jumped over the wall fence being apprehended. She also confirmed that she did not tell the Court the type of clothes the man who was arrested was wearing. PW1 also confirmed that the bag with K15,000.00 and the Techno Pop 9 phone were not recovered.
- 2.10 PW1 admitted that she did not tell the Court the person who told her that the small phone was recovered and that she was not there when the same phone was recovered. When asked whether she went outside on her own after the alleged attack, PW1 indicated that she was called by the Police.
- 2.11 Under further cross examination by Mr. Kangwa, PW1 described the gun that was held during the incident as a pistol. PW1 also admitted that she did not bring any medical report over her allegation that someone poured hot water on her. She confirmed that she saw the six men for the first time.
- 2.12 PW2 was Theoness Hamamns, the 2nd Complainant and PW1's husband. He testified that he was asleep when six men entered the bedroom with his wife, children and employee. One of the men

who he described as tall with a bald head and defective eye asked him what his occupation was and he responded that he was a driver. The men then asked for money and one of the men who was described as short got PW2's Techno phone valued at K3,500.00.

- 2.13 When PW2 said he did not have money, one of the men who was dark, tall and putting on a hat said, ***“boss do you hear what this person is saying? It is like he is telling us what to do.”*** It was testified that person who was being referred to as the boss had a haircut and with an eye that did not look original. He identified the accused as the person who was referred to as boss. PW2 further testified that the accused then grabbed him and took him to the passage. His hands and legs were then tied and a cloth was put in his mouth. As a result of the beating, PW2 lost consciousness.
- 2.14 After PW2 regained consciousness, he heard some noise outside. He managed to untie himself and when he went outside, he found that one of the men had been apprehended by the Police. PW2 identified the accused as the person who was referred to as boss. According to PW2, after going to the Police they went to the clinic and went back home.
- 2.15 Under XXN by Mr. Matende, PW2 stated that two of the men took him to the corridor and four remained in the bedroom. He confirmed that he could not manage to talk when the men tied him and put a cloth in his mouth. PW2 clarified that he started shouting before the men started beating him and that he could not see his wife in the bedroom. PW2 confirmed that he did not bring to court any document from the clinic. He also confirmed that he did not tell the Court how each of the six men looked like because he could not see what each of them was wearing.
- 2.16 In further XXN, PW2 could not confirm whether it was the Police or community that apprehended one of the alleged assailants. He indicated that the man who was arrested could not be said to

have been a passer-by because he had seen him in the house. PW2 stated that he only saw the man who was apprehended at the Barlastone Police station from the time of the incident. Mr. Matende challenged PW2's testimony because under evidence in chief he had indicated that after untying himself he went outside and found the Police had apprehended one of the men.

- 2.17 In further XXN, PW2 indicated that he did not see the K15,000.00 cash money being taken but his wife did. PW2 admitted not showing the Court that indeed he had that money. He also confirmed that the Police did not find his phone and money. Lastly, when PW2 was asked by Mr. Kangwa why he did not tell the Court what he told the Police that his wife went to join the fight and she fell down leading her back and buttocks being burnt, his response was that what he said was the truth.
- 2.18 Detective Constable Mendai Simasiku was PW3, the dealing officer. He testified that on 2nd December, 2024, he reported for work at Barlastone Police as Chief Investigation Officer in charge of crime. He narrated that he received a report around 14:00 hours that a nearby house about 20 metres from the Police Post was under attack. Himself and other Police Officers went to the house which was a walkable distance.
- 2.19 PW3 said that he saw about seven people jumping off the wall fence. According to PW3, he and his colleague managed to apprehend one of them, who happened to have been the accused, while the other colleagues chased after the others. PW3 testified that his colleagues who chased after the other men came back and informed him that they could not apprehend the other men as it was a bushy area.
- 2.20 Before going back to the Police station, PW3 called the occupant of the house to come out. Upon arrival the complainants, Theoness Hamamns (PW2) and Rachel Nshimwe (PW1), were able to identify the suspect he apprehended. That upon seeing the

accused who was apprehended, PW1 stated that the accused was the one the others were calling boss.

- 2.21 PW3 further testified that after that they proceeded to the police post and PW1 and PW2 gave formal complaints. He said that he later searched the accused and found one Celus phone. The accused was asked who the owner of the phone was but he was unable to account for the phone and show proof that the phone was his. PW3 then put the accused in police custody. From PW3's investigations he discovered that the phone belonged to Emiriah Kalonga, who lived in the house that was attacked and that the accused was a Tanzanian national.
- 2.22 After administering a warn and caution statement to the accused in English, the accused voluntary and freely denied the charge. PW3 said that the Celus phone was identified by Emiriah Kalonga when she went to the Police Station. The Celus phone was produced and marked as "**P1**". It was PW3's testimony that Emiriah has since relocated to a refugee camp in Angola. PW3 was able to positively identify the accused as the person he apprehended after jumping the wall fence at the time of the incident.
- 2.23 Under XXN by Mr. Yambwa, PW3 agreed that Emiriah, the owner of the Celus phone, did not come before Court. He indicated that he was not aware that PW1 and PW2 did not identify the Celus phone in court. When asked whether Emiriah showed him any receipt to prove that the phone belonged to her, PW3 indicated that she was able to identify the phone.
- 2.24 PW3 was further asked whether he had opened the Celus phone to see if it had a sim card and whether he subjected it to sim card identification. PW3 agreed that he did not present a sim card identification report before Court. Further, PW3 admitted that he did not tell the Court what number Emiriah told him was in the phone.

- 2.25 When asked whether he found people at the house that was attacked, PW3 said that he did not. He agreed that he would not agree if someone said people gathered and were shouting police. PW3 confirmed that when they arrived, they surrounded the wall fence and that there was no witness who confirmed that someone jumped on the wall fence and that he apprehended the accused. According to PW3, people were minding their business in the tarred road. However, when asked whether people were passing, he changed his statement and said that the police presence started attracting people.
- 2.26 PW3 confirmed under further XXN that he apprehended the accused after he jumped the wall fence. He clarified that the tarred road was by the side while the gravel road was in front of the house and the other side was a bush. He confirmed that when apprehending the accused, PW1 and PW2 were inside the wall fence. PW3 told the court that he was informed by PW1 and PW2 that it was their first time seeing the accused.
- 2.27 PW3 revealed that he came to learn that it was a group that stole from the house and that the money and Techno phone were never recovered. He denied that the accused was just passing by at the time of the incident. There was no RXN and that marked the close of the Prosecution's case.
- 2.28 The Prosecution filed written submissions on 29th August, 2025. It was submitted that the Prosecution has through the witnesses proved the case against the accused beyond all reasonable doubt as set out in the case of **Mwewa Muroso v The People**¹.
- 2.29 It was further submitted that PW1 and PW2 gave evidence that established the elements of the offence of Aggravated Robbery as set out in **Section 294(1) of the Penal Code**¹. It was contended that on the fateful day, the assailants threatened PW1, got her phone and started searching the rooms until they pounced on PW2 who was resting in his bedroom. Further, that PW1 stated that she could not miss the identity of the accused as the one

who appeared to be the boss and was giving instructions to his group had a defective right eye.

- 2.30 The Prosecution went on to point out that PW3 stated that he together with other officers apprehended the accused as he was jumping out of the wall fence in question. It was posited that both PW1 identified the accused as the one who entered their house, attacked and gave instructions and PW2 also identified the accused as the one who together with others tied him in the passage, put some cloth in his mouth and started beating him.
- 2.31 The Prosecution asserted that the accused was apprehended within the vicinity and was identified by PW1 at the scene and Police Station which rules out any honest mistaken identity. Additionally, it was submitted that according to PW3, the accused was found with **P1** (Celus Phone) when he was searched. Furthermore, that PW3 informed the Court that Emiriah, the victim in count three, identified the phone as hers despite not coming to identify it in court as she relocated to Angola. According to the Prosecution, the cardinal point is that the accused person failed to account for the phone. I was urged not believe the version of the accused as it was misleading.
- 2.32 The second limb of the Prosecution's submissions focused on the odd coincidence. It was submitted that it is trite law that odd coincidences if unexplained can amount to corroborative or circumstantial evidence against the accused. The case of **Jackson Sakala v The People²** was adverted to in buttressing the point.
- 2.33 The Prosecution submitted that it was odd how the accused alleges to have been a passer-by at the time he was apprehended when there were other people on the road. Further, that it is odd how the accused who stated that it was his first time being in Barlastone could estimate the distance where he was going to get money from Mr. Mweene as being near from where he was apprehended from. It was contended that the accused failed to

call the same Mweene to be his witness if at all his version is truthful. Additionally, that he did not mention that he possessed a liquor license to authorise him to conduct the business he allegedly conducted. The Prosecution submitted that in the absence of any reasonable explanation, the Court should find the accused guilty of the offences charged against and convict him accordingly.

- 2.34 Lastly, the Prosecution went on to argue on the elements of the offence of Aggravated Robbery. **Section 294(1) of the Penal Code**¹ was reproduced. I was referred to cases of **Mugala v The People**³ and **Abraham Sinkamba v The People**⁴ at page J.12, where it was enunciated that to prove the offence of aggravated robbery, violence must be used to obtain the thing stolen.
- 2.35 Finally, it was submitted that the accused acted together with others unknown for a common purpose when they attacked and stole from PW1 and PW2. The case of **Winfred Sakala v The People**⁵ was called to aid, where the Supreme Court held, *inter alia*, that:

“Section 22 of the Penal Code clearly contemplates that liability will attach to an adventurer for the criminal acts of his confederates, which will be considered to be his acts also, if what those confederates have done is a probable consequence of the prosecution of the unlawful common design.”

3.0 Evidence and Submission by the Defence

- 3.1 The accused was found with a case to answer and put on his defence pursuant to **Section 291 of the Criminal Procedure Code**². He gave sworn evidence but did not call any witnesses. His defence was that on 2nd December, 2024, he was at his place in Zanimuone, where he was squatting, around 13:00 hours. He then left for Barlastone to collect some money for his business.

The accused testified that he was in the business of supplying liquor (whiskey).

- 3.2 It was the accused's further testimony that he arrived in Barlastone in a street he could not recall and was approached by two vehicles. One vehicle was a black Mark X and the other a blue Honda Fit. The accused said that the two vehicles went in front of him and suddenly stopped. According to the accused, more than six guys approached him and asked him a question in a language he could not understand. When he told them that he could only understand English, one of the six people who was tall, dark and huge told him that he was the person they were looking for. The accused was told that there was a robbery and he denied being part of it.
- 3.3 Further, the accused narrated that the men had sticks and weapons and he asked them not to beat him but instead took him to the police. He was put in a boot of one of the cars and he ended up finding himself at Barlastone Police. He testified that he was told that there was a robbery and he denied being part of it. The accused was later taken to Matero Police. He insisted that he was in Barlastone to collect money from Mweene. That he was in a business of supplying whiskey which he orders from Nakonde.
- 3.4 Under XXN, the accused agreed that he did not show a Liquor License to the Court. He also confirmed that he did not tell the Court how he moved from Zanimuone to Barlastone but stated that he used a bus. He indicated that Mweene's place and to where he was approached was about 7 to 10 minutes away. He also indicated that he told the police that he was going to see Mweene. Further, the accused agreed that it would have been helpful to call Mweene as a witness. It was confirmed by the accused that he did not tell the Court in his evidence in chief that he was approached by two vehicles in a tarred road. The accused indicated that it was his first time in Barlastone when he was apprehended. He denied being the person who was referred to as

boss and the Celus phone being found with him. According to the accused, the phone was just brought and shown to him by PW3. That marked the close of the Defence's case.

3.5 No final submissions were submitted by the Defence.

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 three counts of aggravated robbery contrary to **Section 294 (1) of the Penal Code**¹. The offence of aggravated robbery is found in **Section 294 (1) of the Penal Code**¹. This section provides as follows:

“294. (1) Any person who, being armed with any offensive weapon or instrument, or being together with one person or more, steals something, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony of aggravated robbery and is liable on conviction to imprisonment for life, and, notwithstanding subsection (2) of section twenty-six, shall be sentenced to imprisonment for a period of not less than fifteen years.”

4.2 It is evident from the above provision that an offence becomes aggravated robbery when a person is armed with an offensive weapon or instrument during the robbery or when more than one person steal something, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained. **Section 4 of the Penal Code**¹ defines an offensive weapon as follows:

“Offensive weapon means any article made or adapted for use for causing or threatening injury to the person, or intended by the person in question for such use, and includes any knife, spear, arrow, stone, axe, axe handle, stick or similar article.”

4.3 However, **Sections 294 (2) (as amendment by Act No. 23 of 2022³) and 294 (3) of the Penal Code** provide as follows:

“(2) Notwithstanding the provisions of subsection (1), the penalty for the felony of aggravated robbery under subsection (1) shall be life imprisonment-

(a) Where the offensive weapon or instrument is a firearm unless the Court is satisfied by the evidence in the case that the accused person was not armed with a firearm.”

(i) That he was not aware that any of the other persons involved in committing the offence was so armed; or

(ii) That he dissociated himself from the offence immediately on becoming so aware;

(b) Where the offensive weapon or instrument is not a firearm and grievous harm is done to any person in the course of the offence, unless the court is satisfied by the evidence in the case that the accused person neither contemplated nor could reasonably have contemplated that grievous harm might be inflicted in the course of the offence.

(3) In this section “Firearm” has the meaning assigned to it in section two of the Firearm Act.”

4.4 **Section 2 (a) of the Firearm Act⁴** defines firearm as follows:

“(a) Any lethal barreled weapon of any description from which any shot, bullet, bolt or other missile can be discharged or which can be adapted for the discharge of any such shot, bullet, bolt or other missile.”

4.5 It follows from the above provisions of the law that aggravated robbery can be classified into three categories:

(a) Where (i) any offensive weapon is used or threatened to be used, (ii) any offensive instrument is used or threatened to be used, or (iii) a person being together with one person or more others.

(b) Where the offensive weapon used is a fireman, as defined in **Section 2 of the Firearms Act**⁴; and

(c) Where the offensive weapon or instrument is not a fireman and grievous harm is done to any person in the course of the commission of the offence.

4.6 I have noted from the Information that the accused is charged with aggravated robbery contrary to **Section 294 (1) of the Penal Code**¹ which puts the offence under category (a) above. PW1 testified that one of the assailants pointed a gun at her. This gun was not found at the scene nor presented before court. There was no evidence from a ballistic expert to establish that what PW1 saw was indeed a firearm which falls under **Section 2 of the Firearms Act**⁴. Further, in the particulars of offence for all the three counts, there is no mention of use of firearm to bring the offence under **Section 294 (2) of the Penal Code**. I am fortified in this by the case **Steward Mudenda and Another v The People**⁶.

4.7 In the case of **Mugala v The People** (*supra*), which was cited by the Prosecution, it was held that:

“To prove a charge of aggravated robbery in terms of section 294(1) of the Penal Code, Cap 87, it is

necessary for the prosecution to show that violence was used in order to obtain or retain the thing stolen.”

4.8 In the case of **James Kundu v The People**⁷, the Supreme Court considered the relationship between the violence inflicted on the victim and the robbery. The apex Court guided as follows:

“The offence of aggravated robbery requires proof that actual violence or threats of it was used immediately before, during or immediately after the robbery to any person or property to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained as was held in the case of Mugala v The People.”

4.9 Further, the learned author of **Criminal Law in Zambia**¹ state at **page 275** as follows:

“In order to convict an accused person under s. 294, the elements of theft must be established; the elements of robbery under Section 292 must be proved beyond reasonable doubt in addition to either: (i) the accused was armed with an offensive weapon or instrument, or (ii) the accused with one person or more, whether or not armed with any offensive weapon or instrument ... steals anything.”

4.10 Mumba, J. in the case of **The People v Fariiss Mwaanga**⁸ summarised the elements of aggravated robbery at page 108 as follows:

- (a) The accused who, being armed with any offensive weapon or instrument or being in a group with another person or persons;***
- (b) did steal anything capable of being stolen;***
- (c) with an intention to deprive the owner of the thing stolen permanently of it; and***
- (d) at or immediately before or immediately after the time of stealing the thing, used or threatened to use***

actual violence to the complainant or property to obtain or retain the thing stolen or to prevent or to overcome resistance to it being stolen or retained.

It was further pointed out in the above case at page 109 that, the act of stealing is actually accomplished in that the property is taken from the person who was in possession of it, and the owner is deprived permanently.

- 4.11 It is important to determine whether the above elements can be applied in *casu*. According to the evidence of the Prosecution, the accused was in the company of other men who entered into PW1's and PW2's house and used violence in order to obtain the things that were stolen from them. The only offensive weapon that was mentioned through the evidence of PW1 was a gun which looked ***"like a pistol"***. However, even when there was no offensive weapon or instrument it has been established that there were more than one person involved in the commission of the crime herein. Although PW1 and PW2 gave the number of the men, including the accused, as six and PW3 as seven, it is clear that there was more than one person involved. The evidence of PW1, PW2 and PW3 puts the accused at the scene of the crime. PW3 identified the accused as the person who was apprehended by PW3 while jumping the wall fence and was also identified by both PW1 and PW2 as the boss of the group that robbed them. This brings out the case from the realm of single identification. The incident occurred in broad day light and does not bring in the issue of honest mistaken identity. The description given by PW1 and PW2 of the person who was referred to as boss as tall, bald head with a 'defective' eye matches that of the accused. PW3 maintained that he apprehended the accused after he jumped the wall fence shortly after the attack and he was identified by both PW1 and PW2.

- 4.12 The words of Ngulube CJ, as he then was, on identification in the case of **Kenneth Mtonga and Another v The People**⁹ at page 36, which I find helpful were as follows:

“As the learned trial judge observed, the robbery itself took place in broad daylight. The second appellant and his co-accused were identified not by one but by three eyewitnesses. Obviously when more than one witness identifies and even if it can be said that two or more witnesses can make the same mistake, the case is nonetheless taken out of the realm of single witness identification and is on a better footing.”

- 4.13 Further, though no medical reports were presented to prove any injuries suffered by PW1 and PW2 this does not rule out the fact that violence and threats were used. Moreover, the Supreme Court in the case of **Darius Chanda Nkole and 2 Others v The People**¹⁰ at J.25, held that:

“In any case, there is no law which requires that to prove aggravated robbery, a medical report must be produced.”

- 4.14 I also note that the Celus phone that belonged to Emiriah Kalonga was recovered. This does not remove the fact that there was a crime that was already committed as the phone was said to have been found with the accused. The Techno Spark 20 and the K15,000.00 that belonged to PW2 as well as the Techno Pop that belonged to PW1 were not recovered. I do acknowledge that no evidence was laid to prove ownership of the phone said to be for Emeriah. Furthermore, Emiriah Kalonga was not brought before court to lay evidence that the Celus phone really belonged to her and to also give her side of the story. However, the fact of phones belonging to the Emiriah, PW1 and PW2 being stolen remained unshaken. I do note also that PW1 and PW2 are husband and wife according to the evidence laid. In my considered view suspicion of concoction of the story may have arisen if they were

the only ones who testified. However, the testimony of PW3, is that he went to the scene and apprehended accused after he jumped the wall fence. The evidence of PW3 corroborates that of PW1 and PW2.

4.15 The accused's explanation is that he went to collect money from Mweene because he is in liquor supplying business. He also testified that he was in Barlastone for the first time when he was just approached by six men with two vehicles who accused him of being involved in a robbery. He denied that he was found with the Celus phone. However, no liquor license was adduced by the accused and Mweene was not called to testify to support the accused persons claim. No evidence was adduced by the accused to support his testimony that he supplies liquor and was in the area to collect his money for the supply. The issue of being owed money and the existence of the person called Mweene staying in Barlastone was not supported by any evidence. In the circumstances, this court finds the defence evidence advanced by the accused to explain what he was doing in the area to be wanting. The odd coincidence of the commission of the crime in the area and the accused being apprehended in the same area, where according to him it his was the first time of being in the area, brings the accused within commission of the offence herein when assessed together with the evidence by the prosecution, putting the accused at the scene of the crime. The case of **Jackson Sakala v The People** (supra) cited by the prosecution affirms the foregoing conclusion.

4.16 It was testified by PW1 that the accused was in the company of other men and that force was used to grab the phones from the complainants (PW1, PW2 and Emiriah Kalonga). Additionally, that the bag containing the K15,000.00 which was in the bedroom was also stolen. Further, PW2 was beaten when taken to the passage. This establishes the issue that there was common

purpose among the men who attacked PW1 and PW2. **Section 22 of the Penal Code**¹ provides as follows:

“When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”

- 4.17 The Supreme Court in the case of **Abedinegal Kapesh and Best Kanyakula v The People**¹² in considering whether there was common purpose by the two appellants at pages 1230 and 1231 held as follows:

“the formation of a common purpose does not have to be by express agreement or otherwise premeditated; it is sufficient if two or more persons join in the prosecution of a purpose which is common to him and others, and each does so with the intention of participating in the prosecution with the other or others.”

- 4.18 In the Supreme Court ruling of **Boswell Kapepe v The People**¹³, the apex Court guided on making a conviction under **Section 294 (1) of the Penal Code** as follows:

“Under this section a person found guilty of the offence, which requires the use of an offensive weapon or instrument or acting with one or more other persons, is liable on conviction to imprisonment for life.” (underlined for emphasis only)

- 4.19 I am satisfied from the evidence laid before me that the above passage applies to the case in issue. I find that there was common purpose between the accused herein and the men that attacked PW1, PW2 and Emiriah Kalonga and stole their Techno 20, K15,000.00 cash, Techno Pop 9 phone and Celus phone using

violence. The property referred to in Count 1, 2 and 3 were taken when the assailants entered the house with the children who were outside. Threats were used to get the property in question from all the three complainants and PW2 was later beaten after the three phones were grabbed from them. The bag with the K15,000.00 was taken after it was found by one of the assailants. I find that before, during and after the commission of the offence, actual violence was used in order to overcome resistance to the property in issue being stolen. Actual violence was also used by the assailants on PW2 after stealing his phone and K15,000.00.

4.20 On the whole evidence, I am satisfied that the Prosecution has established beyond reasonable doubt that the accused jointly and whilst acting together with other persons unknown did rob PW1, PW2 and Emiriah Kalonga of the items referred to in Count 1, 2 and 3 contrary to **Section 294 (1) of the Penal Code**¹. I find the accused, Edwin Donaclan Masansa, guilty on all three counts and I accordingly convict the accused on all the three counts of the subject offence.

Delivered at Lusaka on the 2nd September, 2025



Lastone Mwanabo
HIGH COURT JUDGE