

IT

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

HP/272/2025

**BETWEEN:**

**THE PEOPLE**

**V**

**PHINEAS HAMUKOLYO**

**Before: Hon. Mr. Justice L. Mwanabo on 3<sup>rd</sup> 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 Murolo v The People (2004) ZR 207*
2. *David Zulu v The People (1977) Z.R. 151*

**Legislation referred to:**

1. *The Penal Code, Chapter 87 of the Laws of Zambia*
2. *Penal Code (Amendment) Act No. 17 of 2007*

**Materials referred to:**

1. *Cross and Tapper on Evidence, 12<sup>th</sup> Edition by Collin Tapper, Oxford University Press, 2010 at page 266*

**1.0 INTRODUCTION**

- 1.1 The accused person herein stands charged with the following offences:

**Count one**

Vandalism contrary to **Section 341 D (1) (2) (a) of the Amended Act No. 17 of 2009 of the Penal Code**<sup>1</sup>. Particulars of the offence are that **PHINEAS HAMUKOLYO**, on 17<sup>th</sup> day of February, 2025 at Chirundu in the Chirundu District of the Lusaka Province of the Republic of Zambia, jointly whilst acting together with other persons unknown did vandalize a neutral cable, the property of Zambia Electricity Supply Corporation Limited a public property necessary for or incidental to the provision of supply of electricity to the public.

**Count two**

Malicious Damage to Property contrary to **Section 335 of the Penal Code**<sup>1</sup>. Particulars of the offence are that **PHINEAS HAMUKOLYO**, on the 17<sup>th</sup> day of February, 2025 at Chirundu in the Chirundu District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together with other persons unknown did damage a 70mm 2 x 4 core x 10m armored cable valued at K18,298.00, the property of **MUSIYANI SIWAKWI**.

The accused pleaded not guilty to all the two counts.

- 1.2 Let me state from the onset that, I warn myself that the Prosecution bears the burden of proving all the elements of the offences which the accused stands charged beyond reasonable doubt. The accused person, who for convenience I will refer to as **A1**, 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 A1, then he must be given the benefit of that doubt and must be acquitted. I am fortified by the case of **Mwewa Murono v. The People**<sup>1</sup>, 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 six witnesses who adduced evidence relating to the alleged offences. PW1 was Musiyani Siwakwi, the Farm Manager at Musanza Farm. He testified that on 17<sup>th</sup> February, 2025 he with other employees reported for duty at the farm. PW1 went to the Pump House in order to switch on the pump. However, he found that the armored cable measuring 10 metres was cut. PW1 together with other employees later proceeded to the transformer and discovered that it was disturbed as there was some cutting.
- 2.2 Whilst looking at the transformer, PW1 and the other employees discovered some footprints, which they followed and discovered a dead body in the grass near a tree. PW1 told the Court that the dead body was about 20 metres from the transformer. He further testified that they also discovered a 10 metre armored cable which was cut from the pump not far from the dead body. After that, PW1 called the Zesco Manager for Chirundu, Mr. Seta and Officers from Chirundu Police Station.
- 2.3 PW1 told the court that Security Guards from Zesco and the Police arrived at the farm around 10:00 hours and that they checked where the dead person was and then put him in a vehicle together with the armored cable which was cut. According to PW1, the armored cables are valued at K18,280.00.
- 2.4 Under XXN by Mr. Yambwa, PW1 confirmed that he did not see the cable being cut as it was done in the night. He stated that they only discovered in the morning. Under further cross-examination by Mr. Kangwa, PW1 admitted that the time the incident occurred was during the rainy season and that the footprints seemed to have been made in the night as the grass was down. PW1 stated that the footprints were for humans and not animal footprints. There was no re-examination by the Prosecution.

- 2.5 PW2 was Billy Mpukuta, a Security Officer from Zesco, Chirundu. His testimony was that on 17<sup>th</sup> February, 2025, he reported for work around 06:00 hours. Around 08:00 hours his Branch Manager, Mr. Seta Chabolyo went into his office and informed him that one of the transformers in Malabanyika area had been tampered with. PW1 then organised his team that included Idah Phiri (PW6), the Detective Police Officer based at Zesco and Davison Kapopo (PW5), who is the Chief Electrician. PW1 and the team drove to Chiyaba Police and picked up two Police Officers there. From there they went to Malabanyika and reached the scene around 10:00 hours.
- 2.6 When they reached Malabanyika, the transformer was inspected and the Chief Electrician, Mr. Kapopo noted that there was a cut at the transformer. Mr. Kapopo showed PW2 and the others where the transformer was tampered with. As a result of the cutting on the transformer, the surrounding area did not have power. The pieces of cable on top and at the bottom, which were given to Mr. Siwakwi where replaced with the new cable.
- 2.7 It was PW2's further testimony that they were led to the dead body, which was picked up by the Police. After that they were led to a different place where a cable was cut and was laying on the ground and the cable was picked up and put in the vehicle together with the dead body. The body was taken to Mtendere Hospital Mortuary. After that a complaint was lodged with the Police who took over the investigations. PW2 identified the cable that was cut as 5 to 6 metres with a size of 70mm x 4, black in colour with a red ribbon. He further described the cable as having yellow, blue and red and black cables inside.
- 2.8 PW2 further positively identified the black 70mm cable and the cable that was found near the body which was black in colour with 12 metres in length with a red ribbon and with blue, red, black and yellow cables inside.

- 2.9 Under XXN by Mr. Yambwa, PW2 admitted that he did not tell the Court the owner of the cables he showed the Court and that he did not differentiate the two cables he presented by name. He conceded that he did not see anyone vandalise the cable.
- 2.10 The third Prosecution witness (PW3) was Detective Constable Amon Kabwidi based at Chirundu Police Station. He testified that he reported for duty on 16<sup>th</sup> February, 2025 and received information from one of his informers that knew the whereabouts of the suspect who was with the one who died whilst they were stealing at Musanza Farm in Malabanyika Village in Kafue District. Acting on the information, PW3 set up an appointment and met the informer who showed him the house of the suspect who happens to be A1. PW3 later clarified that he met the informer on 18<sup>th</sup> February, 2025 the same day he was led to A1's house. A1 was later arrested and detained at Chirundu Police Station for further investigations. PW3 could not remember the exact date between 18<sup>th</sup> February, 2025 and 28<sup>th</sup> February, 2025 when A1 was arrested. There was no XXN.
- 2.11 PW4 was Samuel Hamwiinga, the father of the deceased, Trywell Hamwiinga. He testified that on 18<sup>th</sup> February, 2025 Phineas Hamukolyo (A1) went to his place around 18:00 to 19:00 hours. A1 found PW4's wife and asked whether PW4 was around. A1 said that he went to meet to PW4 who had a bag with him. When A1 and PW4 spoke, A1 told PW4 that his son, Trywell Hamwiinga, had been electrocuted when they were in Chiawa area. A1 told PW4 that he would leave the bag and PW4 should know what to do with it. According PW4, A1 said that he was leaving and running away and that the Police were not going to arrest him.
- 2.12 It was narrated by PW4 that the following day he checked the bag and found a phone, a knife, a razor blade, a scale and a screw-driver. PW4 gave the phone to his daughter and threw away the other items as he did not know how they were used. He testified that he then decided to make a follow-up at Zesco to find out

whether what A1 told him was true. He was given one officer to go to the mortuary where PW4 found out that truly Trywell Hamwiinga died. Trywell Hamwiinga was later buried on 20<sup>th</sup> February, 2025.

- 2.13 On 3<sup>rd</sup> March, 2025, the officers went to PW4's home with A1. He was asked whether he was Trywell Hamwiinga's father and then A1 requested that he gives him back the items he left. PW4 went to the place where he threw the items and handed them over to the Police.
- 2.14 PW4 later recalled that among the items that were in the bag were a cutter without handles. He was able to positively identify the black bag, black phone, sky blue small measuring scale, cutter without handles, two knives with blades with orange handles but failed to identify the screw-driver.
- 2.15 Under XXN by Mr. Yambwa, PW4 agreed that he did not present to the Court a signed inventory by A1 of the items that were in the bag. He confirmed that he did not have independent evidence in form of a recording to prove what A1 told him. He also confirmed that he was confused when he learnt that he had lost his son. There was no RXN.
- 2.16 PW5 was Davison Kapopo, a Zesco Electrician. He told the Court that on the day of the incident he spotted a cut cable and proceeded to remove the transformer and replaced the cable to restore power supply. He positively identified the armored cable and indicated that it was valued at K18,000.00.
- 2.17 Under XXN by Mr. Matende, PW5 confirmed that the armored cable that was cut was the type used by Zesco everywhere and that a similar cut cable would be the same to the one shown in Court. PW5 stated that he would know if the cable was replaced despite it not having any special feature. He conceded that he did not know what was used to cut the cable and agreed that the cutting would not have been done with a knife. PW5 admitted that he did not know the number of people who cut the cable. He

confirmed that he did not find anything linking the A1 except for the cut cable. PW5 told that the Court that he was not aware that Trywell Hamwiinga was electrocuted.

- 2.18 The last Prosecution witness (PW6) was Detective Inspector Idah Phiri based at Chirundu Police Station and currently attached to Zesco Security. She recalled that on 17<sup>th</sup> February, 2025, she was called by the Head of Security to inform her about the incident. PW6 narrated about what she found at the scene which I will not repeat. She interviewed A1 in connection with the two offences. A warn and caution statement was administered to A1 in Nyanja and that he freely and voluntarily denied the charge. It was testified by PW6 that before she recorded a warn and caution statement against A1, she received information through her investigations that a bag was taken to Sikonga to Trywell Hamwiinga's father. Acting on that report she proceeded to Sikonga and collected the same bag, which was kept in the bush near a grave side.
- 2.19 PW6 positively identified the following items: three cut cables (two cut short cables 420mm with 4 core cables around and 70mm armored cable), a black laptop bag, black itel phone, blue scale, three yellow trimming knives , green tester, 10 blades with orange covers inside and a metal cutter without handles. The items were produced and marked as P1 to P10, respectively.
- 2.20 Under XXN, PW6 confirmed that she got the bag from PW4. She admitted that she did not show the Court any evidence that the cutting was done by Trywell. When asked by Mr. Kangwa whether she established that tracks at the scene were for one person, PW6 indicated that it was not. PW6 conceded that no investigation was done to find out whether the same informer was part of the vandalism and that the information the informer gave was unverified. PW6 further indicated that she did not see it necessary to investigate PW4 even when he initially denied having

the bag. She confirmed that there were other suspects who were not investigated.

- 2.21 In further XXN by Mr. Yambwa, PW6 confirmed that there were no eye witnesses to the vandalism and admitted that no fingerprints were uplifted from the bag to determine who could have lifted it.
- 2.22 In RXN with Mrs. Muhambi, PW6 clarified that he did not investigate PW4 because he rarely leaves Sikonga and is a farmer. This marked the close of the Prosecution's case.
- 2.23 The prosecution filed submissions and I have duly considered and noted the contents thereof.

### **3.0 Evidence and Submission by the Defence**

- 3.1 A1 was found with a case to answer and was put on his defence pursuant to **Section 291 of the Criminal Procedure Code<sup>2</sup>**. He gave sworn evidence but did not call any witnesses. His defence was that on 17<sup>th</sup> February, 2025, he went to see his friend Trywell Hamwiinga in Chirundi in an area called Chibbaketi (River Side). He narrated that when he arrived at Trywell Hamwinnga's place around 16:00 hours he asked for money. However, Trywell responded that he did not have but if A1 could manage they could go to a place where Trywell was doing some work.
- 3.2 A1 testified that they reached the place Trywell talking about and around 18:40 hours and A1 complained of thirsty. They went into a shop and Trywell bought a drink and water for A1. According to A1, he told Trywell that what he bought him made him full and was failing lazy to walk and Trywell told him to remain there and that he would find him as the farm was near. After waiting until 20:00 hours, A1 realised that Trywell had taken long to come: he followed in the direction Trywell went around 20:00 hours. He followed a gravel road going to the farm and after walking a short distance he found four poles for electricity. He said that about 2 metres from the road, he saw a black bag beside the road and

when he checked on the electricity poles on the western side he saw someone laying on the ground. When A1 drew near he realised that it was Trywell Hamwiinga. A1 testified that he realised that Trywell was dead and was facing up. He got confused and got scared to inform the Police. He eventually decided to take the bag to Trywell's father, PW4.

- 3.3 It was A1's testimony that he checked the content of the bag before taking it to PW4. A1 narrated what happened to PW4 and PW4 told him that they should keep it between themselves. That a week after the burial of Trywell Hamwiinga, the Police followed him at his house on 28<sup>th</sup> February, 2025 and arrested him.
- 3.4 Under XXN by Mrs. Muhambi, A1 said that he knew Trywell for about a month through football. A1 indicated that he told Trywell that he would find him in the shop. He revealed that he was bought a Kung Fu drink costing K12 and a bottle of water costing K5. He further told the Court that he got very full and felt lazy to go together with Trywell after having the drink and water.
- 3.5 A1 confirmed that he did not know Malabanyika very well. He indicated that he was able to see Trywell's body despite being around 20:00 hours because there was light from the moon. On the issue of not telling anyone after finding Trywell's body, A1 indicated that it is difficult where someone dies. A1 confirmed hearing PW4's testimony. He also confirmed that the bag and the items shown in court were the ones he took to PW4. He confirmed that Trywell Hamwiinga got electrocuted. However, he denied ever being with Trywell Hamwiinga the time he was electrocuted. That marked the close of the Defence's case.
- 3.6 At the time of writing this judgment there were no submissions from the defence despite being past the deadline for filing of the submissions.

#### **4.0 Analysis and Decision**

4.1 I have considered the evidence and submission of the Prosecution and the evidence by the Defence. The accused stands charged with the offences of Vandalism and Malicious Damage to Property. The prosecution called six witnesses to support the charges against the accused.

4.2 On the charge of vandalism, the ingredients of the offence are found in the charging section itself which reads;

***“(1) Any person who for any purpose vandalises any public or private property essential for or incidental to the provision of a necessary service commits a felony.***

***(2) Where the property referred to in subsection (1) is –***

***(a) a cable, overhead line, power line, electricity pole, pylon, transformer, pole mounted substation, substation, generating station or other property essential for or incidental to the connection, installation, generation, supply or distribution or other use of electricity, notwithstanding the Electricity Act or any other written law, the offender is liable, on conviction-***

***(i) to imprisonment for a term of not less than ten years and not exceeding twenty-five years; or***

***(ii) where the vandalism causes the death of any person, to imprisonment for life.”***

**Section 341 A** defines “necessary service” as including

***“(a) any service relating to the generation, supply or distribution of electricity”.***

And “vandalise” means **“wilfully or maliciously destroying, damaging defacing, disabling, or in any way disrupting the functioning of or impairing public or private property ……….”**

- 4.3 The charge for malicious damage to property is premised on **section 335 of the Penal Code**<sup>1</sup> in the information or charge brought by the state. I have looked at the said provisions and established that currently the section has three subsections and was amended by **Act No. 17 of 2007**<sup>2</sup>. The state did not cite the amendment and did not indicate the subsection under which the accused was charged. The charge in its current form, therefore, is defective. Nevertheless, the main issue I have with the 2<sup>nd</sup> count is that the damage in issue relates to power supply cables. According to **section 341 D (1)**, vandalism includes public and private property essential or incidental to the supply of necessary service. There was no need to split the damage or vandalism of the properties in issue as they both relate to supply of electricity. Therefore, the charge under the 2<sup>nd</sup> count is bad for duplicity and is dismissed. The accused is acquitted of the same.
- 4.4 Coming back to the charge of vandalism, the summary of the prosecution evidence in support of the first count is that a neutral cable for ZESCO was cut from the transformer at Malabanyika Chiawa area and also that an armored cable for Musiyani Siwakwi connecting to the booster pump was cut. A dead body and cut armored cable were discovered not far from the disturbed transformer. The evidence linking the accused to the offence was that of PW4 the father to the deceased, Trywell Hamwiinga. He told the court that he was given a black bag by the accused who informed him that it was for his son who was electrocuted by electricity in Malabanyika where he had gone with him. The bag contained the phone for PW4's son, knives, blades, cutter and scale which were produced in court as P4 to P9. PW4, however, told the court that he did not recognize the person who left the bag for his son and did not ask for his name.
- 4.5 When put on defence the accused confirmed being the person who gave the bag to PW4 and further confirmed being in the company of the deceased and picking the bag near where the

deceased's body was lying after being electrocuted in Malabanyika area at the farm where PW1 is the farm manager. The evidence of vandalism was availed to the court and I am satisfied that the power supply cables were vandalized at a farm in Malabanyika. The damaged cables were produced in court as P1 to P3. Since the cables in issue relate to supply of necessary service, their damage creates an offence of vandalism under the subject offence that the accused faces.

- 4.6 The question to be determined is whether there is evidence to connect the accused to the vandalism in issue. The evidence availed by the state is circumstantial. The treatment of circumstantial evidence was dealt with in the case of **David Zulu v The People**<sup>2</sup>, cited by the state, that:

*“.....the possible defects in circumstantial evidence may include not only those which occur in direct evidence such as falsehood, bias or mistake on the part of witnesses, but also the effect of erroneous inference... It is therefore incumbent on a trial judge that he should guard against drawing wrong inferences from the circumstantial evidence at his disposal before he can feel safe to convict. The judge in our view must, in order to feel safe to convict, be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of cogency which can permit only of an inference of guilt.”*

- 4.7 What is not in dispute is the fact that the accused is the one who delivered the bag for Trywell Hamwiinga who was electrocuted and was found dead at the scene of the vandalism. The accused corroborated this evidence himself. I am alive to the fact that the burden of proof and indeed any conviction of an accused, after going through trial, should be based on the prosecution evidence. However, an accused's evidence favourable to the prosecution

can corroborate the prosecution evidence. I find fortification in holding this position in **Cross and Tapper on Evidence**<sup>1</sup> where it was stated that:

***“Statements intended as mitigation or exculpation in court maybe held to support the case against the maker. In R v Dossi for instance, it was held that the accused’s admission in evidence that he had platonically fondled the child who gave sworn testimony to the effect that he had indecently assaulted her could be treated as some corroboration of her statement.”***

4.8 The circumstantial evidence by the state is that the accused was in the company of the person who was electrocuted by electricity and the cables for the transformer and also for the booster pump were vandalized. The only permissible and possible conclusion to be drawn is that the electrocution of Trywell happened while he was tampering with the power cables. The evidence of the accused that at the request of Trywell he escorted him to a place where he had some piece work which happened to the same farm where the vandalism happened but that he remained at some shop after drinking water and Kung Fu drink and felt lazy walk is incredible. The drinks the accused took were supposed to give him energy as opposed to feeling lazy in the absence of evidence that there was an unusual chemical in those drinks. The piece of evidence relating to remaining at the shop appears to be an afterthought as there is no evidence that he narrated the same story when interviewed by the police.

4.9 I have considered the circumstantial evidence linking the accused to the commission of the offence and hold the view that there is enough evidence linking the accused to commission of the offence while acting with others. The circumstantial evidence has been pushed beyond the realm of conjecture and the only inference to be drawn is that the accused was in the company Trywell

Hamwiinga at Malabanyika farm to commit the offence of vandalism. The presence of the accused at the crime scene connects him to the commission of the offence pursuant to **Sections 21 and 22 of the Penal Code**<sup>1</sup> even if there is no evidence that he personally cut the cables in issue. I am satisfied that the prosecution has proven the charge against the accused of Vandalism contrary to **Section 341 D (1) (2) (a) of the Penal Code as by Amended Act No. 17 of 2009**<sup>1</sup>. I accordingly find the accused Phineas Hamukolyo guilty of the subject offence and convict him accordingly.

**Delivered at Lusaka on the 3<sup>rd</sup> September, 2025**



---

**Lastone Mwanabo**  
**HIGH COURT JUDGE**