

**IN THE HIGH COURT OF ZAMBIA**

**HP/89/2025**

**HOLDEN AT LUSAKA**

*(Criminal Jurisdiction)*

**BETWEEN:**

**THE PEOPLE**

**V**

**RABSON CHAMA**

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

**For the State:** *Mrs. S. M. Besa, Senior State Advocate-National Prosecution Authority*

*Ms. S. Mumbula, State Advocate – National Prosecution Authority.*

**For the Defence:** *Mr. E. B. Kaluba and Mr. O. Sambo - Emmanuel and Onesmus Legal Practitioners.*

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**JUDGMENT**

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**A. CASES REFERRED TO:**

1. *Woolmington v DPP (1935) A.C 462*
2. *Mwewa Murolo v The People (2004) ZR 207*
3. *Mwiya Mulenga and Another v The People CAZ Appeal No. 6,7 of 2016*
4. *Ali and Another v The People 91973 Z.R 232*
5. *Kenneth Mtonga and Kaonga v The People SCZ Judgment No. 5 of 2000*
6. *Peter Yotamu Hamenda v The People (1977) Z.R 246*
7. *Nyambe v The People (1973) Z.R 28*
8. *Kapowezya v The People (1967) ZR 35*
9. *Abraham Sinkamba v The People Appeal No. 70/2023*
10. *Robertson Tembo v The People SCZ Appeal No. 309/2015*

**B. LEGISLATION REFERRED TO:**

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

1. The Accused person **RABSON CHAMA** (“the accused”) stands charged with the offence of **Aggravated Robbery** contrary to **Section 294 (1)** of the **Penal Code Chapter 87** of the **Laws of Zambia**.
2. Particulars of the offence are that the accused, on the 21<sup>st</sup> day of July, 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 and whilst armed with an offensive weapon, namely Pistol, did steal cash money amounting to K500.00 the property of **EVERISTO KUCHINEZA** and at or immediately before or immediately after the time of such stealing did use or threaten to use actual violence to **EVERISTO KUCHINEZA** in order to obtain or retain, or prevent or overcome resistance to its being stolen or retained.
3. The Accused denied the charge and the Matter proceeded to trial.
4. I have warned myself, through out the trial and indeed at the time of writing this Judgment 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 doubt as to the guilt of the accused, my obligation is to acquit. There is

absolutely no burden placed on the accused person to prove his innocence. The celebrated case of **Woomington v DPP**<sup>1</sup> which was cited with approval in our own Supreme Court case of **Mwewa Murolo v The People**<sup>2</sup> is instructive on this point.

5. The offence of **Aggravated Robbery** is provided for by **Section 294 (1)** of the **Penal Code Chapter 87** of the **Laws of Zambia** as follows:

***“Any person while being armed with any offensive weapon or instrument, or being together with one person or more, steals anything, 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 a felony of Aggravated Robbery and is liable upon conviction to imprisonment for life and notwithstanding Subsection (2) of Section (2) of Section Twenty- six, shall be imprisoned for a period of not less than fifteen years”.***

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

*(i) That the accused was armed with an offensive weapon or was with one or more persons;*

*(ii) That a thing was stolen from another person; and*

*(iii) That violence was used by the accused on another person to retain the thing stolen and to prevent or overcome resistance to the thing being stolen.*

### **Prosecution case**

7. In support of the case against the accused, the Prosecution called five (5) witnesses, starting with the 31 year old Ballistic Expert, Patrick Kasungulu of PHI, Lusaka (hereinafter referred to as **"PW1"**) who informed Court that he has worked for the Zambia Police for 15 years three (3) of which haven been as a highly experienced and qualified Ballistic Expert. He outlined his duties as being that of examining small firearms, cartridges and components and conducting scene reconstruction when called upon.
8. His testimony regarding the events of 9<sup>th</sup> September, 2024, is that Detective Inspector Amusa from Woodlands Police Station submitted an exhibit, a firearm serial No. TF0620 – 14TF00231 and also Five (5) cartridges for purposes of identification and Ballistic examination after which he authored a Ballistic Report. According to **PW1**, his findings as contained in the Report admitted into evidence as **"P1"** revealed that the exhibit firearm is a semi-automatic 7.62 Fatih Pistol made in Turkey designed to load cartridges of 7.65 Browning of good working condition. He stated that this was established after test firing by loading the firearm and discharging two (2) casings which he marked as **"T1"** and **"T2"** from among the five (5) submitted exhibit cartridges. Further that the five (5) submitted exhibit cartridges are of calibre 7.65 Browning and all live and designed

to be loaded and discharged from firearms of their calibre such as the Fatih exhibit Pistol Bereta, Model 35 Zastara of Model 67, among other firearms of the same calibre.

9. It was **PW1**'s testimony that before he tested the exhibit firearm, he swabbed the Barrel of the exhibit Pistol and discovered cartridges discharge residue, an indication that it had been fired before it was submitted to the Ballistic Office. That the exhibit firearm is a dangerous commercial weapon capable of causing damage to property or death or injury to an animal or human being once loaded and discharged. Further that it can cause fear or panic to any person with a reasonable state of mind when threatened or challenged with it. Further that it is therefore restricted to persons with valid firearm permits or licences in the Republic of Zambia. **PW1** who had custody of the firearm and the Five cartridges from the time they were handed to him tendered them into evidence and they were admitted as follows:

(i) The two (2) spent exhibit cartridges as P2;

(ii) The Firearm (Pistol) as P3; and

(iii) The three (3) live cartridges as P4.

10. In Cross Examination by Mr. Kaluba **PW1** confirmed that he tested the Firearm as a Ballistic Expert who had acquired his training from Police Training College in 2009 and underwent training at Police Service Headquarters Forensic Science and Ballistic Unit where he received training as Ballistic Expert for 3 years and was awarded a certificate. Pressed further, **PW1** declined to confirm that Zambia Police is not an

accredited higher learning institution. He did confirm however, that he had not produced his certificate in Court and also that the only qualification he holds is a certificate.

11. **PW1** responding to a question regarding when he first saw the firearm "**P3**", stated that it was 9<sup>th</sup> September, 2024, when it was released from Detective Inspector Musa of Woodlands Police Station. He admitted that according to the Record, the Firearm was received on 21<sup>st</sup> July, 2024 and that he only had sight of it after more than one month. He also admitted that he did not know the condition in which the Firearm was when it was recovered and that his evidence was based on what was given to him on 9<sup>th</sup> September, 2024, together with five (5) cartridges. Further that the Firearm was tested on 10<sup>th</sup> September, 2024, at the Ballistic Laboratory at Zambia Police Head Quarters. He denied the assertion that the Firearm was fired twice at Woodlands Police Station but confirmed that when he swabbed the gun it had gun powder indicating that it had been fired.
12. **PW1** responded that he would not know who had fired the gun before it was brought to him. On the question how long it was from the time the Firearm was fired before he tested it, he gave an estimation only that it must have been six months. He confirmed his testimony that **P3** was a dangerous weapon but that he did not establish that the Firearm was licensed in another person's name because that was the job of the Investigating Officer.

13. When asked whether it was possible for a person to buy the ammunition, 'P4' from a gun shop or dealer, **PW1** responded in the affirmative and added that it was available to licence holders. According to **PW1** and to his knowledge, weapons of the calibre of 'P3' were not available at the Police. **PW1** confirmed that he had interacted with all the exhibits he had tendered into Court since 9<sup>th</sup> September, 2024. He agreed that he could not tell whether the bullets, 'P4' were recovered from the scene.
14. There were no questions for **PW1** in Re- Examination.
15. **PW2** was the victim, 41 year old Evaristo Kuchineza, a Business man of Chalala, Salena Trust Area. He recalled that on 21<sup>st</sup> July, 2024, in Chalala, Salena Area, some four (4) gentlemen went to his shop in an IST Motor Vehicle at around 17:00 hours. That when they had parked the vehicle, two of the passengers disembarked and entered into his shop one went out and the other remained. That the one who remained in the shop got a papas snack and started eating and paid a K5.00 for it before going out also and sat with his colleagues who were outside. That they stayed outside the shop for more than 30 minutes at the verandah of the shop. That when he noticed that they had stayed for long, he went outside to check and found two men at each corner of the verandah while one was at the centre near the entrance. According to **PW2**, he went back into the shop and thought the men were just resting or waiting for someone or had come from church.

16. It was **PW2**'s evidence that as he was seated in the shop, one of them who had entered the shop earlier came back, went to the fridge and got fruiticana drink, drew nearer to the counter where **PW2** was and got a packet of crisps which he opened and started eating and drinking the fruiticana. Further that the person placed his hands in pocket and came to pay K5.00 which he had removed, but then placed the same back into his pocket as if looking for some more money. That instead, the person got out a pistol and said "you dick, give me some money, I will kill you".
17. According to **PW2**, he got scared and realized that the person with a Pistol would kill him and so he tried to refrain from him by ducking but was hit on the face with an object **PW2** did not see. That **PW2** managed to run outside and screamed "thief" so a lot of people started coming out of their houses. That the other four (4) persons who had remained outside the shop when the one who hit him entered got into the car and sped off leaving the accused. Further that when the accused came out, he found that his colleagues had run away and he had gotten the bucket which had money which he started stuffing in his pockets before he threw the bucket outside.
18. According to **PW2**, the accused tried to chase after the vehicle hoping that it would stop. That **PW2** and others tried to give chase but that he failed because he was bleeding. That other people continued with the chase shouting thief until they apprehended the accused at the tarmac near Salena School almost 30 metres away from **PW2**'s shop. He stated that it

was very visible because it was not dark and when he heard that the accused had been apprehended, he followed to see. That he found the accused being put in the vehicle and the people who had done so told him to follow at Woodlands Police Station.

19. It was **PW2**'s testimony that when they arrived at Woodlands Police Station he found the person who was at his shop, the accused, and he gave a Statement, was given a Medical Report after which he went to Chilenje Hospital. He was sutured and given medication and thereafter the Police took him back to his shop where the crime had been committed. That he explained to the Police where the gentlemen had been standing. That he took back the Medical Report to the Police on 22<sup>nd</sup> July, 2024, when the Police told him to call the witnesses who were there when the incident happened.
20. **PW2** testifying further stated that the time spent at the shop by the gentlemen before the accused pointed a gun at him was about 30 minutes from the time they had arrived outside his shop. That the money lost was in the bucket and amounted to almost K500.00 and to date his money had not been recovered. He gave the description of what the man looked like and what he was wearing, that is to say black hoodie with a white label in front and other labels behind, jeans trousers and that the man was tall, dark and muscular like a weightlifter. He identified the accused in the dock.
21. According to **PW2**, he could identify the gun that had been pointed at him as short, silver colour with black patches on

the handle. He proceeded to show Court the identifying features referred to. He also identified the Medical Report and the bucket that had contained his money which the accused had taken and thrown away. Lastly, **PW2** identified the black hoodie which the Accused had been wearing on the material day.

22. In Cross Examination by Mr. Kaluba, **PW2** confirmed that he gave a Statement at Woodlands Police Station on 21<sup>st</sup> July, 2024, at 18:25 hours barely minutes after the alleged incidence and that it would be correct to say that he gave all relevant information on what happened. When asked to confirm that the Statement did not make any reference to the number of people who were seated outside or about someone buying crisps, he stated that he had had mentioned but they did not write.
23. In further Cross Examination, he confirmed that it was true that the person who had entered into his shop went out with a bucket. He confirmed further that in his statement he had not given the description of the gun. He stated that according to the statement, it was true that the first time he saw the other people is when the accused was running away from the shop.
24. **PW2** confirmed that there was a demarcation of the counter in his shop and that customers stand in front of the counter and he behind where he was standing on the material day. Further that the money was kept behind the counter when attending to customers.

25. On how far the shop is from the tarmac to Tokyo way, **PW2** estimated this as being about 30 metres inside Salena by passing Selena Trust School and admitted that he was simply guessing the distance.
26. **PW2** reiterated that the first time he saw the accused was when he entered at first but then entered the second time. He confirmed that the accused produced a gun when he **PW2** thought he would produce money after placing the fruiticana drink he had taken on the counter. In terms what happened first between pointing the gun at him and hitting him, **PW2**'s response was that the accused began by pointing the gun at **PW2**. That **PW2** did not have time to examine the gun before it was pointed at him but that if three (3) guns with similar colour and size was shown to him he would be able to identify the one that was pointed at him through the colour, black handle with white patches on the side because he saw it when they arrived at the Police Station. Pressed whether he would identify it if he had not seen it at the police, he reiterated that he would do so because it was silver in front, black handle with white patches on the side of the handle.
27. **PW2** confirmed that when the gun was pointed at him, he shouted or screamed when he had ran outside after he was hit by the accused who he had bypassed as he ran outside. He said he had been standing close to the accused who hit him as he was trying to run outside the shop. Further, **PW2** confirmed that he did not surrender anything to the accused but he got the money by himself and that it was true that

immediately **PW2** ran out the accused also ran out and started running. That the accused did not follow **PW2** because all he wanted was to run away with the money he had gotten amounting to about K500.00 as **PW2** had not counted it.

28. When asked how the accused knew within that short time that money was kept behind the counter as admitted by **PW2**, **PW2**'s response was that the accused knew because the money was inside and showing in the bucket as even at first when he had paid for the 'papas' the accused saw where **PW2** had put the money. **PW2** confirmed that he had stated this in his statement at the police and even in his testimony.
29. In further Cross Examination regarding the Motor Vehicle, **PW2** stated that the vehicle was close to the shop but could not know the metres nor what was inside as he did not go near it. Further that the only persons who he saw are those who had come out from the car and he could not tell if there was anyone else in the car. That when this person ran away he tried to give chase but he gave up because he was bleeding on the face.
30. He agreed that when the mob pounced on the accused he was not there but he found that they had already apprehended him and were putting him in the vehicle when people came running to him to inform him that the accused had been apprehended.
31. When it was asserted that at the point that the accused was attacked, **PW2** was handed the ammunition and the gun,

**PW2**'s response was that he did not handle any of those items and that he only saw them when they arrived at the Police Station. Asked whether he could not tell whether what was pointed at him was a real gun or a toy (replica) **PW2** answered that it was a real gun because he saw it at the Police Station. Pressed further, **PW2**, stated that he did not know whether it was a real gun or a replica at the time because he thought he would be killed.

32. On the assertion that the accused who had been attacked by the mob had no opportunity to spend the money, **PW2** responded affirmatively and stated that when the accused ran away, the money was falling off. He said he did not know that the accused was not found with any money alleged to have been stolen when he was arrested. On whether he wanted Court to believe that the money could fall when the accused was wearing jeans trousers, **PW2** stated affirmatively that the money can fall.
33. On who between the accused and **PW2** arrived first at the Police Station on 21<sup>st</sup> July, 2024, **PW2** stated that it was the accused as he was behind the vehicle carrying the accused.
34. In Re-Examination by Mrs. Besa, regarding the Statement given at the Police which did not include the description of a gun, **PW2**'s position was that the Police did not ask him about the appearance or colour of the gun. Similarly, on the description of the accused, **PW2** said he was not asked about this in his statement. Further that what he was asked at the Police Station is what he was answering.

35. Clarifying on what the accused did when he entered his shop, **PW2** said that he got fruiticana and crisps. That at first, they had entered the two of them, one of them moved out and then one entered the second time.
36. Making clarification on how **PW2** moved away from the counter and passed the person who had pointed the gun at him, **PW2** stated that he passed beneath the accused who held him on the T. shirt but he was able to pass under.
37. **PW3** is 49 years old John Kambwali, a Businessman and resident of Chalala, Woodlands in Lusaka. His testimony is that on the material day, he was at a place in Chalala where he conducts his business when he heard people shouting 'thief' That a person being pursued by a mob headed in the direction where **PW3** and his friend Musonda were. That the mob caught up with the person and started beating him while he continued holding in the pocket of the hoodie he was wearing.
38. According to **PW3** he told the people who were beating the accused to stop doing so but they continued and as they did, the accused dropped a Pistol from the hoodie where he placed his hands even as he was being beaten and the time was around 17:00 hours to 17:30 hours. That when the Firearm had dropped, the accused attempted to pick it but **PW3** who had seen it picked it up earlier and handed to his friend who he was with. That his friend stopped a motor vehicle which was passing by and they placed the accused in the vehicle and they took him to the Police while **PW3** remained behind.

39. **PW3** testified that he could describe the person who they apprehended as tall, dark in complexion and muscular. That the accused at the time of apprehension was wearing a blue jeans and a black hoodie (with head cover). He proceeded to identify the accused in Court. He also identified the Firearm **P3** and the Black hoodie and stated that after picking up the Firearm from the scene, he gave it to Musonda Mwila.
40. In Cross Examination by Mr. Kaluba, **PW3** confirmed that on 21<sup>st</sup> July, 2024, around 17:00 hours he was at his trading area, near the shop belonging to **PW2** is a bit of distance away from his place and that while at his place, he is not able to see **PW2**'s shop. He further confirmed that he would therefore not know what is happening on the other side and that the first time he saw the accused was when he was being chased by the people and that he did not know where the chase started from. That all they heard was that they were pursuing a thief. Further that he did not know of any interaction that could have taken place between the mob and the accused.
41. **PW3** confirmed that the accused is the one who got to his place earlier and that when the mob caught up with him, they started beating him up badly until he started bleeding. He denied that the blood even went on what he was wearing or the top. He also confirmed that as the accused was being beaten, a gun dropped from his pocket and that apart from the gun, nothing else dropped from the accused's pocket.

42. It was **PW3**'s confirmation in further Cross Examination that his report to the Police was given on 22<sup>nd</sup> July, 2024, 24 hours after the incident and that it was correct to say that at that time, he had a good reflection of what had happened. Pressed on what the Court should believe between what he gave to the Police in his statement and what **PW3** had told Court, his response was that what he had stated in his testimony was the truth because that is what he believed.
43. **PW3** categorically declined to confirm that **PW2** was present at the scene when the mob was beating the accused. He also did not agree with the assertion that he handed the rounds of ammunition to **PW2** but that he handed them to Musonda.
44. There was no Re- Examination.
45. **PW4** was 34 year old Musonda Mwilwa, a Registered Nurse of Chalala, Tokaleya Street. He testified that on 21<sup>st</sup> July, 2024, between 17: hours to 18:00 hours, he went to chat with John Kambwali (**PW3**) near Salena Trust School, at a place where **PW4** sells firewood. That as they were seated, they saw a mob chasing a person while shouting 'thief, caught up with the accused near where the two were seated and started beating him. That while the accused was being beaten, he was holding on to a pole with his right hand. He described the accused as tall, black in complexion, muscular and wearing a black hoodie. That he was able to clearly see the accused as it was bright and not dark and it took about 30 minutes between the time the accused was being beaten and the time he was taken to the Police.

46. According to **PW4**, they could see when they went closer to watch that the accused had gotten tired and that is how the Pistol, **P3** dropped from the front part of the hoodie which the accused was wearing. That after the Pistol fell down, it was picked by **PW3** who gave it to him. Further that they stopped a motorist who was passing by where the accused was put in the boot of the vehicle. Further that **PW4** also entered and examined the gun that had been given to him by **PW3** and noticed that it was short, silver and black in colour. He proceeded to identify the Pistol, **P3**.
47. It was **PW4's** testimony that as the vehicle started moving and reached Woodlands round about, the accused started screaming that he was not breathing well. That they refused to open fearing that the accused would jump out, but that the accused himself managed to open the boot. **PW4** stated that he threatened the accused that if he jumped, he would be bashed by other moving vehicles from behind and the accused said that he could not jump off. That the driver of the motor vehicle accelerated until they reached the Police Station and fortunately, they found one of the Police Officers outside. Finally, that the victim, **PW2** arrived shortly thereafter.
48. In Cross Examination by Mr. Kaluba, **PW4** responded that the only thing he saw that dropped off from the accused 's pocket was a gun which was picked up by **PW3** who later gave it to him. He confirmed that in his Statement at the Police he also said that he saw a magazine and ammunition and that

they fell off and that he did not know who picked these as they were just given to him.

49. **PW4** confirmed that he gave a statement to the Police which he read over as correct. He maintained that **PW2** never held the gun and that perhaps the person who was writing the statement may have made a mistake. He added that he may not have heard or understood properly when the statement was read but what he had stated in his testimony is what he saw happening on the material day. Further that the Police may not have heard or understood him correctly when writing the Statement.
50. It was **PW4**'s confirmation that he did not see the accused at **PW2**'s shop, that the first time he saw the accused was at **PW3**'s trading place and that he did not know where the commotion had started from
51. There were no questions in Re-Examination.
52. **PW5** is 50 year old Silvester Mwamba, Detective Inspector, CID, Woodlands at Chelstone Police for 26 years. He told Court that on 23<sup>rd</sup> July, 2024, he was allocated a docket of **Aggravated Robbery** in which **PW2** had reported that four (4) unknown people in a White Toyota IST had gone to his shop and parked outside. That one of the passengers went outside the shop, picked a fruiticana, went to the counter where he took out a Pistol which he pointed at the Complainant, **PW2** and demanded for money.
53. He proceeded to state that **PW2** refused to give the money and the accused hit him with an unknown object on the right

eyebrow following which **PW2** sustained a cut and was issued with a Medical Report so that he could receive attention and medication. That the accused managed to steal K500.00 from the shop during the incident which occurred on 21<sup>st</sup> July, 2024 at around 18:30 hours in Chalala.

54. **PW5** testified that acting on the Report, he interviewed the accused who was already in Police custody. That the Pistol had be taken from the accused by members of the public and that the black hoodie where the gun had fallen from was collected from the accused in custody. That the bucket containing the K500.00 from **PW2**'s shop was retrieved but the money was not recovered.
55. It was **PW5**'s testimony that after the interview with the accused, he recorded a Warn and Caution Statement from him in Bemba, a language he appeared to understand better. Thereafter, **PW5** made up his mind to charge and arrest the accused for Aggravated Robbery. **PW5** was able to identify the Pistol, **P3** which was taken to the Police by members of the public and was later handed over to him by the 2<sup>nd</sup> Criminal Investigation Officer Peter Musa who had received it.
56. **PW5** was able to identify the Medical Report issued to **PW2** and also the accused in Court as the person he had charged for the offence of **Aggravated Robbery**. The following items which were said to be where in **PW5**'s custody were admitted into evidence as follows:

- i) *Medical Report marked **ID5** as **P5***

ii) *The boom bucket marked **ID6** as **P6***

iii) *The Black hoodie marked **ID7** as **P7***

57. **PW5** testified that the Firearm, **P3** has five (5) bullets and it was in working condition as he knows that it was tested at Service Headquarters by the Ballistic Expert who had authored a Report, **P1** which he identified. He also identified **P2** (2 empty cartridges) and **P4** (3 live cartridges).
58. In Cross Examination by Mr. Kaluba, **PW5** admitted that his first encounter with the accused was on 23<sup>rd</sup> July, 2024, and that during investigations he had interacted with other witnesses including **PW3** and **PW4** who only saw the accused at the point he was being beaten and were not present at the shop. He also admitted that **PW2** did not pursue the accused until he was caught but that he tried to pursue but did not continue until the accused was caught. That he did not come across anyone who said he had followed the accused from **PW2**'s shop until he was caught and that it would have been important to look for such a witness.
59. Regarding the Pistol, **P3**, **PW5**'s testimony was that it had been given to him by the 2<sup>nd</sup> Criminal Investigations Officer Peter Musa 4 days after the incidente and that he did not know who had given the same to Peter Musa. He also stated that he did not know the condition in which it was at the time it was given to Inspector Musa or even whether it was the same one that had been handed over to Inspector Musa.

60. Answering the question whether from his investigations, the Firearm in question was registered, **PW5**'s response was in the negative and the basis was that if it was for the accused on whom it had been found he would have produced papers. He stated that he knows that the Zambia Police keeps records of all licenced firearms whose licences it issues and that it was not necessary for him to check the record and ensure that it was registered because it would have taken ages to do that. He stated that he did not know the serial number for the firearm as an Investigations Officer because there was an expert who was supposed to do that at the Forensic Department where it was taken for examination. He admitted that he did not know how long the firearm was kept at the Forensic Ballistic Department before it was taken back to the Police for custody.
61. Regarding the black hoodie, it was **PW5**'s position that he got it from the accused who was wearing it when he was detained in Police cells, a day after the accused was taken into custody. He insisted even when pressed further that he got the hoodie from the accused and not from the detainees as asserted in Cross examination. **PW5** also denied the suggestion that the hoodie was infact collected almost after two weeks from the date of the accused's arrest.
62. **PW5** confirmed that he did not recover the Firearm from the accused and that what he was given was a Firearm through the 2<sup>nd</sup> CIO. That he collected the bucket himself together with the black hoodie.

63. When asked to name the Police Officer who received the firearm, **PW5** said he could not do so because it was recovered through the members of the public who handed it over to the Police. He said that he could not name the Police Officer who received the Firearm because he was not present but that it was recorded in the docket received from inquires which only captured the person who brought it and not the person who had received it. Pressed further on whether it is not important to record the name of the person receiving the Firearm, **PW5**'s response was that it is important but that it is recorded in the other books of the Police and in the docket. Further and in response to whether as the Investigating Officer **PW5** was not supposed to check those books, he stated that it was not necessary as long as he had received the docket. Pressed whether he was saying that it was not necessary for the Court to know who received the Firearm, he agreed that it was.
64. Regarding the K500.00 allegedly stolen from **PW2**, **PW5** responded that he did not see that money from the accused and that it was not there among the items received from the accused when he was taken into detention. He agreed that from the time the accused was attacked by the mob and taken to the Police the accused had been in Police custody. **PW5** could not answer whether the accused had no opportunity to spend the money because, he was not present when the accused was taken to the Police. He confirmed that as Investigation Officer, he had interviewed the witnesses who had given statements at the Police. On whether the witnesses

had confirmed the correctness of the statements they had given, **PW5** stated that the Statements were recorded at Inquiries and that he did not ask the witnesses to confirm whether the Statements they gave were correct.

65. 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**.

### **Defence case**

66. The accused, Rabson Chama, a 34year old Driver/Businessman of Kanyama John Laing (**DW**) gave evidence on his own behalf and called no other witness. He informed Court that while at his house on 21<sup>st</sup> July, 2024, he received a call from his friend Moses who is also a driver and who informed him that a vehicle had been found for him to drive and was if he was serious, he should start off for somewhere in Ring Road. That he informed his friend that he did not have transport after which his friend told him to get a Taxi because buses were difficult in that area.
67. **DW** stated that he proceeded and found his friend opposite Appex University who apologized that the boss had decided to give the vehicle which he had been called for to drive, to his inlaw. That his friend gave him a K50 for use as transport to get back into town and to make another plan since there was still time. That his friend left him at Appex and promised that he would try and talk to his boss. That as **DW** was

waiting for a bus, he stood nearby a shop where an elderly muscular man wearing a reflector and a short was also standing and looking at **DW**. According to **DW**, he asked the elderly man why he was looking at him and the old man replied that he liked **DW**'s body stature and the way it was looking and asked which gym **DW** goes to. That in response **DW** informed the elderly man that he goes to Kanyama gym.

68. It was **DW**'s testimony that the elderly man informed him that he owned a club/bar in Chongwe where he was having a show and that he was scouting for manpower of people with a body like **DW** and that so far, he had found three (3) who were in the vehicle. According to **DW**, the time was around 15:30 hours and the elderly man told **DW** that they could start off immediately. **DW** testified that he informed the elderly man that he had just gone there for an emergency program and was only dressed in a golf T.Shirt and grey and white shoe and looking at his dressing, he needed something warm and also that he needed to inform his wife. That they agreed on payment of K800.00 for the job he had been engaged for and the elderly man told **DW** not to worry about warm clothing as he would be given and also not to worry about informing his wife as he could do so. Further that the elderly man opened the door of the vehicle and **DW** found three (3) other men who had the same body structure like him all dressed in black hoodies and black trousers. Further that the elderly man gave a black hoodie to **DW** and told him to wear it.

69. According to **DW**, he got on board the car, greeted the persons he found and the vehicle started off. Whilst in the vehicle he got the phone and called his wife but the phone went unanswered. That when the vehicle reached the robots turning from Apex School going into Ring Road, the old man received a phone call and when he had finished speaking, he informed them he needed to see a person at Salena and they proceeded to the place where there were houses and a shop opposite. That the elderly man did not switch off the vehicle but parked it at the corner and then one of the gentlemen who had sat on the far right side of **DW** (**DW** was on the left side and the other on the middle back seat) disembarked and said he was going to buy a drink in the shop.
70. That after about two (2) minutes, **DW** looked into the mirror on the side where he sat, and saw a certain person coming out of the shop screaming 'thief'. According to **DW**, that is how the old man cut the phone call he was on, looked into the mirror, asked what was happening and started driving the vehicle. That the man who had disembarked from the vehicle earlier started running after the moving vehicle which joined the tarmac. **DW** stated that he persistently asked the old man what was happening and the old man told him to just to keep quiet. That the old man removed two (2) Pistols and handed them to the person **DW** was seating with behind.
71. **DW** testified that he proceeded to ask the old man what it is that the old man had started removing and the old man instructed the person who was at the rear with **DW** to just

push **DW** out as he did not like persons who are talkative. That while **DW** was being pushed, the person held a pistol in his hand and as **DW** was opening the door, the Pistol came out too. That when the Pistol fell, **DW** picked it up and put it in the hoodie that he had been given and after he had been pushed out the vehicle sped off in the direction of Kasama Road.

72. It was **DW**'s testimony that after falling, he stood up and started dusting himself and that he picked up the Pistol and put it in the hoodie because he wanted to report to the Police. That **DW** started walking and two men appeared and started screaming 'thief' and **DW** started having a quarrel/struggle with them and he told them that he was not a 'thief' after which they let go of him. That when they had let go of **DW** another group of people came with stones and planks and upon seeing that, **DW** started moving hurriedly because of the way the group was coming. That among the mob, one of them pointed at **DW** and that is how they started beating **DW**. He stated that he slipped from them and fled towards a makeshift shop where firewood is sold and he held on to a pole near the firewood. That the mob arrived and continued beating **DW** until he kind of became unconscious.

73. **DW** testified that he found himself in the boot of a vehicle and started screaming as the ventilation was not good, but there was no response to his screams. That through God's grace he pushed the boot door and it opened and **DW** saw that they were at Woodlands Police. He stated that he was bleeding,

was ordered to remove his shoes but he told the Police that he was unable to bend because his rib on the side was paining prompting one of the Police Officers to assist **DW** to remove one shoe on one side of his leg.

74. **DW** stated that he was taken into Police cells on 21<sup>st</sup> July, 2024, and the following day, an Officer by the name of Mwamba came to the cells and enquired who Rabson Chama was and the other cell mates lifted **DW** and took him to the front as he could not manage to stand on his own because of the paining ribs. That Officer Mwamba told the other cell mates that **DW** was just feigning the pain. That when the cell door was opened, Officer Mwamba told **DW** that his muscular body and stature which he was using would not help him where he was being taken and that he would see. He was handcuffed and taken upstairs to the CID Office and was made to sit down.
75. **DW** stated that he was asked where he stayed and he told the officers that he lived in Kanyama John Laing. That they inquired what **DW** had gone to do at Salena and changed their minds stating that they had treated **DW** like they were at church so they got some handle like sticks and shot buttons, pushed a metal bar through his handcuffed hands, placed two tables apart and put **DW** on the metal bar like a swing. That other Police Officers who were there started gearing themselves folding the sleeves of their shirts and asked **DW** if he knew a swing and while all this was happening, his head was facing down and his legs were facing up. That the

Officers started beating him using shot buttons on his feet and buttocks.

76. Further that whilst beating **DW**, the Police were repeatedly asking him who the owner of the gun was and his response was that it was not his and he did not even know who owned the gun. That the Police Officers told **DW** that he had even beaten a person and in reply he had denied ever having beaten anyone. In his words it was like they were forcing him and putting words in his mouth to admit that it was his gun.
77. **DW** stated that, another Police Officer who appeared elderly and was looking smart started whispering something in Officer Mwamba's ears after which **DW** was taken off the swing as he complained that they had hurt him. That he was then told to lead them to his house where they found one of the children kept by **DW**, Violet, who was touched by the injuries she saw on **DW**'s head and the blood stains on his clothes. That the Officer got a 55-inch Hisense T.V and an L.G Radio, placed the appliances in the Landcruiser and said these items were also acquired through stealing. According to **DW**, he told the Officers that he was not a thief and he was taken back to Woodlands.
78. It was **DW**'s testimony that the following day on 23<sup>rd</sup> July, 2024, his wife went to the police cells with a bottom, stockings and a hoodie and he informed her that he was not well. That his wife purchased Rufedol and Diclofenac and that she was touched at the fact that **DW** was not feeling well. He stated that the following day when he went to the toilet to

urinate, blood was coming out. That later on 26<sup>th</sup> July, 2024, Officer Mwamba went to the cells and informed **DW** that he had heard that he was urinating blood and that **DW** would not die and asked him whether his blood would finish.

79. In his concluding testimony, **DW** stated that after about two days, Officer Mwamba returned to the cells where he found **DW** being helped to bath by a cell mate who he instructed to give him the hoodie. That **DW** stayed in the cells for about 2 months before Officer Musa went to ask him whether he was aware that the T.V and Radio had been collected from the Police by **DW's** father in law and wife.

80. In Cross Examination, **DW** confirmed that the T.V and Radio referred to above are the ones he had mentioned in his earlier testimony and that it was correct to state that the items are at his house and not with the Police. He agreed that when he was caught, he was wearing the hoodie where he had placed the gun when he picked it up. When referred to the Firearm **P3** and asked whether it was the same Firearm that he had placed in his hoodie, his responded that he did not pay attention to how the Firearm looked like. He could not confirm whether the Firearm he was found with was short and a pistol maintaining that he did not look at it and went on to estimate it as being about 15 to 20 cm when pressed further. He said that the incident happened so fast and the Firearm before Court could either be the one or not. He conceded that when he was apprehended, he was found with a Firearm after being pursued by two people and the mob.

81. On whether Officer Mwamba was present when **DW** was being tortured, he responded affirmatively. When asked whether he had reported the Officers who allegedly tortured him, **DW** said that he had informed the person at Inquires about the bleeding and he had informed his family about the torture. **DW** conceded that the issue of torture was coming up for the first time in Court and that even when Officer Mwamba was testifying the issue of torture was not mentioned. Further that the Officers who had testified earlier would not have an opportunity to speak for themselves on the issue regarding torture. Pressed further on whether it should not be categorized as an afterthought, **DW** stated that it happened.
82. **DW** conceded that he was in a group of people in the vehicle which had parked outside the shop near Salena. He also agreed that he did not go with them when the vehicle sped off leaving him behind. He agreed that the whole incident happened during the day and that visibility was good.
83. Regarding **DW**'s testimony that a pistol followed him when he was pushed out of the vehicle and whether **DW** wanted to go to the police to report that a firearm had followed him, his response was that he had wanted to go and report that the men in the vehicle had dropped a firearm. That the passengers in the vehicle were five (5) when they had parked the vehicle at Salena before **DW** was left behind. On how long it took from the time they had parked outside the shop and the time when the one who had gone into the shop came out, **DW** stated that it was just a few minutes because the vehicle

was parked but idling. Pressed further he responded that it took about 2 minutes.

### **CONSIDERATION AND DECISION OF THE COURT.**

84. I have considered the information, the Prosecution and Defence testimonies and the submissions by the Defence for which I am grateful. I will proceed to address the elements of Aggravated Robbery which the State ought to prove to establish the guilt of the accused Person, in the context of the evidence.

***(i) Whether the Accused was with one or more other assailants or was armed with an offensive weapon.***

85. The evidence before me is that **PW2** was at his shop near Salena Trust School on 21<sup>st</sup> July, 2024, around 17:00hrs and that there was good lighting at that time, when a group of four Men arrived in a car and remained near the shop for about 30 minutes. It was his testimony that the accused walked into the shop with one of the men he came with and bought a corn snack called papas and went out. It was **PW2**'s testimony that the accused went alone into the shop a second time and proceeded to the fridge to get a fruiticana drink and walked towards the counter. That he placed the drink on the counter and placed his hands in the pocket as if searching for money only to pull out a pistol which he pointed at **PW2** whilst demanding for money. **PW2** testified that when he saw that his life was in danger, he decided to

escape from his shop. That whilst he was escaping he was hit with an unknown object on his face and he sustained a wound and started bleeding. That he managed to get out of the shop and he started shouting 'thief!'. It was his testimony that members of the community came out of their homes and pursued the accused who had come out of his shop shortly after him. Further that he went to the place where the accused was apprehended and saw him being put into a car and taken to the Police and he followed behind in a different vehicle. That in that whole ordeal he was robbed of cash money amounting to about K 500.00. **PW2** further went on to describe his attacker in Court as being muscular, dark in complexion and on the day the crime was committed he was wearing a black hoodie and jeans. He also positively identified the gun during trial.

86. **PW3** and **PW4** testified that they were at a make shift store belonging to **PW3** near Salena School where he sells firewood, when they saw the accused running towards them whilst being pursued by a mob that was shouting 'thief!'. That when he got to where the two were, he held a pole with one of his hands while the other was in the pocket. That he did not remove his hand from the pocket even when he was being beaten by the mob. Further that he only removed his hand from the pocket when he became tired at which point a pistol and some ammunition fell out of his pocket. That it was at this point that a vehicle was found and he was taken to the Woodlands Police Station. The witnesses positively

identified the accused in Court, the Clothes he was wearing on the material day being a black hoodie and blue jeans. The witnesses also stated that the whole incident happened between 17:00 hours and 18:00 hours and that there was good lighting at that time.

87. **PW1** informed Court that he was a Ballistic Expert and gave evidence that on 9<sup>th</sup> September, 2024, he was given a firearm serial No. T.0620-14TF00231 and five cartridges and that during his investigation he found that the firearm was a semi-automatic 7.62 Fatih Pistol made in Turkey designed to load cartridges of 7.65 browning and was capable of causing damage to property or death or injury to an animal, human once loaded and discharged. Further that, it can cause fear or panic to any person with a reasonable state of mind.
88. I have also considered the evidence of the accused herein, who informed this Court that he did not at any point enter the shop belonging to **PW2** nor did he threaten or harm him in order to steal money. The accused Person's alibi is that on the day in question he went to Chalala near Apex School to meet his friend who had found work for him as a bus driver. That however when he met his friend, he was told by his friend that the bus had been given to someone else. At that point he had no option but to go back home and he was given a K50.00 by his friend to use as transport money. That whilst he was waiting for a bus he was approached by an elderly gentleman who had a similar body stature to his who offered

him work in Chongwe as a security detail at his club to which he accepted. That looking at how he was dressed (white T. shirt and white and grey shoes) and the weather, he was offered a black hoodie by the same man and that he proceeded to the man's car where he found three (3) other men who all wore black hoodies and black trousers in the car.

89. According to the accused, when the car started moving, the elderly gentleman who was putting on a short and who had offered him the job received a phone call and informed the others that he had to meet someone near Salena Trust School. That they drove to a shop near the said school and one of the gentlemen came out of the car and in about a time frame of two minutes the accused saw a man run out of the shop shouting 'thief' that it was at this point that they drove off leaving the man that had entered the shop behind. Further that whilst they were driving away he inquired from the elderly man what was happening and the said man become irritated with his questioning and instructed the man who was sitting next to him in the back seat of the vehicle to push him out. Further that the person who was instructed to push him out was given two guns and that when pushing out the accused from the car one of the guns fell out. The accused informed Court that he picked up the said gun and placed it in the pocket of the hoodie he was wearing with the intention of taking it to the Police.

90. That it was at that point that two men approached him calling him a thief, but that he explained to them that he was not a thief and they let him go. It was also the accused's testimony that shortly thereafter, a mob came with stones and planks and he ran towards a make shift store where he held a pole and was beaten until he lost consciousness which he only regained when he was in the vehicle that took him to Woodlands Police.
91. I note from the evidence before me that the victim (**PW2**) had not known the accused before the incident and arrived after the accused at the Police Station as they were in different vehicles. Further that the Police did not conduct an identification parade for the victim to identify the accused nor was the victim asked to identify the accused by describing his features. Furthermore, no satisfactory explanation was given as to why this was not done as submitted by Defence Counsel. This can only be described as dereliction of duty on the part of the Police. It has been held in a plethora of cases that Courtroom identification is of less value. One such authority is the Court of Appeal case of **Mwiya Muleya and Another v The People**<sup>3</sup> where it was stated that:

***“ It has been held in a Plethora of cases that it is undesirable for the police to do nothing about the question of identification until the accused is brought before the Court. The reasoning behind that is that at first sight it might seem that there could not be better evidence of the identification of***

*the accused than the direct statement of a witness in Court that the accused is "the man" but the witness is all too apt to think that the police must have gotten the right man who is actually in the dock, with the result that he may be prepared to swear positively to a fact of which he is by no means certain.*

*It is therefore, safer and advisable that where the identity of a person is said to be known or there is an allegation by the witnesses that they are able to identify the Accused, that an identification parade is held. Before the identification parade, the police must make record of the witness's description of the suspect.*

*In the English case of Forbes (2011) ALL ER, 686, the House of Lords was of the view that an identification parade is mandatory where there is a witness who has identified a suspect or who identified a suspect or who feels that they are able to identify a suspect. That there is a mandatory duty on the police to hold a parade where the suspects disputes the identification.*

*Therefore, dock identification, that is identification at the trial itself, in court, without any preceding method of identification is normally inadmissible, although there are exceptions."*

92. It was also stated by the Court of Appeal in the case of **Ali and Another v The People**<sup>4</sup> that:

*“Although it is within the Courts discretion to allow it in appropriate circumstances, a Court room identification has little or no value particularly where there is no satisfactory explanation for failure to hold an identification parade and there is no other evidence incriminating the Accused.”*

From the forgoing it is clear that Police Officers play a crucial role in the identification of an accused person to avoid mistaken identity. Be that as it may, the fact that an identification parade was not held herein does not make the Identification of **PW2** who was the only other person at the crime scene inadmissible. As stated in the **Muleya case** above there are exceptions. It may be argued that the identification of **PW2** was weakened by the fact that he was not asked to describe the accused nor was an identification parade held. The Supreme Court provided guidance as what ought to be done when the identification of an accused person is weakened. It was stated in the case of **Kenneth Mtonga and Kaonga v The People**<sup>5</sup> that:

*“If the identification is weakened then, of course, all it would need is something more, some*

***connecting link in order to remove any possibility of a mistaken identity”***

93. Equally in the case of **Peter Yotamu Hamenda v The People**<sup>6</sup> it was stated that:

***“Where the quality of identification is good and remains so at the close of the defence case the danger of mistaken identification is lessened; the poorer the quality the greater the danger. In the latter event the court should look for supporting evidence of identification. Odd coincidence can provide corroboration.”***

I have also considered the case of **Nyambe v the People**<sup>7</sup> (1973) stated that:

***“(ii) there is great danger of honest mistake in identification, particularly where the accused was not one of credibility in sense of truthfulness, but of reliability.***

***(iii)The greatest care should be asked, for instance, by what features or unusual marks, if any, he alleges to recognise the accused, what was his build, what clothes he was wearing, and so on; and the circumstances in which the accused was observed – the state of the light, the opportunity for observation, the stress of the moment- should be canvassed.***

***(iv)The adequacy of evidence of personal identification will depend on all surrounding circumstances, and each case must be decided of its own merits”***

It is clear from the cases cited above that where the evidence of identification has been weakened as in this case, where identification was courtroom identification, the Court is mandated to look at other supporting evidence so as to ensure that there is no mistaken identity.

94. In this matter **PW2**, has given evidence that his attacker was wearing a black hoodie which had white and blue labels on them. That he was also wearing a jeans trouser. This evidence was corroborated by **PW3** and **PW4** who confirmed that the person they apprehended was wearing the same clothing as described by **PW2**. **PW3** clearly testified that the accused was wearing a blue jeans and this evidence was not challenged. The accused person himself does not deny wearing these clothes. In his alibi, the accused provided further information that the other three (3) men were wearing black hoodies and black trousers and the elderly gentleman was in a short. He also described what he was wearing before he was given the black hoodie as a white T. shirt and white and grey shoes. Ironically, he conveniently chose not to describe the pants he was wearing. I find it odd that the accused could be quick to describe the kind of pants all the others were wearing and not do so about himself. This would

mean that he was the only person who was wearing a blue jeans trousers. Further, he was apprehended at a place not far from the shop of the victim and it has been testified that during the time of the incident there was good lighting in the day. There is no chance that another person other than the accused would have been pursued and caught given this chronology of events. Furthermore, **PW2**'s attacker had a silver pistol and the accused herein was found with a silver pistol the time he was apprehended not far from the victim's shop. I find this to be an odd coincidence that is corroborating the evidence of **PW2** herein. It was also **PW2**'s evidence that the attacker entered the shop twice, when there was good lighting, entailing that he had enough time to observe his attacker in a calm environment. The victim quite clearly had a good opportunity to observe the accused who had entered the shop twice. At first the accused picked a snack, paid for it, went outside, and went back into the shop again, got a drink before he pointed the gun at the victim. The victim can only be said to have gotten in a panicky state after the gun was pointed at him and certainly after he had already observed the attacker.

95. I find the evidence of the accused unbelievable that he picked up the gun to take it to the Police. In the state of events as narrated by him, a reasonable person would be more concerned for his safety and fleeing would be his major pre-occupation. Instead, the accused clutched on to the pocket of the hoodie where he had placed the gun even in the wake of beatings from the mob as if his life depended on securing

the gun which he attempted to pick after it fell off. The only thing that prevented him from doing so was that **PW3** picked the gun earlier. I also find this to be odd in the scheme of things. When all the old coincidences are added together, they tend to confirm the Prosecution's case.

96. From the forgoing, I find that there was no mistaken identity as regards who attacked **PW2** and from the facts, it is clear that it was the accused herein. It is also clear that the accused was found with a weapon which is a pistol. Therefore, the first element of the offence of **Aggravated Robbery** has been proven by the State.

***(ii) Whether something was stolen.***

97. It was **PW2**'s testimony that money amounting to K500.00 was stolen from his shop. I note that the incident happened between 17:00 hours and 18:00 hours. The accused was also apprehended within that time frame and not far from the victim's shop. Further it is clear that he would not have had time to dispose of the said money and **PW5** who is the Arresting Officer confirmed that no money was found on the accused. Therefore, it is clear that the State has failed to prove theft in this matter.

***(iii) Whether violence was used on the victim immediately before or immediately after the time of stealing.***

98. I have already found that there is no evidence that there was any money stolen so I will not belabour the point about theft. The victim testified that when the accused had a gun pointed at him, he decided to run away from the shop and it was , at that point that he was hit with an unknown object on the face and he sustained a wound and started bleeding. That he was given a Medical Report which was taken to the Hospital. This testimony was supported by the evidence of **PW5** who produced the said Medical Report in Court. The Medical Report revealed that **PW2** sustained a cut on his forehead and left eye. This element has also been proved by the State.
99. It is clear from my findings that the State did not prove the element of theft in the ingredients of the offence of Aggravated Robbery. Therefore, the State has not proved the charge of Aggravated Robbery as set out in **Section 294 (1) of the Penal Code Chapter 87 of the Laws of Zambia**.
100. Notwithstanding the failure by the State to prove the offence of Aggravated Robbery, the view I take is that this is a fit and proper matter for me to invoke the provisions of **Section 181(2) of the Criminal Procedure Code Chapter 88 of the Laws of Zambia**. For avoidance of doubt the Section provides that:

***“When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of a lesser offence although he was not charged with it.”***

101. I am further fortified by the case of **Kapowezya v The People**<sup>3</sup> where the Court of Appeal<sup>8</sup> stated that:

*“On the other hand, if it is clear on the evidence that the gist of the principal charge has been proved but that some element is lacking which obviously makes the charge a lesser one, or that there is evidence of some lesser offence which is clearly cognate to the offence charged, it is clearly in the interests of justice that the accused person should not be acquitted but should be convicted upon the lesser charge which is thus clearly proved”.*

In this case therefore, the accused is liable for conviction for a lesser offence that is cognate with the offence of Aggravated Robbery for the elements that have been proved.

102. Further in the case of **Abraham Sinkamba v The People**<sup>9</sup> the Court of Appeal held that:

*“In this case, there is no doubt that the victim was attacked as evidenced by the medical report and the testimony of PW3. There is however, no evidence of a theft. This is because PW3 did not see anything being taken from the victim neither did PW2 recover anything to confirm that the attack on the victim was to facilitate a theft. The Complainant did not*

*come before court to testify to the property stolen. Therefore, we find that there was no evidence to support the charge of aggravated robbery. We instead find that the evidence on record discloses the offence of assault occasioning actual bodily harm contrary to section 248 of the penal code. This is evidenced by the medical report and the testimony of PW1 and PW3”.*

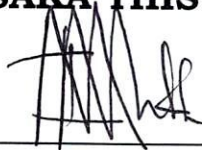
103. I note that in this case there is a single witness who saw the accused at the crime scene but it matters not. Having considered all the evidence before me, I am satisfied that it is safe to convict the accused on the evidence of this one witness as **PW2** who from my observation is reliable and honest. I also find that there is enough corroborative evidence to support his testimony and the dangers of mistaken identity have been excluded as guided in the case of **Robertson Tembo v The People**<sup>10</sup> where it was stated that:

*“It is settled law that evidence of a single identifying witness can sustain a conviction, provided it is clear and satisfactory in every respect. In the case of Chimbini v The People, the court reiterated the principle that, where the evidence of a single witness in question relates to identification, there is the additional risk of an honest mistake, and it is therefore necessary to test the evidence of the single witness with particular care; and that the honesty of the*

*witness is not sufficient, the court must be satisfied that he is reliable in his observation.”*

104. Following the guidance highlighted above and having found that the element of theft was not successfully proved by the State, I find the accused guilty of the lesser offence of **Assault Occasioning Actual Bodily Harm** contrary to **Section 248 of the Penal Code** based on the evidence before me and I Convict him accordingly.

**DELIVERED AT LUSAKA THIS 9<sup>TH</sup> DAY OF MAY, 2025.**



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**I. M. MABBOLOBOLO**  
**HIGH COURT JUDGE**