

**IN THE HIGH COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Criminal Jurisdiction)
BETWEEN:**

HP/87/2025



TEDDY CHIKOLOMA

BEFORE THE HONOURABLE MR. JUSTICE I. M. MABBOLOBOLO IN OPEN COURT ON THE 9TH DAY OF MAY, 2025.

For the State: Mrs. Susan Mwamba Besa, Senior State Advocate – National Prosecution Authority
Ms. Sikota Mumbula, State Advocate - National Prosecution Authority

For the Defence: Mr. N. Tembo, Legal Aid Counsel- Legal Aid Board
Ms. D. Kabuka, Legal Aid Counsel – Legal Aid Board.

JUDGMENT

A. CASES REFERRED TO:

1. *Mwewa Murono v The People* (2004)ZR 207
2. *Crispin Mabvuto Banda and Andrew Tembo v The People* (2011)ZR Vol.2, 194
3. *Attorney General v Kakoma* (2008) ZR SC
4. *Tembo v The People* (1972) ZR 220 CA
5. *John Musonda Mwanamwenge v The People* (2012) ZR Vol.3 Page 1
6. *Jose Golliadi v The People* (Appeal No. 26 of 2017) (2017) ZMSC 282

B. LEGISLATION REFERRED TO:

1. *The Penal Code Chapter 87 of the Laws of Zambia*
2. *The Penal Code (Amendment) Act No. 23 of 2022 of the Laws of Zambia*
3. *The Criminal Procedure Code Chapter 88 of the Laws of Zambia*

1. **TEDDY CHIKOLOMA** (“the accused”) was charged with the offence of **Murder** contrary to **Section 200** of the **Penal Code Chapter 87** of the **Laws of Zambia**.
2. The particulars of the offence are that **TEDDY CHIKOLOMA** on the 25th day of December, 2023, at Chirundu in the Chirundu District of the Lusaka Province of the Republic of Zambia did murder **MUMBI MWANSA** (“the deceased”).
3. The accused person denied the charge and the matter proceeded to trial.
4. Throughout the trial and indeed at the time of writing this Judgment, I have warned myself that the burden of proving the charge against the Accused lies from beginning to end on the Prosecution to prove every element of the offence beyond reasonable doubt. If at the end there is any lingering doubt as to the guilt of the accused, I am obligated to acquit. There is absolutely no burden placed upon the accused person to prove his innocence as guided by the often cited case of **Mwewa Murono v The People**¹.
5. The ingredients of the offence of Murder are to be found in the charging section itself couched as:

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

6. In order to establish the guilt of the accused, the State must prove the following elements:

i) The accused person had malice aforethought

- ii) *The accused person by an unlawful act or omission caused the death of another person.*

In legal parlance, there ought to be *mens rea* and *actus reus*.

Prosecution case

7. In support of the charge of Murder against the accused, the Prosecution called seven (7) witnesses. The first witness was 24 year old Timothy Soko of Mazongololo compound in Chirundu whose occupation is that of installing Solar Plantations in 16 miles, Chisamba (hereinafter referred to as **"PW1"**). He informed Court that around 05:00 hours, he arrived home and found the deceased and the accused drinking beer. That when he found them drinking, they invited him to join them at the home of Bamai Zulu where upon he informed them that he would join them later after checking on his children at home.
8. **PW1** testified that, at home, he changed his clothes and went to join the accused and the deceased where they were drinking from. That the accused bought a spirit called Golden Bell and told him that they should go and drink from home and that the deceased would not partake of it. Upon arrival at the accused's home, the accused got into the house and brought out a mattress. That they mixed the spirit which the accused had bought with a Brutal Fruit bought by **PW1**. That the two started drinking while seated and the deceased came with a beer, First Choice, which he gave to **PW1** to drink after which **PW1** passed it over to the accused and that is how it finished. Further that when the deceased's beer got finished, the accused got his beer which he drunk and passed over to **PW1**

who also drunk and as **PW1** tried to pass it to the deceased, the accused grabbed it. After grabbing the beer, he informed the deceased that he (the deceased) would not drink some of the accused's beer because the deceased had finished his money alone. According to **PW1**, the accused said "*you 'dick' you will not drink, get out or else I will stab you with a knife*".

- 9 It was **PW1**'s testimony that the accused entered his house and when he did so, the deceased followed him while **PW1** remained outside but heard the deceased saying "*so my friend it is true that you have come to get a knife*". **PW1** stated that he stood from the bed outside where he was seated and followed into the house where he saw the accused with a knife, separated the two and pushed the deceased outside. Elaborating further, **PW1** stated that when he entered the house, he found the accused with a knife and was close to the deceased facing each other with a distance of about 0.5 meters apart. That the deceased was asking the accused whether he really wanted to stab him with a knife when they were always found together and the accused kept telling the deceased to get out of his house or else he would be stabbed with a knife.
10. Returning to the point where he pushed the deceased outside, after separating the two, **PW1** stated that he also pushed the accused outside and the knife was still in the accused's hands and that when he pushed the accused outside, the knife the accused had in his hands fell down and **PW1** picked it up. That the accused who was following the deceased got another knife from his back pocket and stabbed the deceased in the chest. That after stabbing the deceased, the accused pulled out the knife and **PW1** ran off to call for help. **PW1** stated that

the distance where the stabbing took place was about 15 metres from the house where **PW1** had pushed them from the house. He stated that the deceased had started walking backwards and the accused was following him. Further that the place where the deceased was stabbed from is at the neighbour to the accused's place, (father to Stario) and that when the deceased got to that place, he had told the accused not to follow him as the deceased was no longer in the accused's yard as he held on to the wire for hanging clothes which was on the boundary. That it was at that point when the accused stabbed the deceased and said "*I have been telling you to leave my yard.*"

11. **PW1** stated that the deceased was stabbed on the left side of his chest by the accused who went very close to the deceased who he stabbed, twisted the knife and pulled it out. The time of the incident was around 06:00 hours and it was very clear and visible in terms of light. **PW1** testified that he was scared and ran to call uncle Mwachindalo and when they returned to the crime scene, **PW1** ran back to call the cousin to the deceased. That upon their return, they found a crowd and the deceased was covered with a chitenge from the head to his feet. That the people around were angry and threatening to burn the accused who said that they should not do anything to him as the Government would come and fetch him from there.
12. **PW1** in concluding his testimony stated that he left the crime scene and people called the Police who went to apprehend the accused. He stated that the deceased was not his relative but that they grew up together in the same compound. **PW1**

identified the accused in Court and the knife he said the accused had used to stab the deceased with.

13. In Cross Examination by Ms. Kabuka, **PW1** confirmed that the time was around 05:00hrs and that they were coming from a friend's party on Christmas Eve. He also confirmed that he saw the accused and the deceased who were together chatting and drinking before the incident and according to what he saw they were relating well and they infact invited **PW1** to join them which he did after going home and returning. **PW1** agreed that shortly after joining the two, the accused left and informed **PW1** that he was going home and they went together as **PW1** was invited. That the deceased was not invited and they left him there. That as they left, the accused carried a beer called Golden Choice and **PW1** carried a Brutal Fruit.
14. **PW1** confirmed that as they were seated chatting and drinking at some point, the deceased went to the accused's house where the deceased found the two of them drinking. He confirmed that it is true that the accused started drinking the beer which the deceased had come with and also that at no point did the accused invite the deceased. **PW1** denied that having been there and having seen both, the accused was provoked by the deceased. He however confirmed his earlier testimony to the effect that the accused had told the deceased to leave his house on Christmas Eve. He also confirmed that the accused, the deceased and himself were drinking the whole night.
15. When asked to confirm that the accused had in his testimony left out the bit about the accused and deceased having fought, **PW1**'s response was that the two did not fight. **PW1** also

responded that there was no point when the deceased took off his shirt and approached the accused to fight. When asked whether he knew Joyce Musonda Mwila, a young girl, **PW1** responded affirmatively and when asked further whether she was lying when she told the Police that the two were fighting, his response was in the affirmative because the two never fought.

16. **PW1** declined to confirm that when the deceased went to the accused's house, the accused immediately told the deceased to leave stating that it was not there and then. He confirmed that the accused who went to Chirundu recently, found **PW1** and the deceased there. **PW1** said that he did not remember that when the accused told the deceased to leave and not partake of his beer, the deceased insulted the accused's parents. He also did not remember the deceased using words like "*satanyoko, this is Chirundu where you have come and you will see*". **PW1** did not agree that if what he was saying was true that the accused drunk the deceased's alcohol and refused the deceased to partake of his, ordinarily that would infuriate the deceased because these people were together overnight.
17. When asked why **PW1** was calling the deceased his inlaw, his response was that it was because they played with **PW1's** in law who was married to his sister. Pressed to state whether **PW1** considered the deceased as his relative, **PW1's** response was that the deceased was a family friend. Pressed further that **PW1** was not happy with the death of a family member, he stated that there is no one who can be happy with another person's death. He agreed that when the deceased insulted

the accused and the accused went into the house, the deceased followed the accused in the house but that they were not fighting. He also agreed that when the deceased followed in the house, he too followed.

18. **PW1** denied the assertion that he had removed a small knife which he passed on to the deceased who used it to stab the accused on his leg. He also denied the suggestion that it was at this point that the fight started and the cut he sustained that the accused became angry and got a knife. **PW1** stated that it is not true that it does not make sense that the deceased could go with his beer and the two of them could stop drinking theirs and start drinking someone else's beer. He also stated that it was not true that the accused had stated that he did not allow the deceased to drink his alcohol but it was only after they had finished the deceased's beer that that the accused uttered those words.
19. **PW1** declined to confirm that the act of the deceased following the accused to his house was provocative. He stated that it would be a lie if Joyce Musonda Mwila told Court that Mumbi had moved out of the accused's yard and returned taking off his shirt wanting to fight.
20. On whether **PW1** agreed that having been drinking the whole night, his judgment was impaired, his response was that it was not, as they were not very drunk. He conceded that he did not test his friends to know how drunk they were as he was not an expert.

21. Clarifying in Re-examination, **PW1** stated that the event happened on Christmas Day in the morning when they were coming from Christmas eve.
22. **PW2** was 65 years old Lukson Mwachindalo, a Security Guard and resident of Mazongololo, Chirundu. He testified that he knew **PW1**, the deceased and the accused who had passed through on their way to the accused's home. That after a short while, **PW1** went to inform **PW2** that the accused had stabbed a person. **PW2** testified that he started off to where the deceased was and he saw that he had been stabbed, was lying down and bleeding.
23. It was **PW2**'s testimony that he followed the accused where he sat and told the accused not to move but to just remain seated because he saw that things were already bad by the killing, he (the accused) had done. That after that, **PW2** returned to his home.
24. In Cross Examination by Ms. Kabuka, **PW2** confirmed that he was not there when the stabbing happened and that he was unaware of the circumstances leading to the stabbing.
25. In further Cross Examination by Mr. Tembo, **PW2** responded that he was sure that he saw the accused, the deceased and **PW1** walking to the accused's home.
26. There was no Re-Examination.
27. **PW3** was 45 year old Stario Kelvin Mwila, a Clearing Agent of Plot No. B1/3 Chirundu. He testified that on the morning of 25th December, 2023, around 06:00 hours he was lying down in bed but not asleep when he heard a loud shout from the children outside and he got from the bed, went to the window

so that he could get the view of what was happening. But because of the angle, he could not see what was happening so he rushed to the toilet so that he could get a clear view. That is when **PW3** saw the deceased lying down near a septic tank in his yard (**PW3**'s). That **PW3** could also see the blood which had spilled on the septic tank and that at that point, the deceased was gasping for air by opening and closing his mouth.

28. It was **PW3**'s testimony that he rushed outside and went where the deceased was. That when he stood by the deceased, the deceased became motionless and stopped gasping for air which **PW3** had earlier seen him do. That what came into the mind of **PW3** was to try and help and that is how he saw an injury on the left part of the deceased's chest at a position of the heart. **PW3** stated that he called out the name of the deceased who did not respond. He stated that as people started coming through, he decided to call the Police. That thereafter, **PW3** arranged for a Motor Vehicle from the neighbour who stays behind him and they lifted the deceased with about three ladies into the van where they placed him at the back enroute to the hospital.
29. **PW3** testified that the ladies escorted the deceased to the hospital and he stayed behind and went to the accused who was surrounded by people as he intervened and tried to calm the people down. That the accused's hands were tied behind with wires. **PW3** stated that the person who was stabbed was found in his yard. **PW3** who stated that he had known the accused for more than two years identified him in Court.

30. In Cross Examination by Mr. Tembo, **PW3** confirmed that when the incident was happening, his daughter Joyce was outside. He also confirmed that his daughter Joyce had told him that she witnessed a fight and that she even mentioned that the deceased had taken off his shirt.
31. There was no Re- Examination.
32. The Prosecution called William Njobvu, a 38 year old Carpenter of Chirundu as the Fourth Witness (**PW4**). It was his testimony that on 25th December, 2023, on his way to the market, Amos called him on his phone and informed him that someone had stabbed a person with a knife. He said that is how he went to the scene and found that the person who had stabbed his friend had been tied and inquired from him why he had done that to his friend but got no response. According to **PW4**, the cousin to the accused asked the accused where the knife he had used to stab the deceased was and the accused raised his head and said the knife was in the house. The cousin is said to have gone into the house and called **PW3** inside and showed him the knife and told him to put it in a plastic bag. **PW3** added that the knife was in the accused's house in a corner near some blocks and it had blood stains when they found it.
33. **PW3** testified that he called the Criminal Investigations Officer (CIO) of Chirundu Police who came not long thereafter and he handed over the knife and requested him to lift the accused and put him in the vehicle. He identified the knife and the accused who he said was his good friend who he had known for over a year.

34. There were no questions for Cross Examination.
35. **PW5** was Virginia Zulu, 38 year old Business Lady of Mazongololo, Chirundu. She testified that on 25th December, 2023, she went to check on her children and found her sister's child Norah Phiri who said he had followed her because the deceased who was her cousin had been stabbed and fallen down like a chicken. That she ran to the scene and found that a lot of people had gathered at the boundary of the accused's house and that of Stalio's father (**PW3**) where the deceased was lying on the septic tank. That upon her arrival at the scene, she called out the deceased's name and noticed a hole on the chest where he was bleeding from. She put a mop on the hole, touched his feet and his hands and discovered that they were cold.
36. It was **PW5's** testimony that a neighbour from the opposite side of Stario's (**PW3**) house came with a vehicle so that they could take the deceased to the hospital. That as they were organizing themselves to take the deceased, the accused stood up from the steel bed where he had been seated and **PW5** held the accused and asked him why he had stabbed the friend where upon the accused replied that he did not know what he was doing. At that point according to **PW5**, people helped her by tying the accused with wires on his hands and legs and put him back on the steel bed.
37. **PW5** testified that they carried the deceased and put him on the back of the vehicle and took him to Mtendere Mission Hospital where he was examined by the Doctor on the mouth and wound. That the Doctor instructed them to take the

deceased to Chirundu Police where the Police took pictures of the deceased in the vehicle and informed them that the person they had taken had already died. That she gave her statement and were given a Medical Report and told to go back to the hospital where the deceased was examined, blood wiped from him and taken to the Mortuary. **PW5** identified the accused in the dock.

38. In Cross Examination by Mr. Tembo on whether **PW5** knows that she had given a statement to the Police to the effect that when she asked the accused why he had stabbed the deceased, the accused remained silent, **PW5** stated that she could not remember that because the accused had told her that he did not know what he was doing.

39. There was no Re-Examination

40. **PW6** was 14 year old Grade 10 pupil at Dambo School in Ndola, but ordinarily resident of Chirundu. In her narration of events of 25th December, 2023, she stated that she took plates and dishes outside for cleaning with her cousin who she was with. That as they were about to start washing the plates, they heard the deceased, the accused and Timo (**PW1**) shouting as they normally did and so they proceeded with washing dishes. That as they were shouting at each other, the deceased and the accused started pushing each other and Timo (**PW1**) was trying to separate them.

41. It was **PW6**'s further testimony that the deceased went to his place and the accused continued insulting the deceased's parents and grandparents. That the deceased got annoyed and returned, took off his shirt and threw it on the bed. She

stated that the deceased's place was not far from where they were quarrelling and estimated the distance to be about 20 to 25 metres. That the two continued pushing each other and saying I will beat you and Timo (**PW1**) continued to disengage them. That as they were pushing each other, the accused got annoyed and went into his house and the deceased and Timo (**PW1**) followed.

42. **PW6** stated that she saw the deceased come out of the accused's house while running and also saw Timo (**PW1**) come out running followed by the accused with a knife pursuing the deceased. That the deceased started running towards **PW3**'s yard and the accused was pursuing him while Timo (**PW1**) just stood because he was afraid. According to **PW6**, the accused got his knife and started waving it in the air and said "*you will see today, I will kill you*". That the deceased was trying to defend himself, got to the wire where they hang clothes and tried to push the accused away.
43. Testifying further, **PW6** stated that as the deceased proceeded with trying to defend himself the accused continued swinging the knife while saying that "*today you will see, I am going to kill you*". She stated that, that is how the accused stabbed the deceased on the left side of his heart. That the accused removed the knife and started going to his house where he entered and came out without a knife. That she heard the accused say the Government would find him as he was not afraid. Further that the accused continued saying those words, got on the bed, covered himself with a blanket and started whistling.

44. According to **PW6**, after the deceased was stabbed, he fell down whilst holding his chest where he had been stabbed and blood was coming out. That Timo (**PW1**) ran off to go and call people to see what had transpired. That the number of people increased and others went to apprehend the accused who they tied with wires on his hands and legs. She estimated the distance from the accused's house door to the place where the deceased was stabbed from as about 10 metres. Her further testimony is that while the accused was swinging the knife and saying that he was going to kill the deceased, the deceased was not saying anything.
45. **PW6** said she could try to remember how the knife looked like but may be not to well. She added that it was big but she did not think that it was used for cutting relish, but may have been kept for something else. She identified the accused in the dock (among 2 other people who were made to stand in the dock with the accused). She concluded her testimony by stating that she has known the accused for about one year and that the person who was stabbed is deceased.
46. In Cross Examination, by Mr. Tembo, **PW6** responded that that she did not know what started the argument between the accused and the deceased. She denied the assertion that when the two were arguing Timo (**PW1**) teamed up with the deceased against the accused insisting that Timo (**PW1**) was trying to disengage the two from their argument from what she observed.
47. Responding to the statement that she had told her father that the accused and deceased were fighting, she emphatically

stated that they were not fighting but were just pushing each other. When referred to the statement that she had given earlier at the Police which indicated that the two were fighting, her position was that she told the Police that Timo was trying to stop the argument but when he saw that the accused had a knife, he was scared and that is how he just started watching. That while they were pushing each other, the accused ran into his house followed by the deceased and then Timothy (**PW1**). She agreed that at the time she was giving her testimony at the Police, her memory was still very fresh and that she knows the difference between fighting and pushing.

48. **PW6** confirmed that when the deceased came back after leaving earlier, he removed his shirt and was visibly annoyed. She added that they were not fighting but were just pushing each other. She confirmed that at some point the accused left to go into the house and that she did not know why he went into his house. She however disputed that the accused went into the house because he was retreating. She insisted that she had told the Police that the accused was saying that he would kill the deceased and did not know why the Police had not included that in her statement.

49. There was no Re-Examination.

50. The Prosecution's last witness (**PW7**) was a 50 year old George Samsom Phiri, Detective Chief Inspector No. 10078, of Criminal Investigations Officer of Government Complex in Chirundu who said he has been in service for more than 27 years. He testified that while at home on 25th December, 2023, he received a phone call from the office where he was handed

a docket of Murder reported by Virginia Zulu. Acting on the Report, **PW7** constituted a team of Detectives to investigate the matter, among them Detective Constable Chisala and Detective Constable Ngosa.

51. It was **PW7**'s testimony that a private motor vehicle was used and when they got to the scene, he found the accused tied on both his legs and hands after being apprehended by members of the public. That he was led to an area where the deceased was alleged to have been stabbed from and where he was lying down. That the area was in the residence of Male Kelvin Mwila (**PW3**). According to **PW7**, he observed that there were some blood stains on the ground. He stated that he asked the owner of the house who informed him that when the incident happened, he was inside the house and was led to his female child, Joyce Mwila (**PW6**) who was outside when the incident was happening.
52. **PW7** testified that Joyce (**PW6**) narrated to him that she witnessed the deceased being chased by the accused from the house where the accused was residing which is about 6 metres away. That **PW6** further informed him that the accused was holding a lethal weapon, a knife and stabbed the deceased while she was watching.
53. He further testified that while there, he also interviewed Timothy Soko (**PW1**) who was with the deceased at the time the incident happened. **PW7** stated that Timothy Soko mentioned to him that he witnessed the accused stab the deceased with a knife. That **PW7** went back to the house of the deceased where William Njobvu (**PW4**) informed him that

he was the one who recovered the knife inside the residence of the accused and handed over the same to **PW7** who took over custody of the knife and the accused who was arrested for murder and the knife kept as exhibit. According to **PW7**, the knife was stained with reddish stuff that looked like blood. He stated that he could identify the knife which was about 30cm in length, silver in colour with a black broken handle with a hole at the edge.

54. Testifying further, **PW7** stated that on 28th December, 2023, he attended a Postmortem Examination conducted on the deceased at Mtendere Mission Hospital by Dr. Vicktor Telendiyi. That when the body of the deceased was unveiled, he observed that the deceased had a deep cut on the left side of the chest and he was able to assume that the instrument used to inflict such injury may have been a sharp one. Further that at the end of the postmortem he was able to determine that the injury the deceased had suffered could have led to his death.
55. It was **PW7**'s testimony that on 28th June, 2024, having had in his possession the signed Postmortem Report, he made up his mind to charge the Accused with one Count of **Murder** contrary to **Section 200** of the **Penal Code Chapter 87** of the **Laws of Zambia**. That under Warn and Caution Statement administered in Nyanja, a language the accused seemed to understand, he gave a free and voluntary Statement denying the charge. **PW7** identified the Postmortem Report and the accused in the dock. He concluded by tendering into evidence the knife and Postmortem Report which had been in his

custody and were admitted into evidence as “**P1**” and “**P2**” respectively.

56. In Cross Examination by Mr. Tembo, **PW7** confirmed that it is standard procedure for witnesses to read over their Statement given out at the Police. He declined to confirm that in this particular case, all Witness Statements were read over because Statements are recorded by different people and he merely received the docket. He agreed that it must be made sure that the Statements reflect the truth. He admitted that Joyce Musonda was his witness as the Arresting Officer but insisted that he did not record the Statement from her and could not confirm whether it was correct. Further that if standard procedure was not followed then that was wrong.
57. When asked whether at the point of realizing that the Statement was not read over to Joyce, he recorded a proper Statement, **PW7** responded that he did not. He disagreed that the failure to correctly record the Statement by the person who took it is dereliction of duty. He admitted that he had read Joyce’s Statement and that Joyce wrote her name on the Statement. Pressed further on what he was investigating, **PW7** stated that he interviewed the Witness right at the scene and not at the Police Station where the Statement was recorded.
58. When asked whether he had investigated the Statement made by Joyce at the Police Station that the accused and deceased were fighting, **PW7** confirmed that he had done so. He added that the Statement was not given to him. He confirmed that the docket was given to him on the same day of the incidence,

25th December, 2023, and that he had gone through the docket. Further that he did not go back to the Witness after he read the Statement to confirm whether it was correct.

59. **PW7** stated in response to the question what he was told, that according to Joyce the aggressor was the accused because the deceased was running away and the accused was following him with a lethal weapon. Further that there was no fight apart from pushing each other as **PW7** was told at the scene. It was his further response that it would be shocking if she had told the Police and her father that there was a fight because the statement at the Police was not made under oath.
60. **PW7** confirmed that Joyce told him that at some point, the deceased left, came back and took off his shirt. That she also told him that the accused left to go into his house after being insulted and that after he went into his house the deceased and Timothy followed him into the house according to his investigations. Further that Joyce told him that after a while she saw the deceased and Timothy run out of the house but that she did not know what happened inside the house because she was not there.
61. Responding to the assertion that the accused told him that when the deceased and Timothy got into the house, Timothy passed a knife to the deceased who tried to cut the accused, **PW7** stated that he did not remember being told that. Pressed further that at some point, the deceased and Timothy teamed up which caused the accused to become annoyed, **PW7's** response was that in his investigations he never came across evidence that the deceased was ever armed. **PW7** confirmed

that prior to going into the house, the accused and the deceased were drinking beer and that at some point Timothy joined them. He did not confirm that there was evidence that the three were drinking the whole night but confirmed that it was Christmas Eve and that three went home in the morning.

62. **PW7** stated in response that he did not remember that Timothy told him that when they were going home the accused told the deceased that the deceased was not wanted at the accused's home. Further that he did not remember that the deceased was left behind and that the investigation revealed that the three (3) were together and that he did not remember the accused telling him that he did not want the deceased at his house. **PW7** did not agree that it would be an act of provocation if someone you do not want comes home to insult.
63. **PW7** declined to confirm that the accused had told him that the deceased was insulting him and stated that it was *vice versa*. On the question that he had not told Court in his evidence in Chief that the accused had threatened the deceased in the past, **PW7's** response was that he did not mention the name but the Statement was made. **PW7** agreed that the investigations revealed that at the time the deceased took off his shirt, he was geared for a fight after being insulted.
64. It was **PW7's** confirmation that the deceased and the two went home drinking First Choice beer and that he did not know that they were mixing with another drink called Brutal Fruit.
65. There were no questions in Re- Examination.
66. At the close of the Prosecution case, I found the accused with a case to answer and accordingly placed him on his Defence

in accordance with **Section 291 (2)** of the **Criminal Procedure Code Chapter 88** of the **Laws of Zambia**.

67. The accused gave his evidence on his own behalf and called no other witness. He is aged 39 years, a Welder and Blacksmith of Mazongololo Compound in Chirundu (**DW**). He recounted what happened on 24th December, 2023, on the day of an overnight. According to him, when he came from work, he reached home and opened the door to put the tools of his trade and then heard a knock on the door. When he came out, he found a young child who told him that he had been sent to tell the accused not to go anywhere else to drink because his mother had also ordered beer. **DW** testified that he told the child to inform the mother that she had done well so that they do not go to the market and that he would go there instead. Further that he entered into his house got a K300 and proceeded to the place which was in the same compound about 100 metres away from his home where he had been informed that there was beer. That when he arrived there he found that there were other people drinking beer.
68. **DW** testified that he went to the owner who was selling alcohol and bought a 750mls bottle of beer called First Choice, sat there and started drinking and took turns in buying rounds with the owner of the bar (**PW5**) until dawn when **DW** left. That when he reached home, he entered the house and removed a mattress and single bed which he put outside and slept on because Chirundu is hot. Further that, Timothy Soko (**PW1**) went to his house and remarked that big man you have already arrived here and in response **DW** said yes and that there was take away so there was no problem. That **DW** went into the

house, took out half a bottle of First Choice beer, sat on the bed and started drinking with Timothy Soko. (PW1)

69. It was **DW**'s testimony that then came his younger brother Ibrahim Banda who he works with and who asked him whether they would be working that day. That in response he stated that as it was Monday and he had been drinking the whole night he would not work and that is how the brother left. According to **DW**, after about 20 minutes later, he saw the deceased and his friend Marshal arrive at his home. That the deceased found **DW** with a bottle of beer in his hands and so the deceased attempted to grab the beer from **DW**'s hands and that in response **DW** told the deceased that he could not partake of his First Choice beer because he (the deceased) had been told not to drink beer by the hospital personnel. Further that the deceased got upset after being told not to partake of the beer and the deceased told **DW** that he found them drinking beer in Chirundu and he could not stop the deceased from drinking and that **DW** would see.
70. **DW** testifying further stated that he asked Timothy (PW1) whether he had heard what his cousin was telling him and **PW1** just told him to forget about the deceased and that is how **DW** told them to go away because they had found him quietly drinking beer alone. That the deceased stood up and said "*ass hole you will see what will happen to you*" and then left with his friend Marshal and then **DW** remained with Timothy Soko (PW1). Further that not long thereafter, **DW** saw the deceased coming back from his house which was behind while shouting without a shirt which he threw at **DW** who was sitting on the bed and shouted vernacular words "*'Musatanyoko' you will*

see". That **DW** could see that the deceased was very upset and filled with fear he **DW** ran inside his house.

71. That when he had entered the house, he saw the deceased and Timothy Soko (**PW1**) also enter into the house which is a single room of about 3.5 x 5 metres and he asked them why they had even entered his home. According to **DW**, the deceased in response using Bemba words which translated as "*there is nothing you can tell me*". That **DW** saw Timothy Soko pulling something which he did not see well but with a green handle which he passed on to the deceased. That the deceased was facing **DW** and Timothy Soko was facing the deceased. That with the vessel which the deceased had received from Timothy, the deceased without hesitating stabbed **DW** on his right thigh and as he attempted to stab him for the second time, **DW** grabbed him and pushed him to the door together with his weapon and as he pushed him, he hit the door which fell after the upper hinge came out. That at that point **DW** remained inside the house and it took a while for him to go back outside because his leg had become numb. That when he went outside, he did not find the deceased and Timothy but the deceased's shirt was on the bed outside.

72. **DW** testified that he felt his heart racing and that is how he went and sat on the bed. That he then saw a group of people heading towards his house and among them were Virginia Zulu, William, Johnson and Timothy. That Virginia Zulu asked him why he had stabbed his friend and in response, **DW** said that there was nothing he knew because he was actually the one who had been stabbed. Further that Johnson hit **DW** with a block on his face and he fell on the ground after which

they tied wires on his hands and legs while he was being beaten. That Willie was telling friends that they should just burn **DW** and they sprinkled petrol all over him and he heard someone from the mob shouting that they should not burn him but just call the Police. That luckily the Police arrived and threw him in a Taxi Corolla they came in and took him to Chirundu Police Station where they instructed Willie to take off **DW's** trousers because he was bleeding. That **DW** was given a book with writings for him to sign but he refused to do so and said he did not know what he was being charged for. **DW** in his further testimony stated that the Police forced him and he signed and was informed that he was being charged with the of Murder of Mumbi Mwansa and was detained in Police cells.

73. On the testimony by Timoty Soko and Joyce Musonda Mwila that they saw **DW** stab the deceased, **DW's** response was that he did not even see Joyce in his house as the person he was with was Timothy Soko. **DW** stated that the testimony given by Timoty Soko in Court was not complete because he turned against **DW** in the end while he was the one who caused things to reach that far. That when the deceased uttered the insulting words, **DW** was not happy with that and he felt anger.
74. In Cross Examination by Mrs. Besa, and responding to a question how far it is from where the body of the deceased and where **DW** was seated on the bed, **DW's** response was that he did not know the distance because he did not know where the deceased fell as he (**DW**) just went to sit on the bed.

75. **DW** agreed that he had known Joyce Musonda Mwila for a period of 2 years as they are his neighbours whose house is about 30 metres from his. He repeated that within that distance, he did not see the deceased's body and was just taken to the Police.
76. When asked whether after he had been stabbed by the deceased as he testified, he did anything, **DW's** response was that the only thing he did was to push the deceased from inside his house where they were. **DW** replied that the relationship he had with the deceased was that of being neighbours and there was no friendship between the two of them.
77. **DW** agreed that he had heard what the other witnesses had said about him insulting the deceased's mother and that the deceased was annoyed. He added that what he knows is that it was the deceased who was insulting his (**DW's**) parents. He stated that he would be able to show Court the stab sustained on his right thigh and would even show the trousers he had been wearing as he had it. Pressed further, **DW** conceded that he had not produced any trousers with blood before Court.
78. When asked whether according to his evidence he did not see the deceased and therefore the deceased is still alive, **DW** stated that what he was told is that the person had died because he had not seen him and was only informed by the Police.
79. When asked whether he agreed that one of his relatives who was there entered his house and found a blood stained knife and how the knife found itself in the house, **DW's** response

was that he did not know because he did not see the body of the deceased.

80. Referred to the testimony of **PW3**, who testified that after the incident, he told **DW** not to run away and his response was that the Boma would find him, **DW** agreed that he remembered the testimony but did not see any body.
81. On how long it took for **DW** to go outside after the alleged numbness, **DW**'s response was that it took about 30 minutes.
82. There were no questions in Re- Examination.

SUBMISSIONS

83. At the close of the Defence case parties indicated that they were desirous of filing Submissions following which I ordered that the Defence file its Submissions on or by 14th April, 2025 while the State was expected to file Submissions in Reply on or by 21st April, 2024. The Defence in compliance with the order filed submissions on 14th April, 2025 and there were no submissions by the State as at the time of writing this Judgment.
84. I am grateful to the Defence for the Submissions which I have considered and will not reproduce them. They will be referred to where necessary.

CONSIDERATION AND DECISION OF THE COURT

85. The issue falling for my determination on the guilt or otherwise of the accused is whether the ingredients of the offence of **Murder** as set out in Paragraph 6 above have been satisfied

from the evidence adduce. I propose to deal with the second element before tackling the first element as set out in Paragraph 6 above.

a) *Whether the accused by an unlawful act or omission caused the death of the deceased*

86. The evidence of **PW1** and **PW6** who were the eye witnesses indicates that it was the accused who stabbed the deceased using a lethal weapon namely a knife. The Post Mortem Report admitted into evidence as **P1** shows that the cause of death was a sharp wound to the chest and the manner of death is homicide. On his part, the accused's position is that there was nothing he knew about stabbing the deceased because he was actually the one who had been stabbed. Further that he had not even seen the deceased who was lying about 30 metres away from where he was seated on the steel bed.

87. In my analysis of the evidence, it is clear that the evidence of **PW6** was very clear and was not shaken in Cross Examination notwithstanding that she was a child witness. I found it honest and believable because she had no reason to falsely implicate the accused in her very clear narration of what she observed on the fateful morning of 25th December, 2023. The evidence of **PW1** who was with the accused and the deceased at all material times largely tallies with that of **PW6**. On the other hand, I find the accused to be evasive and his evidence a fabrication, unreliable, untrustworthy and at worst a pack of lies intended to mislead this Court.

88. I am inclined to accept the testimony of **PW1** and **PW6** which can not be ignored. In the face of such strong evidence, I find

that the accused stabbed the deceased with a lethal weapon namely the knife admitted into evidence as **P2**. This finding can not be faulted and I take comfort in the case of **Crispin Mabvuto Banda and Andrew Tembo v The People**² where the Supreme Court held that:

“The Supreme Court could not fault the conviction by the trial Judge in the face of strong eye witness evidence”.

89. I am further fortified by the case of **Kakoma v The Attorney General**³ where it was held that:

“A Court is entitled to make findings of fact where the parties advance directly conflicting stories, and the Court must make these findings on the evidence before it and having seen and heard the witnesses giving that evidence”.

b) Whether the accused had malice aforethought.

90. The Defence Counsel in their Submissions took a pragmatic approach and made no express Submissions regarding whether or not the accused caused the death of the deceased. The Submission is around **Section 201 (1)** of the **Penal Code Chapter 87** of the **Laws of Zambia** as read with the **Penal Code (Amendment) Act No. 23 of 2022** addressing the issue of extenuating circumstances. For avoidance of doubt, the Section is couched as follows:

“201(1) Any person convicted of murder shall be sentenced to life imprisonment or where there are extenuating circumstances, a sentence other than life imprisonment.

(2) An extenuating circumstance referred to under Subsection (1) shall not apply to murder committed in the course of aggravated robbery with a firearm under section 204

(3) For purposes of this Section

(a) An extenuating circumstance is any fact associated with the offence which would diminish morally the degree of the convicted person's guilt.

(b) In deciding whether or not there are extenuating circumstances, the Court shall consider the standard of behavior of the community to which the convicted person belongs".

91. It is the Defence's Submission that the accused and the deceased had been drinking from 24th December, 2023, until the next day. The case of **Tembo v The People⁴** was called in aid where the Court stated that:

"Evidence of drinking, even heavy drinking is not sufficient in itself, nor is evidence that an accused person was under the influence of drink in the sense that his reflexes were affected. To constitute evidence fit to be left to a jury for the purpose of Section 13 (4), there must be evidence that an accused person's capacities may have been affected to the extent that he may not have been able to form the necessary intent".

92. There is evidence by **PW6** that as the accused and the deceased were pushing each other and exchanging insulting words, the accused at one point went into the house where he was followed by the deceased and shortly thereafter by **PW1**. Further that not long after the trio had entered the accused's house the deceased was seen running out of the house with the accused in hot pursuit wielding a knife and shouting that the deceased would see as he was going to be killed. That at that point **PW1** who had earlier been trying to separate the two was just watching as he was scared.
93. I have also found evidence that even after the deceased had left the accused's yard in retreat and had indicated so to the accused, the accused continued pursuing the deceased until he stabbed him on the left side of his chest near or at the septic tank which was in the neighbour's (**PW3**) yard. There is also evidence that after stabbing the deceased, the accused twisted and pulled out the knife which had been lodged in the deceased's chest, went back to the house and placed the knife in the corner of his house near some blocks. Further that the knife was retrieved with blood stains from the accused's house by **PW4**, who was with the cousin to the accused. It is also worth noting that **PW4** was a friend to the accused having known each other for over a year as the unchallenged evidence shows.
94. I am not convinced the accused who claims to have been drunk and had diminished responsibility could have had the strength to attack the deceased in such a brutal manner with a lethal weapon on the chest after repeatedly saying that the deceased was going to see as he was going to be killed,

thereafter twist and pull out the knife and take it back into the house where it was later retrieved from. The chronology of the facts taken together point to a clear intention by the accused person to carry out what comes out as a premeditated act preceded by threats on the life of the deceased who had retreated and left the accused's yard.

95. It is trite that failed defences of provocation, evidence of witchcraft and drinking can amount to extenuating circumstances as held in a plethora of case one of which is the case of **John Musonda Mwanamwenge v The People**⁵. In this case the Supreme Court held that:

i) failed defence of provocation, evidence of witchcraft and drinking can amount to extenuating circumstances

ii) The Appellant was not drunk: The facts negate drunkenness as an extenuating circumstance”.

96. On my analysis of the facts and evidence placed before me in this case, I see none that would bring the accused within the ambit of **Section 201 (1)** of the **Penal Code Chapter 87** of the **Laws of Zambia** and in the case of **Tembo v The people**⁵ cited in Paragraph 90 above. What I find is that the facts negate drunkenness as an extenuating circumstance and I wholly adopt the holding in the case of **John Musonda Mwanamwenge v The People**⁵ above.

97. I find further comfort in the Supreme Court case of **Jose Golliadi v The People**⁶ where it was held that:

“We must emphasise that trial Courts must be wary of finding drunkenness as an extenuating

circumstance in every case where the offence is committed at a drinking place or where the accused claims he was drinking or was drunk. It is important to consider the peculiar facts instead of applying drunkenness in every single case which would do an injustice”.

98. In my final analysis of the facts in the present case, I see none that would afford the accused reason or justification to place reliance on drunkenness as an extenuating circumstance. This means that the State has proved both the *actus reus* and *mens rea*, the elements of the offence for which the accused was charged. In the premises, I find the accused **TEDDY CHIKOLOMA** guilty of the offence of **Murder** contrary to **Section 200** of the **Penal Code Chapter 87** of the **Laws of Zambia** and Convict him accordingly.

DELIVERED AT LUSAKA THIS 9TH DAY OF MAY, 2025.



I. M. MABBOLOBOLO
HIGH COURT JUDGE.