

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

HP/219/2024

THE PEOPLE  
V  
VINCENT NKONDE  
VINCENT MWAMBA NKONDE  
MARTIN NKOLOMA



BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 8<sup>th</sup> DAY OF JANUARY,  
2026

For the State : Mrs C. Mtolo Sikanyika & Ms G. Phiri, State Advocates  
NPA  
For the Accused persons : Ms K. Nyimbili, Legal Aid Counsel, and Mrs Bibiyana  
Bulaya Kearns Pro bono Counsel, LAB

---

## J U D G M E N T

---

### CASES REFERRED TO:

1. *London Chisulo and 2 others v R* 1961 R& N 116
2. *Mutambo and five others v The People* 1965 ZR 15
3. *The People v Njovu* 1968 ZR 132
4. *Inambao v The People* 1969 ZR 84
5. *Haonga and others v The People* 1976 ZR 200
6. *Ernest Mwaba and Chabaya Ndala and Simushi Manyima and Wamunyima Walusiku and Erustus Kakumbi Banda v The People* 1987 ZR 19
7. *Francis Mayaba v The People* SCZ No 5 of 1999
8. *Abednigal Kapesh and Best Kanyakula v The People* SCZ No 35 of 2017
9. *Rodgers Kunda v The People* Appeal No 81 of 2017

### 1. INTRODUCTION

1.1 Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma, the Three (3) accused persons stand charged with one count of murder contrary to **Section 200 of the Penal Code, Chapter 87 of the Laws of Zambia.**

- 1.2 The particulars of the offence allege that Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma on the 29<sup>th</sup> day of August, 2023, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia jointly and whilst acting together with others unknown, did murder Samson Mulipukwa.
- 1.3 Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma all denied the charge. At trial, the State called Ten (10) witnesses in support of their case, while Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma all gave their defence on oath and they did not call any witnesses.
- 1.4 The onus is upon the State to prove the case beyond all reasonable doubt.

## **2. EVIDENCE LED AT TRIAL**

### **PW1- MIKE MWALE**

- 2.1 This witness testified that on 28<sup>th</sup> August, 2023, he went for work and parked his motor vehicle, Toyota Harrier, black in colour. He stated that he after he went for work in the field using a company vehicle, he received a phone call from James Phiri his workmate, who asked to be picked up from Kabulonga.
- 2.2 Mike Mwale's testimony was that when he went there to pick some flowers, he found James Phiri and the late Samson Mulipukwa, who was also a work mate, but who used to work in the security department.

- 2.3 Further in his evidence, Mike Mwale stated that Samson Mulipukwa informed him that he was going to Chilenje to pay back some money that he had borrowed, and Mike Mwale agreed to pick him as they were going in the same direction.
- 2.4 It was his testimony they left and went and dropped the flowers first, and proceeded to where Samson Mulipukwa had borrowed some money which he paid, and he was given back the phone that he had left as security.
- 2.5 Further evidence was given, that Samson Mulipukwa suggested that they go and drink some beer, and that was how they went to a place near Chilenje Police.
- 2.6 Mike Mwale testified that they bought some Mojo energy drinks and some Junta spirits and mixed them. Then after they finished drinking around 19:00 hours, Samson Mulipukwa had asked Mike Mwale if he could buy some fuel to put in his vehicle, so that Mike Mwale could drop him off at his house in Mtendere East.
- 2.7 It was stated that they proceeded to Harvest Filling Station, behind Chalala Mall on the Ring road to refuel, where Samuel Mulipukwa stated that he had only K50.00 to buy fuel, and not the K100.00 that Mike Mwale had told him. Then, Samuel Mulipukwa stated that he would just get on a bus as Mike Mwale told him that he could not manage to take him and back on fuel worth K50.00.
- 2.8 Mike Mwale still in his testimony, told the Court that he drove off into Kalomo Road, and Samson Mulipukwa

disembarked, stating that he was going to board a bus. His evidence was that Samson Mulipukwa was tipsy but not drunk, such that he could not walk. Then from there, James Phiri also disembarked and Mike Mwale went home.

- 2.9 He testified that the next day, he went for work, and he found James Phiri, but not Samson Mulipukwa. Mike Mwale stated that he tried to call Samson Mulipukwa's phone but it did not ring. His evidence was that even the next day, Samson Mulipukwa did not report for work.
- 2.10 Further in his testimony, Mike Mwale testified that on the third day, Samson Mulipukwa's wife went to their place of work, and she informed them that Samson Mulipukwa had not been sleeping at home.
- 2.11 He stated that he had informed Samson Mulipukwa's wife that they were last with Samson Mulipukwa in Chilenje South. Thus, it was agreed that Mike Mwale and his colleagues would go and look for Samson Mulipukwa in Chilenje, and Samson Mulipukwa's wife would search for him in the area where they lived.
- 2.12 Mike Mwale told the Court that he went to file a report at Mary Mwango Police Post and there he was informed that they should advertise on the radio, and go and report the matter to Chilenje Police.
- 2.13 It was his evidence that at Chilenje Police, he had showed the police a photograph of Samson Mulipukwa that his wife had given him. That was how, Mike Mwale was shown

photographs of some dead people, and he identified Samson Mulipukwa among them.

2.14 He testified that he notified the office of Samson Mulipukwa's death, and he further called Samson Mulipukwa's relatives and told them about the death. In still testifying Mike Mwale stated that together with Samson Mulipukwa's relatives, they gave statements to the police. He stated that he learnt that Samson Mulipukwa was found along the Ring road.

2.15 It was his evidence that he had worked with Samson Mulipukwa for about five to six years, and that Samson Mulipukwa was married with children. Mike Mwale testified that himself and Samson Mulipukwa would encourage each other on how to keep their families.

#### **CROSS EXAMINATION OF MIKE MWALE**

2.16 Mike Mwale in cross examination, agreed that he was drinking alcohol with the late Samson Mulipukwa in Chilenje. He explained that Samson Mulipukwa was going to Mtendere East, while James Phiri was going to Kamwala South.

2.17 Mike Mwale stated that Samson Mulipukwa had asked to put fuel in his vehicle and thus they had proceeded to Harvest Filling Station around 19:00 hours. He agreed that there are other Filling Stations in Chilenje, but his position was that they went to Harvest Filling Station as it was near to Kamwala South.

2.18 Further in cross examination, Mike Mwale told the Court that Samson Mulipukwa had a big bag from work. It was his

---

testimony that he could not account for what Samson Mulipukwa did in his absence, but he learnt that Samson Mulipukwa was apprehended for being a thief.

- 2.19 Mike Mwale clarified that tipsy meant that they did not take a lot alcohol, and they did not lose focus. Whilst stating that he was the last person to see Samson Mulipukwa, Mike Mwale's evidence was that he did not see Samson Mulipukwa get on to a bus, although he saw him walking.

**RE-EXAMINATION OF MIKE MWALE**

- 2.20 There was no re-examination.

**PW2-JAMES PHIRI**

- 2.21 James Phiri testified that on 28<sup>th</sup> August, 2023, he was working from Mutende Road in Woodlands, when he asked Mike Mwale, his workmate, to give him a lift after he knocked off. That was how Mike Moyo went to pick him up around 16:00 hours.
- 2.22 It was his testimony that Samson Mulipukwa who was changing shift with his friend, asked Mike Mwale if he could also be given a lift as he was taking money to Mwaanga in Chilenje South.
- 2.23 Thus, the three of them went to Chilenje, where Samson Mulipukwa gave Mwaanga his money and thereafter, Samson Mulipukwa started buying beer. James Phiri's testimony was that they left there between 18:00 and 19:00 hours.
- 2.24 Like Mike Mwale, James Phiri's testimony was that Samson Mulipukwa had asked to buy fuel in Mike Mwale's vehicle so

that Mike Mwale could drop him off at home. However, Samson Mulipukwa had stated that he had only K50.00 and not K100.00 to buy the fuel as stated by Mike Mwale.

- 2.25 He testified that Samson Mulipukwa told them that he would go home by bus and he left James Phiri and Mike Mwale. Then from there, James Phiri went home using a bus.
- 2.26 James Phiri's evidence was that Samson Mulipukwa did not report for work the next day and his phone was off when he tried to call it. His testimony was that even the day after that, Samson Mulipukwa did not report for work and his phone was off.
- 2.27 He confirmed Mike Mwale's evidence that on the third day, Samson Mulipukwa's wife went to the office, adding that she had a photograph of Samson Mulipukwa.
- 2.28 James Phiri stated that Samson Mulipukwa's wife reported the matter to Mtendere Police whilst himself and Mike Mwale reported to Chilenje Police. It was further his testimony that they went to report with a photograph of Samson Mulipukwa. Then as testified by Mike Mwale, they were shown photographs of dead Samson Mulipukwa by the police, and they were asked to call his relatives.
- 2.29 It was stated that they called Samson Mulipukwa's wife who went to Chilenje Police.
- 2.30 In concluding his testimony, James Phiri testified that Samson Mulipukwa on the material day went to board a bus to go home. He stated that Samson Mulipukwa was drunk, but not drunk enough as he could manage to go home.

**CROSS EXAMINATION OF JAMES PHIRI**

- 2.31 When cross examined, James Phiri's testimony was that he knew Samson Mulipukwa at work at African Life Properties. His evidence was that Samson Mulipukwa worked in the security department, whilst he worked in maintenance.
- 2.32 James Phiri testified that on the material day, he was working from Woodlands, and that Samson Mulipukwa was working from there as well. It was his evidence that he parted with Samson Mulipukwa after Samson Mulipukwa was dropped off in Chilenje along Kalomo Road.
- 2.33 He did not know where Samson Mulipukwa went after that and James Phiri stated that they reported the matter at Chilenje Police, as Samson Mulipukwa was dropped off in Chilenje.
- 2.34 Further, in cross examination, James Phiri testified that when Samson Mulipukwa was alive, they would chat on the phone, and when Samson Mulipukwa did not report for work, he would call him. His evidence was that the call records would be able to show so.
- 2.35 He testified that Kalomo Road was a very busy road, and that there were buses where Samson Mulipukwa dropped off. James Phiri stated that Samson Mulipukwa's body was found along the Ring road, which was in the opposite direction from Mtendere East.
- 2.36 Still in cross examination, James Phiri told the Court that when they reported at Chilenje Police, they had no reason to believe that Samson Mulipukwa had died. He agreed that

when Samson Mulipukwa's wife went to the office, she went with his photograph, and that she had told them to go with it, when they went to report to the police.

2.37 He denied having gone to Chilenje with Samson Mulipukwa to steal, and that was why he had called him.

2.38 James Phiri testified that both himself and Mike Mwale were gardeners, and that on the material day, Mike Mwale was driving a Toyota Harrier, and when he picked them up, he had flowers that he got from Chita Road, where he was working from.

2.39 It was his evidence that the company had a lot of offices in Kabulonga, and that the office on Mutende road was in Woodlands, while Chita Lodge was either in Woodlands or Kabulonga.

2.40 James Phiri maintained that Samson Mulipukwa was going to pay money to Mwaanga, and that Samson Mulipukwa told Mike Mwale that he would buy fuel for his car, so that Mike Mwale could take him home. It was also his evidence that Mike Mwale told Samson Mulipukwa to buy fuel for K100.00. However, Samson Mulipukwa had only K50.00.

2.41 James Phiri also testified that the next day, Samson Mulipukwa did not report for work and his phone was off. It was his evidence that he saw Samson Mulipukwa walk to the bus stop, but he did not see him get on to a bus. James Phiri stated that Samson Mulipukwa had a good record at work.

#### **RE-EXAMINATION OF JAMES PHIRI**

2.42 There was no re-examination.

---

**PW3-MERCY LOMBE MHANGO**

- 2.43 Mercy Lombe Mhango, testified that on 29<sup>th</sup> August, 2023, around 00:35 hours, her child went and informed her that thieves had gone to the house, as she was in the bedroom sleeping. Her evidence was that they heard the door try to open, and Mercy Lombe Mhango tried to call Vincent Nkonde, who was the Chairman of the Neighbourhood Watch, but his phone was off.
- 2.44 It was stated that Mercy Lombe Mhango then called Vincent Nkonde's wife who answered, and Mercy Lombe Mhango explained that there were thieves at her house. Then from there, Mercy Lombe called her opposite neighbor, Emmas mother, and informed her that there were thieves whose number she did not know, who were at her house.
- 2.45 Her evidence was further that as they did not know how many thieves there were, they were scared to go out. Then whilst in the house, Mercy Lombe Mhango shouted thief and they stopped touching the door. She stated that they assumed that the thieves had gone, although it sounded like there was only one person, and he left the back door for the front door.
- 2.46 Mercy Lombe Mhango explained that she lived at a block of four flats which were in a row, and that she lived in flat three, while Chanda's mother lived in flat four, Kisha's mother in flat two, and Chama's mother in flat one. It was her evidence that the flats are in a wall fence, but at the time, there was no gate.
-

- 2.47 Mercy Lombe Mhango also explained that there was a shop at the flats which was attached to the wall fence and it faced the road.
- 2.48 In her continued testimony, Mercy Lombe Mhango stated that the person passed round and went to flat 1, which was occupied by Chama's mother, and he stopped at flat 2 which was near the wall fence.
- 2.49 On how they were able to observe, Mercy Lombe Mhango testified that they were peeping through the window of the living room and there were lights and also through the kitchen window.
- 2.50 It was her evidence that she saw Chanda go out of their house running, and he had asked the person what he was doing there. However, the person did not respond. Mercy Lombe Mhango stated that her child said that he would go outside as Chanda had gone out.
- 2.51 As to how the person appeared, Mercy Lombe Mhango testified that he appeared drunk and he wore a yellow jersey but she could not recall the colour of the trousers that he wore.
- 2.52 It was further her testimony, that Chanda went and scared the man and slapped him. Then from there, Lombe, Mercy Lombe Mhango's son also slapped him, as he was not saying anything when being asked.
- 2.53 The continued evidence that Mercy Lombe Mhango gave was that her husband Elias Mhango went outside, and he stated
-

that they should take the person to the police as he was drunk, and he did not look like a thief.

- 2.54 She went on to testify that as the person was being taken out of the yard, Chama's mother went out with a pounding stick, and she hit me with it on his buttocks, stating that he had disturbed her. Then Emma's mother and father went out and asked what he had stolen, and Mercy Lombe Mhango informed them that he had not stolen anything.
- 2.55 Further in her evidence, Mercy Lombe Mhango testified that Vincent Nkonde, his son who is known as Chewe, Martin Nkoloma, Vincent Nkonde's wife Catherine Mukuluku, Beauty Nkonde, and Vincent Nkonde's elder brother, Chris Nkonde, met them at the shop for Vincent Nkonde
- 2.56 She explained that Vincent Nkonde's house was two houses away from where she lived, and that Vincent Nkonde tripped the person that they had apprehended, and Mercy Lombe Mhango explained that he had not stolen anything, on being asked by Vincent Nkonde. She stated that however, Vincent Nkonde said that thieves kept going back and that the police had said that they should be beaten and killed when caught.
- 2.57 On what else she saw, Mercy Lombe Mhango told the Court that she saw Chewe Vincent Mwamba with a hammer, and that he used the same to hit the person on the legs. Her evidence was also that Chewe Vincent Mwamba stated that they would get petrol to burn him.
- 2.58 Then when she had asked him whether they kept petrol in the house, he had stated that she should not worry as what
-

was in the five litre container that he had was water, as petrol smelled when poured.

2.59 Mercy Lombe Mhango also in her testimony, stated that Vincent Nkonde's wife said that they should just leave the person and when they did, the person ran away, as he could walk and he was okay.

2.60 She testified that after that, she went back to her house, as she was going for work the next day. It was her testimony that the next day around 07:00 hours, she went to Vincent Nkonde's shop, and he had asked her if she had heard that there was dead body.

2.61 Then Chris Nkonde took Mercy Lombe Mhango to the side and told her that Vincent Nkonde beat the person who was in their yard and they dumped him by the roadside opposite Ntambwe Fitment Centre, between Kasama Road and Shantumbu, which was about 100 metres from Vincent Nkonde's house.

2.62 Mercy Lombe Mhango further in her evidence, stated that she went for work, and on 30<sup>th</sup> August, 2023 around 03:45 hours, police went to her house and asked for her. She testified that the police told her that she would go the police station, where she would give a statement.

2.63 Then when she went outside, she found Vincent Nkonde and his child Beauty Nkonde handcuffed, and they were taken to the police station. It was her testimony that Vincent Nkonde had pointed to her neighbor Emma's house, and he said

Webster, and he also pointed at the house which was in front of the T-junction.

2.64 However, when police knocked there, no one came out, and that was the position when Vincent Nkonde pointed at another house.

2.65 Mercy Lombe Mhango testified that they were detained at Chilenje police for one week and she was released after she gave a statement.

2.66 Mercy Lombe Mhango identified a hammer, and it was marked as 'ID1'. She stated that she had known Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma for about fourteen (14) years.

#### **CROSS EXAMINATION OF MERCY LOMBE MHANGO**

2.67 In cross examination, Mercy Lombe Mhango testified that her neighbor went out with a pounding stick. She stated that she was not on good terms with her neighbor, and that she did not feel good when the neighbor hit the person with a pounding stick, twice on the buttocks.

2.68 Mercy Lombe Mhango explained that she thought of calling the Neighbourhood Watch Chairperson after she heard the noise, and she thought that it was thief. Her evidence further in cross examination was that she was afraid for herself and her family, and that she went out to apprehend the person and take him to the police.

2.69 It was Mercy Lombe's testimony that her son and Chanda slapped the person, but she denied that she told her son to

slap him. It was her testimony that she told her son to leave him as he looked drunk.

- 2.70 In still testifying, Mercy Lombe Mhango stated that her neighbor went out before her with a pounding stick and hit the person after she shouted thief.
- 2.71 She explained that she met the neighbor who lived opposite at the road, but that the hitting with the pounding stick happened in her yard. Mercy Lombe Mhango testified that Emma's mother and her husband Webster, came out of the yard that was opposite the flats where Mercy Lombe Mhango lived.
- 2.72 Whilst agreeing that her son and Chanda beat the person, Mercy Lombe Mhango, however stated that the person was okay, and he was not hurt. She maintained that that was the position, adding that the person walked out of the yard. Further in cross examination, Mercy Lombe Mhango testified that she was not protecting her children, because had that been the case, she would not have said that her son slapped the person.
- 2.73 Her evidence was that she was in police custody for seven days, and that she gave a statement to the police. Mercy Lombe Mhango also in cross examination, testified that she did not in her evidence say that a mob shouted thief.
- 2.74 It was her testimony that the noise was at the road, outside the yard, and that her son who was nineteen years at the time, heard the noise outside which the thief was making.
-

- 2.75 On where the said son was, Mercy Lombe Mhango testified that he was on the Copperbelt, having travelled there immediately after she was apprehended, but yet he did nothing.
- 2.76 She denied that her son ran away as he knew what he had done to the person. Mercy Lombe Mhango also in cross examination stated that all the families from the four flats in the yard came out when she shouted thief, with Chanda being the only person who came out from his house.
- 2.77 Her evidence was that she did not hear any noise prior to coming out of her house. Mercy Lombe Mhango told the Court that when she went outside, she did not find that the person had been badly beaten. She stated that she had shouted thief as she thought that there were a lot of people.
- 2.78 On being referred to the statement that she gave to the police at page 3, her testimony was that the incident concerning petrol happened at Vincent Nkonde's house, where Chewe Vincent Nkonde stated that he would get petrol.
- 2.79 She denied that at the police she had informed them that Chewe Vincent Nkonde got petrol, explaining that the police missed her point.
- 2.80 Further in cross examination, Mercy Lombe Mhango testified that in her evidence in chief, she did not say that she stopped her husband from going outside, adding that time had passed and she could not recall. She however stated that everything was recorded in her statement.
-

- 2.81 Her evidence was also that in her statement, she had told the Police that the person was at Vincent Nkonde's place, but in her testimony in Court, she had stated that it was outside her house.
- 2.82 Mercy Lombe Mhango maintained that the person got up and he started running away, then Vincent Nkonde's children chased him. She agreed that she did not say so in the statement that she gave to the police. It was also her evidence, that the question of Vincent Nkonde's children having chased the person only arose when the Nkonde's were charged.
- 2.83 It was denied that Mercy Lombe Mhango had stated so as she wished to exonerate herself, her husband and her son. She testified that Beauty Nkonde would not be lying if she stated that Mercy Lombe Mhango called her and told her not to inform the Court that she had called the Nkonde's and there was a recording to that effect.
- 2.84 She testified that Beauty Nkonde would not be lying if she said that Mercy Lombe Mhango told Kisha to clean the blood. Mercy Lombe Mhango however denied that there was blood on their road.
- 2.85 Her evidence was that she called the whole neighbourhood but denied that this was after her son had beaten up the person. Mercy Lombe Mhango stated that she called the neighbourhood before she went out, and after her husband had woken up.
-

- 2.86 Still in cross examination, Mercy Lombe Mhango stated that her husband had stated that they should take the person to the police. She agreed that two of the neighbours had vehicles so the person could have been taken to the police.
- 2.87 It was also her evidence in cross examination, that only Vincent Nkonde's house was not in a wall fence, and that if she had not called them, they would not have woken up.
- 2.88 Mercy Lombe Mhango testified that the Nkonde's did not ask why the person had been taken to their house, but rather, what he had stolen. She denied that the person was being kicked and beaten when he was taken to a house opposite by the road. Her evidence was that he was walking.
- 2.89 It was further her testimony that the person was not bleeding, immobile and lying on the ground, when he was taken to the Nkonde's house, and the Nkonde's challenged her for taking an unconscious person to their yard.
- 2.90 Mercy Lombe Mhango stated that she did not tell Vincent Nkonde during the preliminary inquiry at the Subordinate Court that she was sorry for implicating him and his wife who had since suffered a stroke.
- 2.91 She testified that she did not call the guards from the Fitment Centre and she did not stop her husband from going out as there were guards from the Fitment Centre. Mercy Lombe Mhango denied that the Nkondes moved the person to the junction as everyone refused to have the person left at their yard.
-

2.92 It was admitted that Mercy Lombe Mhango did not surrender her son to the police for interrogation.

**RE-EXAMINATION OF MERCY LOMBE MHANGO**

2.93 In re-examination, Mercy Lombe clarified that she did not specify who chased the person.

**PW4-BEAUTY NKONDE**

2.94 The daughter to Vincent Nkonde, Beauty Nkonde was the fourth witness. Her testimony was that on 29<sup>th</sup> August, 2023, between midnight and 01:00 hours, she was studying in her bedroom, when she heard her mother's phone ring. She stated that the phone was put on loud speaker and she heard the person who was on the other side of the line, Mercy Lombe, state that a thief had been caught.

2.95 Beauty Nkonde explained that Mercy Lombe was their neighbor who lived two houses after theirs. She stated that she also heard her father Vincent Nkonde ask Mercy Lombe if the person had been caught, and Mercy Lombe agreed stating that he was being beaten.

2.96 In still testifying, Beauty Nkonde explained that her father decided to go outside, and so did her brothers, Martin Nkoloma and Vincent Mwamba Nkonde and her uncle Chris, who is her father's brother.

2.97 Beauty Nkonde testified that she also decided to go outside and she found her father, her brothers, Mercy Lombe's son, Chanda, Lombe's father, her uncle Chris, Chris who lived opposite them, and Webster near the shop that was close to their yard.

- 2.98 It was her evidence that she was able to see as there was power at their neighbour's house, even though there was no power at their house.
- 2.99 Further testimony was given that the person was on the ground and he was being beaten by her father, her brothers, Lombe and Chanda. Beauty Nkonde stated that her brothers were using iron bars, while Chanda and Lombe used their hands, and her father had something in his hands that he was using, which she could not recall.
- 2.100 She testified that the person stood up and he attempted to run, but he fell by the T-junction. Then she saw her father hit him with what he had on the legs. Beauty Nkonde's evidence was that thereafter, Chris who lived opposite them, got an iron bar that her brother had, and he started hitting the person with it.
- 2.101 In continuing with her testimony, Beauty Nkonde stated that another neighbor Welu came out, and he hit the person. Then after that, a security guard who had a black thing also went and hit the person, saying that he was a thief.
- 2.102 She also testified that the security guard said that they get the person and take him to the police or the hospital. That was how her brother Vincent Mwamba Nkonde and Welu carried the person because he was unable to walk, and they reached Ntambwe Fitment Centre.
- 2.103 Beauty Nkonde's testimony was that there, a white car passed and they stopped it, and on her father asking for a lift, the driver refused stating that he could not help a thief

and he drove off. Then from there, Vincent Mwamba Nkonde and Martin Nkoloma carried the person across the road with her father and Welu.

2.104 She stated that after carrying the person across the road, Vincent Mwamba Nkonde and Martin Nkoloma started walking back, and Welu remained and stated that the person was still screaming saying, aah. Then her brothers said that they could leave, as the person would be able to walk on his own.

2.105 Beauty Nkonde further testified when she returned from school the next day, she learnt that the person was not a thief, but he was just drunk and unable to walk, and that he had died. She identified the two iron bars, which were collectively marked as 'ID3'.

#### **CROSS EXAMINATION OF BEAUTY NKONDE**

2.106 In cross examination, Beauty Nkonde's evidence was that she was studying in her room when she heard her mother speaking on the phone with Mercy Lombe, who informed her that a thief had been caught and was being beaten.

2.107 It was her testimony that at the time, her father and her brothers were inside the house. She could not recall if the white vehicle that passed ran over the persons' legs.

2.108 When referred to the statement that she gave to the police, Beauty Nkonde testified that the statement read that the car turned and drove over his feet. She explained that this was what she heard, but she did not see anything.

---

- 2.109 She agreed that her brothers Vincent Mwamba Nkonde and Martin Nkoloma carried the person across the road when the person in the vehicle refused to carry him. Her evidence was that her father also helped to carry the person and he followed. Beauty Nkonde however denied that they said that they wanted to kill him.
- 2.110 Her evidence was that she did not see blood at Mercy Lombe's house, but that she did not pay attention. Clarification was given that a lady at the Mercy Lombe's flats said that Mercy Lombe told her to go and clean the blood.
- 2.111 In further cross examination, Beauty Nkonde stated that Mercy Lombe and her sister went to see her, and told her to inform her father when she went to see him not to say that Mercy Lombe called, but that she heard noise outside.
- 2.112 It was her testimony that Chanda and Lombe beat the person, and that she currently did not see Lombe, but she saw Welu at a funeral at his house, but not since then. Beauty Nkonde stated that when she went outside, she found that the person had been badly beaten and he was lying on the ground.
- 2.113 Her continued testimony was that her father was afraid as the person had been taken to their yard which had no wall fence, and he had asked Mercy Lombe why he had been taken there, and what he had stolen.
- 2.114 Beauty Nkonde stated that she went out after sometime as she was studying.
-

**RE-EXAMINATION OF BEAUTY NKONDE**

2.115 There was no re-examination.

**PW5-WEBSTER SIBANDA**

2.116 In his testimony, Webster Sibanda stated that on the material day around 01:00 hours, his wife was phoned by their neighbor Mercy, who lived opposite them, and informed them that a thief has been caught. Thus, Webster Sibanda and his wife decided to go and see what was happening.

2.117 He stated that when he opened the gate, he found people shouting 'kawalala, kawalala', and Mercy Lombe was standing on the side by the gate where she lived.

2.118 It was Webster Sibanda's testimony, that on asking Mercy Lombe what the person had stolen, she had informed that the person was trying to open their door and he did not steal anything.

2.119 Webster Sibanda stated that the person had moved from Mercy Lombe's place and he was heading in the other direction when Vincent Nkonde, his son Vincent Mwamba Nkonde and Martin Nkoloma apprehended him, and they beat him. He told the Court that he had informed Vincent Nkonde that they needed to take him to the police, and Vincent Nkonde agreed.

2.120 As to what was being used to beat the person, Webster Sibanda's testimony was they were using a T course metal bar, which is used to barricade doors.

2.121 Then from there, Webster Sibanda went back home, and he left for work around 06:45 hours. He testified that between

08:00 and 09:00 hours, his wife had called him and informed him that a dead body had been found by the Ring road.

2.122 Webster Sibanda identified 'ID3' as the iron bars and he concluded his testimony by stating that the person was pleading for them to stop beating him as he lay on the ground.

**CROSS EXAMINATION OF WEBSTER SIBANDA**

2.123 When cross examined, Webster Sibanda testified that he advised Vincent Nkonde to take the person to the police. His evidence was that he did not have a contact for the police and that he was awakened by Mercy Lombe's phone call to his wife.

2.124 It was further his evidence, that he heard people outside shouting thief, but he could not tell how many people were there. Then when he went outside, the people were still shouting thief, and the person tried to run away from Mercy Lombe's place as Mercy Lombe stood by her gate, and he was being held.

2.125 Webster Sibanda testified that he could not see not see who was holding him, but it was not very dark.

2.126 In continued cross examination, Webster Sibanda's evidence was that Vincent Nkonde stated that he would take the person to the police.

2.127 His position was that based on what he saw, Vincent Nkonde and his sons inflicted wounds on the person. Webster Sibanda testified that he did not know Welu, and he was unaware that Mercy Lombe's son was on the run or that

there were blood stains at Mercy Lombe's house which were cleaned up.

2.128 It was his testimony that he was not at the scene for very long.

**RE-EXAMINATION OF WEBSTER SIBANDA**

2.129 There was no re-examination.

**PW6-ELIZABETH PHIRI**

2.130 This witness, the wife to the late Samson Mulipukwa was the sixth witness. Her evidence was that she last saw Samson Mulipukwa on 28<sup>th</sup> August, 2023 around 05:00 hours, when he went for work. It was also her testimony, that around 17:00 hours on that day, Samson Mulipukwa phoned her using the landlord's phone, and informed her that he was trying to get his phone where he had left it.

2.131 Elizabeth Phiri testified that after that, Samson Mulipukwa and her phone that he had carried went off. She stated that when Samson Mulipukwa did not return home, she waited until the next day, as she had no phone, and she had a three weeks old baby. That was how she went to Samson Mulipukwa's friend Inambao whom he worked with, who said he would try and call Samson Mulipukwa.

2.132 Still in her testimony, Elizabeth Phiri stated that on 31<sup>st</sup> August, 2023, she went to Samson Mulipukwa's work place where she was informed that Samson Mulipukwa had worked from morning until 17:00 hours on 28<sup>th</sup> August, 2023.

- 2.133 On what else happened at Samson Mulipukwa's work place, Elizabeth Phiri's evidence was that Samson Mulipukwa's work mates whom he used to hang out with, being Mike and Malora were called, who explained that they were with Samson Mulipukwa when he went to collect his phone in Chilenje.
- 2.134 Thus, Samson Mulipukwa's boss said that they should go and look for him in the area where they were last with him, and that Elizabeth Phiri should look for him where they lived. Her evidence was that she gave them a photograph of Samson Mulipukwa to go with.
- 2.135 Elizabeth Phiri testified that she went to Kalikiliki police and Mtendere police where she was told that they had not received any information. Then she was called by Chilenje police who asked her to go there.
- 2.136 It was her evidence, that at Chilenje police, she was informed that Samson Mulipukwa was dead, and that she should go and identify his body at the University Teaching Hospital (UTH). Elizabeth Phiri stated that she was further informed that Samson Mulipukwa's body was found on the Ring road in Chalala area.
- 2.137 Her testimony was that she was married to Samson Mulipukwa for nine years, and she had three daughters with him, who were aged nine, six and one year at the time of her testimony. She testified that Samson Mulipukwa was a loving man who would not steal or harm anyone, and that he was a Christian.

2.138 Therefore, his death had impacted Elizabeth Phiri and the children, and she was struggling as Samson Mulipukwa used to fight for her and the children, and he would take the children to school.

2.139 Elizabeth Phiri stated that things would have been different if he was there, and that her children had asked her to go and remove him from the box. She testified that on 28<sup>th</sup> August, 2023, Samson Mulipukwa was in good health and they spoke on the phone.

**CROSS EXAMINATION OF ELIZABETH PHIRI**

2.140 In cross examination, Elizabeth Phiri agreed that Samson Mulipukwa used to drink alcohol. Her evidence was that sometimes he would take spirits, but that he would go home after drinking alcohol. It was her testimony that she spoke with the two men who were with Samson Mulipukwa on 31<sup>st</sup> August, 2023, and that one of them said that they were with Samson Mulipukwa between 19:00 and 20:00 hours in Chilenje.

2.141 Elizabeth Phiri testified that Samson Mulipukwa called her around 17:00 hours and informed her that he had money. She stated that he even sent her K2000.00.

2.142 It was also her evidence, that the two men would call Samson Mulipukwa as they worked together. She testified that Samson Mulipukwa's behavior did not change when he started interacting with the two, but that he only went home late three times that week.

**RE-EXAMINATION OF ELIZABETH PHIRI**

2.143 There was no re-examination.

**PW7-KENNEDY MULIPUKWA**

2.144 The father to Samson Mulipukwa, Kennedy Mulipukwa was PW7. He told the Court that on Monday, 28<sup>th</sup> August, 2023, Samson Mulipukwa had called him around 14:00 hours when he was at the farm in Kabwe. Kennedy Mulipukwa testified that he had a chat with Samson Mulipukwa who was fine, and that Samson Mulipukwa also spoke with his mother and sent her some money.

2.145 Further in his testimony, Kennedy Mulipukwa stated that the next day on Tuesday, Samson Mulipukwa's wife called him and informed him that Samson Mulipukwa did not return home, and she did not know what had happened. His evidence was that he had asked Samson Mulipukwa's wife to call Samson Mulipukwa's siblings in Kalingalinga.

2.146 Then when Samson Mulipukwa's wife called on Wednesday stating that Samson Mulipukwa had still not returned, she had advised her to go to his work place and that he would start off.

2.147 His testimony was that when he reached Lusaka, he went to UTH mortuary where he found Samson Mulipukwa and that he had observed that Samson Mulipukwa had been beaten on his head with something, and he had a deep crack on his cheek.

2.148 It was his testimony that he was present when a postmortem was conducted on Samson Mulipukwa, and he

noted that Samson Mulipukwa had broken legs and hands and deep cuts all over his body.

2.149 Kennedy Mulipukwa stated that Samson Mulipukwa's death had traumatized him and he cried every day, adding that he missed his frequent visits, calls, invitations to his house and being taken for shopping.

**CROSS EXAMINATION OF KENNEDY MULIPUKWA**

2.150 Kennedy Mulipukwa in cross examination, testified that he brought up Samson Mulipukwa in a good Christian environment, and he knew right from wrong. It was his evidence that prior to going to Kabwe, he had not seen Samson Mulipukwa for a week. He stated that on the last day that he spoke with Samson Mulipukwa, Samson Mulipukwa was sober and jovial.

2.151 Kennedy Mulipukwa also testified that he did not ask Samson Mulipukwa's workmates what happened after Samson Mulipukwa knocked off, but that given a chance, he would ask. Thus, it was news to him that after knocking off, they went drinking and Samson Mulipukwa was abandoned by his workmates.

2.152 He also told the Court that he was disturbed that Samson Mulipukwa's body was found in Chalala brutalized, as that was not the Samson that he knew, adding that he was not talkative, and was good boy.

2.153 Further in cross examination, Kennedy Mulipukwa stated that the police did not inform him what was used to assault

Samson Mulipukwa, but that Samson Mulipukwa had wounds on his head and other body parts.

2.154 His evidence was that he did not hear that a mob descended on Samson Mulipukwa in Chilenje or that he was apprehended for being a thief.

**RE-EXAMINATION OF KENNEDY MULIPUKWA**

2.155 There was no re-examination.

**PW8-NSAMA BRANDON MWENYA FRANCIS WILOMBE**

2.156 In his testimony, Nsama Brandon Mwenya Francis Wilombe stated that he was a third year student at NIPA in computer studies, and that he had a certificate in Digital Technology and Graphics from Durban University of Technology.

2.157 He further testified that he was an IT Manager/Compliance Officer at Ntambwe Enterprises. As regards his duties, Nsama Brandon Mwenya Francis Wilombe testified that they included work develop and design, data analysis, data retrieval and storage.

2.158 With regard to this matter, he testified that on 29<sup>th</sup> August, 2023, he was at work as his fourth day of work at the offices which were along the Ring road on Tokyo Way in Chalala. His evidence was that he went to buy breakfast, and he saw a red smudge some metres from their offices.

2.159 Nsama Brandon Mwenya Francis Wilombe stated that Kennedy a worker from maintenance jokingly said that it looked like blood. Then as he was downstairs around 08:00 hours, talking to the people who were in the barbershop,

Nsama Brandon Mwenya Francis Wilombe saw a person who was riding a bike exclaim that there was a dead body.

2.160 That was how a group of people who included Nsama Brandon Mwenya Francis Wilombe rushed there, and they found a body of a dead male on the side of the Ring Road about twenty to thirty metres from the office. His evidence was that dead body wore a blue shirt which had writing in white and black or brown pants.

2.161 Nsama Brandon Mwenya Francis Wilombe testified that there were visible injuries on the body, and in particular perforations on the forehead. That was how the Manager who was on site, informed either Chilenje or Godfrey Miyanda police, and Nsama Brandon Mwenya Francis Wilombe went back to work.

2.162 His evidence was that later, his boss Anthony Mulenga called him and instructed him that the authorities were on the way, and he should retrieve footage to show what happened. In that regard, Nsama Brandon Mwenya Francis Wilombe explained that there is CCTV all around the building, which covered both the inside and the outside and was extensive in coverage.

2.163 Therefore, Nsama Brandon Mwenya Francis Wilombe accessed the servers to recover the information and secured it on a flash disc drive which was bought for that purpose, and he kept it under lock and key.

2.164 He explained that they used a security system that allowed on base or off base (remotely) access called Alhua system,

which was designed to grant access by a User ID and a password.

2.165 Nsama Brandon Mwenya Francis Wilombe further in his evidence, testified that the system was functioning well at the time, and it was in perfect condition, and was updated daily. He also told the Court that only himself and the director Mr Mulenga could access the system using their ID's and passwords.

2.166 As to the security of the system, Nsama Brandon Mwenya Francis Wilombe stated that they had files to prevent cyber invasion and anti-virus, and he ran analysis checks every evening before he knocked off to ensure that the system was working well.

2.167 In still testifying, Nsama Brandon Mwenya Francis Wilombe's evidence was that he was instructed to view the footage from midnight to about 02:00 hours on 29<sup>th</sup> August, 2023. Therefore, he sat to watch the footage and he copied the footage on to a hard drive or external drive using a flash disc. The flash disc was marked as 'ID4' on identification and 'P4' on production.

2.168 On the video footage being played, it captured silence and after that the vehicles that passed on the road. It also captured two security guard come of Ntambwe Fitment centre who conversed

2.169 Then from there, two other individuals who were conversing with the security guard, and the two individuals crossing the road looking for a place to dump something were captured.

It was also stated that a number of people were captured dragging a body across the road, with blood opposite the barbershop and Tokyo Road was adjacent.

- 2.170 On what else was captured on the footage, he testified that the security guard and the maintenance office who were going out of the premises and five individuals speaking with the security guard and they stood with him for some time.
- 2.171 Then after that, one individual went across the road and went back and two individuals went across Tokyo Way with the security guard following and others behind. They crossed Tokyo Way and a vehicle drove by which reversed and the driver spoke to the individuals.
- 2.172 The driver then drove on the road where the Fitment Centre was and the group of individuals walked back past the Fitment Centre and disappeared.
- 2.173 From there, a vehicle went up the road to the Fitment Centre, reversed and drove up, and turned right on to Tokyo Way past the Fitment Centre, and left a blood stain opposite the Fitment Centre.
- 2.174 Then the group of people left something on the ground and returned as cars passed by Tokyo Way with one person remaining there, and they were joined by one of the others who left after some minutes. The two also left after a few minutes. The video recording was fifty-eight minutes and thirty four seconds.

**CROSS EXAMINATION OF NSAMA BRANDON MWENYA  
FRANCIS WILOMBE**

- 2.175 In cross examination, Nsama Brandon Mwenya Francis Wilombe testified that he been an IT Specialist since 2018, which was about five-six years before the incident. His evidence was that he had no experience in criminal law. He denied that the footage was based on what he thought was relevant.
- 2.176 Nsama Brandon Mwenya Francis Wilombe further in cross examination, testified that the CCTV had two cameras and he denied that he selected an angle of the cameras whose footage he captured. He explained that there were obstructions from the other angle of the camera.
- 2.177 Nevertheless, Nsama Brandon Mwenya Francis Wilombe's testimony was that a vehicle drove from the southern side with lights on, so what was happening there could be seen. He stated that about 01:11 hours, the security guard from Real Star, went to the direction where the people came from, and reemerged after about twenty minutes.
- 2.178 It was his evidence that Real Star was next door, so he was unaware that the said security guard was detained over the matter.
- 2.179 He agreed that the people flagged down vehicles to stop and that two vehicles slowed down and passed, while one slowed down and one reversed and went to where the people were, as another vehicle drove by.

- 2.180 Nsama Brandon Mwenya Francis Wilombe still in cross examination stated that the vehicle then drove and slowed down at a hump, and he could not see what happened after the vehicle drove past the Fitment Centre.
- 2.181 It was also his testimony that he could not see any instruments in the people's hands and that only one person had papers in their hands.
- 2.182 Further in cross examination, Nsama Brandon Mwenya Francis Wilombe testified that the vehicle drove back but that he was unable to determine at what speed it was driving. He stated that the vehicle slowed down and braked. He told the Court that it could not be seen how the vehicle drove from the southern direction but after that, the body was seen being carried by the people.
- 2.183 Nsama Brandon Mwenya Francis Wilombe's evidence was that in his assessment, something was dropped, and when the people went there, they were scouting and fingers were being pointed all over. He stated that he did not follow where the trail of blood came from.

**RE-EXAMINATION OF NSAMA BRANDON MWENYA  
FRANCIS WILOMBE**

- 2.184 There was no re-examination.

**PW9-VICTOR TELENDIY**

- 2.185 A state Forensic Pathologist, Victor Telendiy was PW9. His testimony was that he was trained as a Medical Doctor in Ukraine where he graduated in 1995. Dr Victor Telendiy further testified that he thereafter trained as a Forensic

Pathologist, and upon completion of the training, he worked in Ukraine from 1997 until 2010. Then from 2011 to date, he had worked as a State Forensic Pathologist in Zambia.

2.186 In terms of his duties, he testified that he conducted post mortems on bodies of dead people and came to conclusions on the cause and manner of death.

2.187 With regard to this matter, Dr Victor Telendiy testified that on 1<sup>st</sup> September, 2023, he conducted a post mortem on Samson Mulipukwa's body, who according to the police report was found dead on 29<sup>th</sup> August, 2023. His evidence was that he observed multiple abrasions and bruises, as well as lacerations on Samson Mulipukwa's head, as detailed in the post mortem report.

2.188 Further in testifying, Dr Victor Telendiy stated that Samson Mulipukwa also had multiple bruises and abrasions on the chest and back and on his arms and legs. It was his evidence that there was a fracture on the forefinger on Samson Mulipukwa's right hand and fractures on his patella or the knee bone.

2.189 On other examination, that he did, Dr Victor Telendiy's evidence was that when he opened the skull, he found right subgaleal hemorrhage, that is bleeding between the brain and the skull. Therefore, his conclusion was that Samson Mulipukwa died as a result of blunt impact trauma to the head and torso, that is from his neck up to the leg, including his chest and back.

2.190 Further on his conclusions, he stated that the manner of death was homicide, and the injury was not due to accidental falling, but due to assault.

2.191 Dr Victor Telendiy, still in his testimony stated that he did not think that the death was due to a road traffic accident, as had it been a road traffic accident, there would not have been other types of injuries on body, especially on the head and fracture of one finger and the patella, stating that such trauma does not usually occur due to a road traffic accident, but when a person is beaten with a blunt object, such a stone, iron bar or a wooden stick among others.

2.192 It was also his evidence that subgaleal hemorrhage occurred due blunt impact trauma to the head. Dr Victor Telendiy produced the post mortem report as 'P5'.

**CROSS EXAMINATION OF DR VICTOR TELENDIY**

2.193 When cross examined, Dr Victor Telendiy's testimony was that it was ethical to include something which was not in the post report in his testimony.

2.194 It was his evidence when he was referred to page 8 of the post mortem report, that the cause of death did not say assault. He agreed that the summary of the report did not talk about a road traffic accident and that pages 4 and 5 reflected the injuries that were sustained, and they did not include perforation to the head.

2.195 Dr Victor Telendiy still in cross examination, stated that at page 4, the facial injuries were recorded and that the person had multiple injuries.

- 2.196 He agreed that no toxicology examination was done, stating that drinking was not relevant, and that being hit by a motor vehicle was also irrelevant, and that it would not have explained the impact trauma.
- 2.197 When cross examined further, Dr Victor Telendiy stated that he would like to see the footage of the vehicle, and he maintained that the vehicle not could cause such injuries after stating that it could.
- 2.198 On the video footage being played, Dr Victor Telendiy's testimony was that he saw the vehicle head at high speed and that a vehicle heading at such speed could cause injuries similar to those that were on the deceased's body.
- 2.199 However, his position was that it is not common for road traffic accident victims to have similar injuries or fractures, and that the injuries that were on the deceased's body were consistent with being attacked by a mob.

**RE-EXAMINATION OF DR VICTOR TELENDIY**

- 2.200 There was no re-examination.

**PW10-BOSTON MWANSA**

- 2.201 The last witness who was called by the State was the arresting, Boston Mwansa. He told the Court that on the morning of 29<sup>th</sup> August, 2023, he was on duty in the morning when between 08:00 and 08:30 hours, when a passer-by from Misisi Compound, Mulonga, reported that he had seen a body near Ntambwe Fitment Centre along the Ring Road.
- 2.202 Thus, Boston Mwansa and other police officers proceeded to Ntambwe Fitment Centre along Tokyo Way in Chilenje

South, where they found an unknown male person lying in a pool of blood, with about four to five blocks near his head, lying face up.

2.203 He stated that the body was clad in a blue t-shirt which was written wanted and brown trousers. Boston Mwansa further testified that there were blood stains on the tarmac from the southern direction heading to the Ring Road.

2.204 It was his evidence, that he noted that there was CCTV at Ntambwe Fitment Centre, and after the body was picked by Chilenje police and he went back to the office, Boston Mwansa later returned to Ntambwe Fitment Centre and requested to view the CCTV footage for the previous day starting from 22:00 hours.

2.205 He told the Court that on the footage from around 00:00 hours, two security officers went to a certain point, then one returned. Then around 01:00 hours, six people were seen heading from the southern direction going towards the Ring road, as two people dragged a body to the Ring road.

2.206 Boston Mwansa also testified that the people waited for the vehicle to pass before they continued dragging the body. Then a few minutes later, a red vehicle passed, and one of the suspects stopped it. He stated testified that the vehicle went and passed on the body as it lay on the tarmac.

2.207 In his continued testimony, Boston Mwansa stated that the body was dumped near the road, and one of the suspects picked a brick and hit the deceased twice. It was his evidence that the body was found where it was dumped and that later

members of public identified Vincent Nkonde and his family as suspects after the CCTV was viewed the second time and Boston Mwansa started asking people.

2.208 Thus, Vincent Nkonde was picked during the night, and on being interviewed he said that the person went his neighbour's house, Mrs Lombe, and he was apprehended as he tried to open the door.

2.209 It was Boston Mwansa's further evidence that Vincent Nkonde Junior and Martin Nkoloma dragged the body. He stated that when he interviewed Mrs Lombe, she informed him that the boy went to her house around 00:00 hours on the 28<sup>th</sup> and he appeared drunk. She had also informed him that she had called the neighbours after she woke up her husband and her son, and she went back to sleep after Vincent Nkonde removed him.

2.210 Boston Mwansa testified that Vincent Nkonde Junior and Martin Nkoloma were detained, as they were seen on the video footage dragging the body. He also explained that Beauty Nkonde was also seen on the video footage as she followed behind.

2.211 Then when interviewed, Beauty Nkonde stated that her father and her two brothers beat the deceased, and that her father had a hammer, while her brothers had iron bars.

2.212 Boston Mwansa told the Court that some of the suspects who were at scene ran away, and he warned and cautioned Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma.

- 2.213 He identified the five pieces of broken stones which he said were at the scene and had blood on them, and they were marked 'ID6'. He produced the exhibits 'P1', 'P3' and 'P6'.
- 2.214 In his continued testimony, Boston Mwansa stated that the deceased had a deep cut on his head and that photographs were taken at the scene.
- 2.215 On 'P4', the CCTV footage being played, Boston Mwansa's evidence was that Vincent Nkonde wore a black t-shirt and that he gave instructions. Then also shown in the footage was Mrs Lombe's son who ran away, and Beauty Nkonde.
- 2.216 He explained that the footage showed them head to the Ring road and back, and thereafter they returned dragging the body and they dumped it and went back.
- 2.217 Boston Mwansa's evidence was that they did not interview the driver of the vehicle that ran over the person as the number plate for the said vehicle was not captured.
- 2.218 He showed the Court the part of the footage where the vehicle was stopped by the suspects which came from Tokyo Way and drove on the road where Ntambwe Fitment Centre was. Boston Mwansa further showed the Court the footage where a drove up to Tokyo Way and some minutes later, the suspects went back with the body and dumped on Tokyo Way.
- 2.219 He stated that some footage had been omitted after that, and then before the body was dumped, Vincent Nkonde hit the deceased twice on the head, and identified this as being at 01:39 hours on the footage.

2.220 Boston Mwansa identified the photographic album which was compiled after he took photographs at the scene, and it was produced as 'P7'.

2.221 He stated that the photographs showed a cut on the deceased's forehead and another deep cut there with bruising from having been dragged on the tarmac. Then at page 2, the broken skull was shown, with the skull and brain mixing.

2.222 It was also his testimony, that the place where the body was dumped was shown, with the blue t-shirt written wanted also being shown. Boston Mwansa further stated that another picture showed the broken leg and cuts all over the body.

#### **CROSS EXAMINATION OF BOSTON MWANSA**

2.223 In cross examination, Boston Mwansa testified that there were six people in the video footage, whom he identified as Vincent Nkonde, Vincent Nkonde Junior, Martin Nkoloma, the security officer from Ntambwe Fitment Centre whose names he did not recall, Beauty Nkonde, and the person who ran away to the Copperbelt who wore shorts.

2.224 He denied that only the Nkonde's were picked, stating that it was not possible to identify the others. Boston Mwansa still in cross examination, testified that he called members of the public who identified Vincent Nkonde. He denied that it was the people who had ran away who identified the Nkondes.

- 2.225 The testimony that was further given, was that Boston Mwansa made efforts to trace those that ran away as he had engaged his colleagues.
- 2.226 It was his evidence that they followed the blood stains up to Vincent Nkonde's house, stating that they started from his house to the tarmac going to the Ring Road. Boston Mwansa denied that the blood stains started from Mercy Lombe's house. He was unaware that Mercy Lombe engaged people to clean the blood stains which started from her house.
- 2.227 Boston Mwansa also expressed ignorance that Mercy Lombe's son who ran away to the Copperbelt beat the deceased. He was also unaware that a lady who lived at the flats where Mercy Lombe lived went out with a pounding stick, and that a pounding stick could inflict injuries such as a broken finger and broken legs.
- 2.228 Boston Mwansa testified that the red vehicle was not in the video, but that the Court could view that footage at Ntambwe Fitment Centre. He stated that the Pathologist was briefed before the postmortem was done, and that it was not necessary for him to view the footage.
- 2.229 In continued cross examination, Boston Mwansa testified that the deceased had multiple injuries on his body. His evidence was that Webster was present when the person was being beaten. It was agreed that Mercy Lombe, Beauty Nkonde and the guard from Ntambwe Fitment Centre were detained in connection with the offence. However, they were not charged.

- 2.230 Boston Mwansa further in cross examination, stated that in the video footage, Vincent Nkonde got a stone and hit the deceased with it. It was his evidence that no one informed him that they saw Mercy Lombe's son hit the deceased.
- 2.231 Still in cross examination, Boston Mwansa testified that he interviewed Mercy Lombe's maid, who said that she heard the noise, but she went back to sleep. He was unaware that Mercy Lombe cleaned up the blood with her maid, and he denied that the police asked each suspect to pay K50, 000.00 in order to secure their freedom.
- 2.232 Denial was also made, that Mercy Lombe asked Beauty Nkonde not to say that there was blood or that she informed Webster not to give information to the police. Boston Mwansa added that the informer was not within the neighbourhood, but was about 400 metres away. He stated that the footage showed Vincent Mwamba Nkonde and Martin Nkoloma dragging the body, but not when they started doing so or who instructed them.
- 2.233 It was stated that Mercy Lombe was not in the video footage and that it was not known who was there before the CCTV footage. Boston Mwansa also testified that he heard that Chris was there, but he was aware that Chris went there with metal bars to beat the deceased. He stated that Chris could be in the video footage.
- 2.234 It was his testimony that they went to the house for Mr Kafula near the tarmac, and another next to that which were in the neighbourhood, but there was no blood there. He also

stated that there was no blood trail at a house near Vincent Nkonde.

2.235 When referred to the blood trail in 'P7', Boston Mwansa testified that the blood was on the ground, and not on the tarmac, and that there was a five metre centre space to the road.

2.236 He was aware that Mercy Lombe stated that Vincent Chew Nkonde poured water on the deceased but he did not know why.

2.237 Boston Mwansa agreed that he took the photographs which were at page 5 of 'P7', and his evidence was that close to the leg was a stone, and that it not near the head. It was his testimony that there were leaves with block fragments and that they turned the body so there were leaves. However, Boston Mwansa stated that the stones were near the body and he did not know if the deceased was a thief.

2.238 His evidence was that Mercy Lombe stated that he appeared drunk, and that he did not know if Vincent Nkonde was called as he was in charge of the Neighbourhood Watch. Boston Mwansa testified that thieves were in all areas including the area where the body was found.

2.239 It was also his testimony that in the footage, Vincent Nkonde pointed in the direction where there was light, and he was not aware that the person was with his friends in the direction of the lights. The testimony was that the deceased was with two friends.

2.240 He denied having been paid to implicate the Nkondes, but agreed that he released the security guard. Boston Mwansa was unaware that Beauty Nkonde saw the security guard hit the deceased with a shot button. He told the Court that the statements that Chris and Chanda's mother gave were not relevant.

2.241 Boston Mwansa whilst agreeing that only Vincent Nkonde's house was not in a wall fence, testified that only Vincent Nkonde could testify that he refused to have the person dumped at his yard.

**RE- EXAMINATION OF BOSTON MWANSA**

2.242 There was no re-examination.

2.243 That marked the close of the case for the State.

**DW1-VINCENT NKONDE**

2.244 When put on his defence, Vincent Nkonde's evidence was that on 29<sup>th</sup> August, 2023, he was asleep with his wife Catherine Mukululuki and the children in their house, when between 24:00 and 01:00 hours, he heard his wife's phone ring.

2.245 It was his testimony, that after his wife answered the phone, he heard noise in the background, with people shouting thief, thief and there was a person who was shouting you will kill me, allow me to speak. He stated that the person continued pleading, and Vincent Nkonde's wife asked Mercy Lombe who had called, and what had happened.

---

- 2.246 Still in his defence, Vincent Nkonde testified that Mercy Lombe informed his wife that a thief had been caught, and they were beating him. He explained that Mercy Lombe lived three houses away from his house, and that the noise continued and it drew towards his house.
- 2.247 Vincent Nkonde testified that he went outside the house after about six to seven minutes after he dressed up, and got the piece of paper on which he had written phone numbers for police officers, whom he used to communicate with, as his phone was off. He added that he carried a torch as his house did not have electricity.
- 2.248 Further in his defence, Vincent Nkonde stated that there is a shop at his house, and that outside his house, was mob of people in the road, and there was a person who lay on the ground and he was being beaten.
- 2.249 The evidence that was given was that Vincent Nkonde identified Lombe, Chanda, Mercy Lombe's children, Mercy Lombe, her husband, Webster Sibanda and his wife who lived opposite Mercy Lombe, Chama's mother and others.
- 2.250 It was his testimony that Lombe, Chanda and Webster Sibanda had iron bars, while Mercy Lombe's husband was just kicking the person, and Chama's mother had a pounding stick. Vincent Nkonde testified that he had asked Mercy Lombe what was happening and why she had called his wife as well as what the person they were beating had stolen.

- 2.251 That in response, Mercy Lombe had stated that he had been hitting her door, and he wanted to break into her house.
- 2.252 Still in defence Vincent Nkonde testified that he had told Mercy Lombe that the person should have been taken to the police. Then the meantime, the people had continued beating the person and his strength reduced, and at that time, Welu had also gone there with an iron bar, and also Chris, who also had an iron bar, and he alleged that his phone was stolen two weeks earlier, and he was angry, such that no one could speak with him.
- 2.253 It was stated that Chris beat the person with an iron bar and the person appeared as if he had fainted. Thus, Vincent Nkonde's son Vincent Mwamba Nkonde poured water on him and the person regained his consciousness, and he got up and ran.
- 2.254 However, Mercy Lombe's children, Lombe and Chanda together with Mercy Lombe's husband chased him and they hit him with an iron bar, that Chanda had and he fell. Vincent Nkonde's testimony was that they continued beating him while shouting, and in the meantime, the mob increased.
- 2.255 Thus, Vincent Nkonde thought of helping the person and he went with his children Vincent Mwamba Nkonde and Martin Nkoloma to Ntambwe Fitment Centre where there was security, and some people followed them. He stated that they left the person who was being beaten there.

- 2.256 Vincent Nkonde still in his evidence, testified that at Ntambwe Fitment Centre, they found a security guard whom Vincent Nkonde informed that they had apprehended a person, and they needed help. His evidence was that when they went back with the security guard, the security guard also hit the person with the shot button that he had on his head, legs and arms and he stopped him from doing so.
- 2.257 Vincent Nkonde's evidence was that he was a member of the Neighbourhood Watch Association which was chaired by Davy, and he was assisting, and he got the person.
- 2.258 The testimony given was that they proceeded to the hump at Ntambwe Fitment Centre, and he asked the security guard to call his boss and ask for transport, so that the person could be taken to Chilenje Police as he was bleeding. However, the Security Guard refused and Vincent Nkonde and his family stood by the pole lines, and they heard some voices of people who had torches.
- 2.259 His evidence was that they went to the road near Ntambwe Fitment Centre, and the person fell at the T-Junction after Chanda hit him on the leg. Vincent Nkonde testified that they tried to stop some vehicles but they went by. It was his testimony that they lifted the person when a white vehicle passed and he ran there and asked for help from the driver to take the thief to the police.
- 2.260 However, the driver said that thieves had troubled him as they stole two car batteries and he turned and drove off.

- 2.261 The defence requested the Court to go to the scene to appreciate the setting.
- 2.262 There, Vincent Nkonde pointed to the yard where Mercy Lombe lived, and to the blue shop which was by the house, stating that he found Mercy Lombe together with the mob. He also pointed to a spot just outside the gate stating that the blood started from there.
- 2.263 Webster Sibanda's house which is just opposite the yard where Mercy Lombe lived was also pointed at, and the Court moved to Vincent Nkonde's house which was incomplete, and without a wall in front. He pointed to the area in front of his yard where there were stones, stating that the person was being beaten there whilst he was being called a thief.
- 2.264 He also showed the Court the T-Junction and the hump which were before one turned to go to Ntambwe Fitment Centre. Vincent Nkonde stated that after the driver of the white or cream vehicle was stopped, and he said that thieves had troubled him after they stole two car batteries, he u turned and drove to the hump where the person had been carried to, and he hit the person then left.

#### **CROSS EXAMINATION OF VINCENT NKONDE**

- 2.265 In cross examination, Vincent Nkonde testified that when Mercy Lombe had called his wife to say that a thief had been apprehended, Mercy Lombe was not still at her house. He denied that Mercy Lombe said so. However, Vincent Nkonde agreed that he was not with Mercy Lombe at the time. It was further his evidence, that Mercy Lombe said that when she

called his wife, no one was beating the person, as they were still in the house.

2.266 Vincent Nkonde however said that this was not true. He stated that Mercy Lombe intended to call him, as he was a member of the Neighbourhood Watch Association, but his phone was off. He clarified that the Chairperson of the Neighbourhood Watch Association was Davy Chongo.

2.267 It was stated that the Neighbourhood Watch Association stopped thieves from stealing in the night, and once caught, thieves would be conveyed to the police.

2.268 Vincent Nkonde agreed that he had testified that he had told Mercy Lombe not to beat the deceased, but to take him to the hospital. It was also admitted that as a member of the Neighbourhood Watch Association, Vincent Nkonde had the duty to take the deceased to the police station and not Mercy Lombe.

2.269 Vincent Nkonde testified that when he came out of the house, there were a lot of people who were beating the deceased. He denied that he did not take the deceased to the police, as himself and his family were beating the deceased.

2.270 Further denial was made, that Mercy Lombe told Vincent Nkonde not to beat the deceased as he was not a thief, but was someone who was intoxicated. Vincent Nkonde did not know if Mercy Lombe testified that the person was not found with anything. His evidence was that he had lived with Mercy Lombe and Webster Sibanda for more than eight years, and that they had lived in harmony.

2.271 Vincent Nkonde agreed that Beauty Nkonde is his daughter, and that he followed her testimony. He recalled that Beauty Nkonde testified that herself, Vincent Mwamba Nkonde and Martin Nkoloma were part of those people who were beating the deceased. It was denied that Beauty Nkonde testified that Vincent Nkonde hit the deceased with an iron bar.

2.272 Vincent Nkonde also disputed the assertion that whilst everyone went home, himself, Vincent Mwamba Nkonde and Martin Nkoloma continued beating the deceased and they dragged him to Ntambwe Fitment Centre.

2.273 The testimony that Vincent Nkonde further gave in cross examination, was that he did not testify that they dragged the deceased to Ntambwe Fitment Centre. He told the Court that Beauty Nkonde did not reach Ntambwe Fitment Centre, although he went there.

2.274 It was agreed that Vincent Nkonde watched the footage in 'P4'. He stated that Beauty Nkonde could be seen in the footage and that she reached the road to the Ring Road, which led to Ntambwe Fitment Centre.

2.275 However, Vincent Nkonde denied that the video showed him lift a stone and drop it on the deceased. He recalled having testified that he got the piece of paper on which he had written some phone numbers for some police officers.

#### **RE-EXAMINATION OF VINCENT NKONDE**

2.276 In re-examination, Vincent Nkonde clarified that as Neighbourhood Watch Association personnel, they were

supposed to take the deceased to the police station. He further stated that Beauty Nkonde did not reach Ntambwe Fitment Centre.

**DW2-VINCENT MWAMBA NKONDE**

- 2.277 The son to Vincent Nkonde, Vincent Mwamba Nkonde testified in his defence that he used to help his father at the shop, and that he was asleep on the material night with his cousin Martin Nkoloma, when they were awakened by the noise of people shouting thief. He added that it sounded that a person was being beaten by a mob.
- 2.278 His evidence was that he heard the bedroom door for his father Vincent Nkonde open, and thereafter footsteps in the corridor, and his father said that he would go outside, as the people may open the shop which was outside the house.
- 2.279 Vincent Mwamba Nkonde still in his defence, testified that he woke up and lit a candle as there was no electricity at their house. It was his testimony, that Martin Nkoloma who called him by his other name Chewe asked him if he had heard the noise, and the two of them went outside and they found a lot of people beating a person.
- 2.280 Further in his defence, Vincent Mwamba Nkonde testified that when he reached the place, he saw Lombe, who is Mercy Lombe's son and Chanda beating the person with metal bars, and Webster Sibanda who had a weapon that also looked like a metal bar.
-

- 2.281 It was stated Mercy Lombe's husband, Elias Mhango was also there, and he was stepping on the person while beating him, all over the body.
- 2.282 On other people that he saw there, Vincent Mwamba Nkonde testified that Wandi's mother and Chama's mother, Webster Sibanda's wife and Mary were there, and that Chama's mother had a pounding stick in her hands. His evidence was that they were angry as they spoke with Vincent Nkonde.
- 2.283 In his continued defence, Vincent Mwamba Nkonde told the Court that he heard Vincent Nkonde ask them why they had taken the person to his house, and not to the police, as they had already beaten him.
- 2.284 He testified that as they did not want to help, and they were beating the person, Vincent Mwamba Nkonde, as he was trained at school, got a bucket of water and poured it on the person as he was lying down, and he was not talking and he appeared to have fainted.
- 2.285 This was explained as being because a person will wake up due to the temperature of the water, and the person on being poured the water woke up and he stood up, looked around and he ran.
- 2.286 However, the people who were beating him chased him and he saw someone at a distance hit him on the legs and the person fell at the junction. Vincent Mwamba Nkonde stated that Weluzani and Chris who lived at the junction came out. Thus, Vincent Mwamba Nkonde, Vincent Nkonde and Martin
-

Nkoloma who were at the shop did not want the beating to continue, and they said that they would look for a vehicle to take the person.

2.287 His evidence was that they went to the Ring Road to look for a vehicle and they met a security guard from Ntambwe Fitment Centre who was going to where the noise was. Like Vincent Nkonde, Vincent Mwamba testified that the security guard was asked for help to take the person if there was a vehicle at Ntambwe Fitment Centre.

2.288 It was his testimony that the security guard at Ntambwe Fitment Centre insisted on seeing the person and when he reached where the person was, he hit him with shot button that he had all over the body. Then Vincent Nkonde grabbed the security guard and told him to stop what he was doing and that they needed a vehicle to take him to the hospital or the police.

2.289 The testimony given, was that the security guard said that there was no vehicle so there was nothing that he could do, and he left.

2.290 Therefore, Vincent Mwamba Nkonde, Vincent Nkonde and others went to the ring Road and the person had in the meantime been moved from the T-Junction to near the hump as one went to Ntambwe Fitment Centre by people that Vincent Mwamba Nkonde did not see.

2.291 He explained that at the road side of the Ring Road was Jesus Life Church by the ZESCO pole lines, where like

Vincent Nkonde, he testified that they heard voices and saw flashes of light as they were looking for a vehicle.

- 2.292 It was his evidence, that a white and a red vehicle passed. Then, a small vehicle which looked like a Toyota Corolla stopped, and Vincent Nkonde went and spoke with the driver. He like Vincent Nkonde, stated that the vehicle turned and went to the hump where the person was and he accelerated and ran over the person after it slowed down, and went and turned.
- 2.293 Vincent Mwamba Nkonde testified that the person who was on the ground was bleeding all over the body as if his legs and hands had been broken. He told the Court that people scattered after the person was ran over and Chris dropped the metal bar.
- 2.294 Then Vincent Nkonde stated that the person should be moved as he would be run over and they went and put him by the Ring Road, in case a vehicle stopped.
- 2.295 Vincent Mwamba Nkonde testified that he could not touch the person with his bare hands as he was bleeding all over, so he used the metal bar that Chris had dropped, and put it through the loops of the persons' trousers who was not responding at the time.
- 2.296 Then himself and Martin Nkoloma carried the person across the road side at Ntambwe Fitment Centre.
- 2.297 He explained that the noise at Jesus Life Church where maize had been cultivated increased, and people were

jumping over the wall fence and they were scared and they left.

2.298 In his continued defence, Vincent Mwamba Nkonde testified that in the morning, he heard from Chris, that police had discovered a dead body. Then around 03:00 hours, Vincent Nkonde was apprehended and he was taken to Godfrey Miyanda police.

2.299 He stated that around 14:00 and 15:00 hours, he was taken to Chilenje police where he found Vincent Nkonde, Wandi's mother, the security guard, Mercy Lombe and Webster Sibanda.

2.300 Vincent Mwamba Nkonde alleged that he was beaten and he slipped on the stair and hit his left knee and he was hurt. After that himself, Vincent Nkonde and Martin Nkoloma were taken to Godfrey Miyanda police while the Security Guard, Webster Sibanda and Mercy Lombe remained at Chilenje Police.

2.301 It was his evidence that after four weeks, Vincent Nkonde was called by the police officer who testified and on his return to the cells, Vincent Nkonde had informed him that the officer Mwansa had informed him that his friends, whom he did not name, had paid to be released, and asked why Vincent Nkonde had not paid, so that he could be released.

2.302 Vincent Mwamba Nkonde testified that Vincent Nkonde refused to pay as he did not commit any offence. Then after two days, the security guard was taken to Godfrey Miyanda

police and he did not say anything. He was released after two days.

2.303 It was stated that Vincent Mwamba Nkonde, Vincent Nkonde and Martin Nkoloma appeared in the Subordinate Court on 22<sup>nd</sup> December, 2023.

2.304 Further in his defence, Vincent Mwamba Nkonde testified that Beauty Nkonde is his sister, and she would visit him at prison where she complained that Wandi's mother had followed her and told her what to say in Court. It was his testimony that Wandi's mother agreed that she followed Beauty Nkonde to her the house, and told her not to say that she had phoned her.

2.305 He stated that he heard Beauty Nkonde testify that she saw him beat the person, but his position was that Beauty Nkonde was threatened as she was followed by Wandi's mother with her sister.

2.306 It was his evidence, that Beauty Nkonde looked after his siblings and his mother who suffered a stroke after they were apprehended. Thus, she would do anything to be avoid being in Vincent Mwamba Nkonde's position.

2.307 Vincent Mwamba Nkonde testified that they did not get along with Wandi's mother. He stated that Webster Sibanda's evidence was that he did not beat the person. It was his testimony that Webster Sibanda's testimony was not true as in cross examination, Webster Sibanda told the Court that Wandi's mother went to his wife after she testified

in Court, and Webster Sibanda stated that whatever his wife told him was true.

**CROSS EXAMINATION OF VINCENT MWAMBA NKONDE**

2.308 In cross examination, Vincent Mwamba Nkonde's testimony was that he had not testified that he helped his father Vincent Mwamba Nkonde in his duty as a neighbourhood watch officer. He stated that he helped his father at the shop. He agreed that only three of them were charged with the offence, but a lot of people came out of their homes after the person was apprehended.

2.309 It was also Vincent Mwamba Nkonde's evidence in cross examination, that he told the police that Mercy Lombe and her children beat the deceased, and he did not remain silent in the warn and caution.

2.310 When referred to the warn and caution at the last page in line 6, which was administered to him, Vincent Mwamba Nkonde stated that it read that he did not wish to say anything.

2.311 His evidence was that exhibit 'P3' did not come for their house, and himself, Vincent Nkonde and Vincent Mwamba Nkonde used them to beat the deceased. Vincent Mwamba Nkonde maintained that Beauty Nkonde was forced to say what she said even though she did not tell the Court that she was forced.

2.312 On being asked which police station is nearest in the area, Vincent Mwamba Nkonde testified that it is Chilenje Police, adding that it is a bit far. Whilst agreeing that he poured

water on the person, Vincent Mwamba Nkonde's testimony was that it was with a view that the person wakes up.

2.313 However, according to Mercy Lombe, he poured water on the person as part of the assault, and not to resuscitate him.

2.314 Further agreement was made that Vincent Mwamba Nkonde testified that a vehicle ran over the person, and he bled profusely. He also agreed that he followed the Pathologists testimony closely, and that he told the Court that the person died due to blunt impact trauma due to being beaten with blunt objects such as a stone, or an iron bar among others.

2.315 Still in cross examination, Vincent Mwamba Nkonde agreed that himself, Vincent Nkonde and Martin Nkoloma left the deceased's body by the road side on the Ring Road about fifty metres from Ntambwe Fitment Centre.

2.316 In still testifying, he agreed that after Chris informed him that there was a dead body by the road, he did not go and tell the police what he knew.

2.317 Further testimony was given, that Vincent Mwamba Nkonde did not live in harmony with Mercy Lombe and she was cross examined on their relationship. Vincent Mwamba Nkonde agreed that in his testimony, he did not say that he had a bad relationship with Webster Sibanda.

2.318 He reiterated that Vincent Nkonde informed him that he was offered a bribe by the arresting officer but that he had no evidence to establish so, and that Vincent Nkonde did not state so in his defence.

2.319 Vincent Mwamba Nkonde denied that he did not report to the police, as he was part of the mob that beat the person who died, and he knew that he would be apprehended if he did so.

**RE-EXAMINATION OF VINCENT MWAMBA NKONDE**

2.320 It was his evidence in re-examination that he was going to the police to take meals to his father before he was apprehended.

**DW3-MARTIN NKOLOMA**

2.321 His evidence in defence was very similar to what Vincent Mwamba Nkonde stated. He added that Vincent Nkonde was apprehended first then himself and Vincent Mwamba Nkonde.

2.322 It was also Martin Nkoloma's testimony that when he was interviewed, he stated that he knew nothing and that he did not kill the deceased.

2.323 Martin Nkoloma in his defence further testified that he heard that Mercy Lombe had been released, and that Beauty Nkonde stated that Mercy Lombe had paid to be released, and that they should also pay so that they could be released.

2.324 He explained that Beauty Nkonde testified that he beat the deceased as Mercy Lombe followed her and threatened her. However, Mercy Lombe in her evidence told the Court that she had told Beauty Nkonde not to say that she called her father, as if she testified, Beauty Nkonde would go to jail.

2.325 He denied having had an iron bar which he used to beat the deceased, adding that he did not stop at the T-Junction.

Martin Nkoloma explained that he passed there and went to the road side, and that he only got the iron bar as he picked up the person who had blood all over, after Chris left it at the junction when they chased the person.

**CROSS EXAMINATION OF MARTIN NKOLOMA**

- 2.326 When cross examined, Martin Nkoloma's evidence was that he was apprehended on 1<sup>st</sup> September, 2023. He did not answer when asked whether the offence happened on 29<sup>th</sup> August, 2023. Nevertheless, Martin Nkoloma agreed that from 29<sup>th</sup> August 2023 to 1<sup>st</sup> September, 2023, he did not tell the police what he knew about the matter.
- 2.327 It was also his evidence that exhibit 'P3' did not show the security guard and others beating the deceased or himself, Vincent Nkonde, Vincent Mwamba Nkonde and Beauty Nkonde scouting for a place where to dump the body.
- 2.328 Whilst agreeing that he identified himself in the video, Martin Nkoloma denied that the video showed them dragging the body with their bare hands, and not with an iron bar. He maintained that he did not have an iron bar that day stating that he picked it as he assisted to take the person to the road.
- 2.329 Martin Nkoloma also denied that the iron bar came from their house even though Beauty Nkonde identified it as having come from there. He also disputed having heard Beauty Nkonde testify that they when they went to Ntambwe Fitment Centre, the deceased was already unconscious.

2.330 The evidence that was further given was that Beauty Nkonde did not testify that Mercy Lombe paid money so that she could be released or that Vincent Nkonde said so in his defence.

**RE-EXAMINATION OF MARTIN NKOLOMA**

2.331 There was no re-examination.

2.332 That marked the close of Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma's defence.

**3. DECISION OF THIS COURT**

3.1 I have considered the evidence in this matter.

**FACTS NOT IN DISPUTE**

3.2 It is common cause that on the night of 29<sup>th</sup> August, 2023, Mercy Lombe called Vincent Nkonde's wife and informed her that a thief had been apprehended at her house after she failed to call Vincent Nkonde as his phone was off.

3.3 It is not in contention, that Vincent Nkonde was a member of the Neighbourhood Watch Association.

3.4 The facts which are further not in dispute, are that the person who was apprehended was identified as Samson Mulipukwa after he died, and he was assaulted after he was apprehended at the house where Mercy Lombe lived.

**3.5 ISSUES IN DISPUTE**

3.6 It is in contention whether Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma caused the death of Samson Mulipukwa.

**ANALYSIS**

3.7 Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma are charged with the offence of murder.

3.8 Murder is defined in **Section 200 of the Penal Code, Chapter 87 of the Laws of Zambia** as;

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

3.9 **Section 204 of the said Penal Code** sets out the instances which constitute malice aforethought as follows;

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

*(a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;*

*(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;*

*(c) an intent to commit a felony;*

*(d) an intention by the act or omission to facilitate the flight or escape from custody of*

***any person who has committed or attempted to commit a felony.”***

3.10 As to the existence of malice aforethought, the Court in the case of *The People v Njovu* <sup>(3)</sup> held that;

***“So far as this case is concerned to establish "malice aforethought", the prosecution must prove that the accused either had an actual intention to kill or to cause grievous harm to the deceased, his wife, or that he knew that what he was doing would be likely to cause death or grievous harm to someone.”***

3.11 In this matter, Mike Mwale and James Phiri testified that after they knocked off from work on 28<sup>th</sup> August, 2023, they went with the deceased Samson Mulipukwa to drink alcohol in Chilenje, and they parted around 19:00 hours after Samson Mulipukwa went to board a bus to go his home in Mtendere East.

3.12 However, Samson Mulipukwa did not report for work the next day, and on the third day of his absence from work, his wife Elizabeth Phiri went to his work place and explained that Samson Mulipukwa had not been home since he left home on 28<sup>th</sup> August, 2023.

3.13 A report was made to Chilenje Police, and Mike Mwale and James Phiri were shown photographs of dead people by the police, and they identified Samson Mulipukwa among them. Thereafter Elizabeth Phiri was called to Chilenje Police and she was notified of Samson Mulipukwa’s death.

- 3.14 The fact that the Samson Mulipukwa died is not in dispute. The State alleged that Samson Mulipukwa died as a result of being assaulted by persons who included Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma.
- 3.15 In their defence, Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma denied having assaulted Samson Mulipukwa, contending that the mob assaulted him and that a car ran over him. They alleged Mercy Lombe's son Lombe and Chanda were armed with iron bars, while Webster Sibanda had a weapon that may have been an iron bar, and Chama's mother had a pounding stick.
- 3.16 They also alleged that after Samson Mulipukwa was poured some water by Vincent Mwamba Nkonde, and he got up and ran from outside Vincent Nkonde's house, Lombe, Chanda and others chased him and he fell by the T-Junction.
- 3.17 It was also their testimony that at the T-Junction, Welu and Chris went with iron bars, and they too assaulted Samson Mulipukwa.
- 3.18 Then as the assault did not relent, Vincent Nkonde went to Ntambwe Fitment Centre to ask the security guard there for transport to take Samson Mulipukwa to either the police or the hospital as he was bleeding badly. They stated that security guard insisted on seeing Samson Mulipukwa and he went to the T-Junction.
- 3.19 However, instead of helping Samson Mulipukwa, the security guard also assaulted him with the shot button that he had all over the body. Thus, Vincent Nkonde, Vincent

Mwamba Nkonde and Martin Nkoloma went to the Ring Road with a view to stop a vehicle so that they could take Samson Mulipukwa.

- 3.20 The evidence in defence was further that a white vehicle turned to go where Samson Mulipukwa was now at the hump after the T-Junction where he had been taken, and it went and ran over him and left with the driver having stated that thieves has troubled him as they stole his two car batteries.
- 3.21 Then as Samson Mulipukwa was now bleeding profusely, and the people scattered, and Chris dropped the iron bar that he had, Vincent Mwamba Nkonde and Martin Nkoloma got the iron bar that Chris had left, and they hooked it in the trousers for Samson Mulipukwa, and they carried him to the Ring Road and left him there.
- 3.22 The events as they unfolded after Mercy Lombe phoned Vincent Nkonde's wife and informed her that a thief had been apprehended are in dispute.
- 3.23 Mercy Lombe and Webster Sibanda contend that they only took Samson Mulipukwa after they apprehended him to Vincent Nkonde's house as Vincent Nkonde was the Neighbourhood Watch Association Chairman.
- 3.24 Vincent Nkonde denied being the Neighbourhood Watch Association Chairman, stating that Davy Chongo was, and he was just assisting.
- 3.25 What is common cause is that Vincent Nkonde was a member of the Neighbourhood Watch Association, and that

was why Mercy Lombe called his wife and informed him that they had apprehended a thief.

- 3.26 The only evidence that shows who was present when Samson Mulipukwa was taken to the area near where he was dumped, is the CCTV footage which was captured at Ntambwe Fitment Centre and was produced as 'P4'.
- 3.27 That footage just shows the security guards at Ntambwe Fitment Centre come at about 01:07 hours. After a few minutes, one of them headed out to towards the hump while the other one went back in.
- 3.28 Then at 01:21 hours the security guard who went out returned, and within the minute, some people emerged and the security guard pointed to the direction of the Ring Road after speaking with the people.
- 3.29 After that, the five people headed in that direction with one who was wearing a light coloured hoodie running there with the four behind, while two other persons were slightly behind the four.
- 3.30 The footage also showed the five who went ahead return to join the two on the road, as the security guard was standing aside on the parking lot at Ntambwe Fitment Centre. The people discussed, and they were pointing towards the Ring Road and the security guard drew near them.
- 3.31 At about 01:26 hours, a lady went towards the Ring Road from among the group, and she headed right back on going there. Then at 01:29 hours the man wearing a black t-shirt who was carrying what appears to be papers, and the person

in the light coloured hoodie headed back to the Ring Road with the security guard on the pavement at Ntambwe Fitment Centre following, and four others including the lady following on the road at first, and another man followed and joined them.

- 3.32 They crossed the Ring road onto the side and a red vehicle drove by. Then a white vehicle drove by, and went and turned heading to the group, as the security guard was on the pavement at Ntambwe Fitment Centre away from them. After the group went the vehicle and spoke with the driver, and the driver drove the vehicle down the road to the hump at 01:32 hours, as the group headed back, and the security guard went into Ntambwe Fitment Centre.
- 3.33 At 01:34 hours, the vehicle drove back and reversed slightly and then drove off onto the Ring Road. Then at 01:36 Samson Mulipukwa was carried by two people using what appears to be a metal bar, with the man in the black t-shirt right behind, and the four others following slightly behind.
- 3.34 Samson Mulipukwa was dumped on the ground across the Ring Road at 01:37 hours. Then group started heading back but they returned, and the person in the black t-shirt got something and hit Samson Mulipukwa. Thereafter a number of vehicles pass on the Ring Road while the group was there and they started heading back.
- 3.35 However, the man in the black t-shirt went back to Samson Mulipukwa and walked around, and stood there before he started heading back after a vehicle passed. The person

wearing the light coloured hoodie also went back and joined the man wearing the black t-shirt, and the two of them went and stood by Samson Mulipukwa for a bit of time, as they pointed around, before they headed back and finally left at 01:41 hours.

- 3.36 The man wearing the black t-shirt was identified as Vincent Nkonde, while the two who carried Samson Mulipukwa were identified as Vincent Mwamba Nkonde and Martin Nkoloma. The lady was identified as being Beauty Nkonde.
- 3.37 Beauty Nkonde testified that the person who wore the light coloured hoodie was Welu, while Boston Mwansa stated the Lombe wore shorts. This evidence was not disputed in any way.
- 3.38 From the CCTV footage, it can be seen that seven people went to Ntambwe Fitment Centre who included Vincent Nkonde, Vincent Mwamba Nkonde, Martin Nkoloma Beauty Nkonde, Welu and Lombe. There was also one other person.
- 3.39 It can be seen from the way that the group of seven moved that they were acting together, as they were seen talking together and with the security guard from Ntambwe Fitment Centre. They even spoke with the driver of the white vehicle that turned on the road at Ntambwe Fitment Centre and stopped.
- 3.40 Therefore, contrary to the assertion by Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma that they proceeded to Ntambwe Fitment Centre to get help as Lombe, Chanda, Chris, Welu and Webster Sibanda among the others

had continuing assaulting Samson Mulipukwa, they appeared to all be acting in unison.

- 3.41 What was just not ascertainable from the CCTV footage was whether the beating of Samson Mulipukwa started from Mercy Lombe's house or at Vincent Nkonde's house after he was taken there, and who was armed with what, as the CCTV footage did not capture those events.
- 3.42 Mercy Lombe and Webster Sibanda who testified for the State were witnesses with an interest to serve, as they were both detained in relation to the matter. Thus, they had motive to falsely implicate Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma in order to exonerate themselves.
- 3.43 Their evidence that Vincent Mwamba, Vincent Mwamba Nkonde and Martin Nkoloma are the ones who assaulted Samson Mulipukwa with iron bars needed corroboration, or in the absence of corroboration special and compelling ground, on that basis, before a conviction for murder can be secured against them.
- 3.44 Beauty Nkonde, the daughter to Vincent Nkonde and siblings to Vincent Mwamba Nkonde and Martin Nkoloma testified that Vincent Mwamba Nkonde and Martin Nkoloma used iron bars from their house to assault Samson Mulipukwa. She also testified that Chanda and Lombe also assaulted Samson Mulipukwa using their hands.
- 3.45 Beauty Nkonde could not recall what Vincent Nkonde had in hands, which he using to assault Samson Mulipukwa.
-

- 3.46 Unlike the testimony that Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma gave that after Samson Mulipukwa got up, Chris hit him with metal bar, Beauty Nkonde stated that it was Vincent Nkonde that hit Samson Mulipukwa with what he had.
- 3.47 Then Chris got the iron bar that her brother had, and started hitting Samson Mulipukwa, as did Welu. Beauty Nkonde also testified that the security guard also hit Samson Mulipukwa with it.
- 3.48 On the white car, Beauty Nkonde's testimony was that the driver said he could not help a thief and he drove off. She did not say that the car ran over Samson Mulipukwa.
- 3.49 Boston Mwansa said that a red vehicle ran over Samson Mulipukwa and that the said part of the CCTV footage was missing.
- 3.50 The CCTV footage however shows a white car and not a red car driving down the road at Ntambwe Fitment Centre and returning. Therefore, Boston Mwansa may have been mistaken on his recollection of the CCTV footage.
- 3.51 The footage of the vehicle running over Samson Mulipukwa is not part of 'P4'.
- 3.52 Contrary to the testimony that Vincent Mwamba Nkonde and Martin Nkoloma gave that after Samson Mulipukwa was ran over by the vehicle, he started bleeding profusely, and they had to use the metal bar to carry him after hooking it into his trousers, the pictures that the arresting officer Boston Mwansa took at the scene which were produced as 'P7' on
-

the last page show just parts of blood on Samson Mulipukwa's body, and not on his whole body.

- 3.53 Further, the Forensic Pathologist testified that Samson Mulipukwa died due to blunt impact injuries which were caused blunt instruments such as an iron bar, stones etc, as recorded in the Postmortem report 'P5'.
- 3.54 The post mortem report shows that Samson Mulipukwa sustained abrasions on the right and left cheeks with underlying bruises, as well as on the right and left eyebrows. Other injuries were on his right chin, and lacerations on the right occipital area and right parietal area.
- 3.55 He also had abrasions on the right chest and multiple abrasions on his back, on both shoulders with underlying abrasions, a fractured finger on the right hand and a fractured right knee and multiple abrasions on the legs.
- 3.56 It was also found that Samson Mulipukwa had hemorrhage on the left side of his head and the right side, but his skull was intact.
- 3.57 Dr Victor Telendiy stated that the injuries could not have been caused by a road traffic accident, as if it were a road traffic accident, the fracture of the patella and the finger would not have been there.
- 3.58 Beauty Nkonde established that Samson Mulipukwa was beaten. Vincent Mwamba Nkonde and Martin Nkoloma alleged that Beauty Nkonde testified in the manner that she did as she was threatened by Mercy Lombe Mhango, thus she was afraid to go to prison.

- 3.59 Indeed, Mercy Lombe Nkonde on being cross examined, agreed that she had called Beauty Nkonde and asked her not tell the Court that she had called the Nkondes. She also agreed that Beauty Nkonde would not be lying if she said Mercy Lombe told Kisha to clean the blood.
- 3.60 When Beauty Nkonde testified, she was not cross examined on her having been threatened by Mercy Lombe.
- 3.61 In the case of *Rodgers Kunda v The People* <sup>(9)</sup> it was stated that:

***“In the case of a witness who is an accused person, it is indeed very important that he must cross examine witnesses whose testimony contradicts his version on a particular issue. When an accused person raises his version for the first time during his defence, it raises a very strong presumption that the version is an afterthought. Therefore, in the contest of credibility against other witnesses, the accused person is likely to be disbelieved.”***

- 3.62 Thus, not having cross examined Beauty Nkonde on the fact that she was threatened by Mercy Lombe to testify in the manner that she did, raising so in Vincent Mwamba Nkonde and Martin Nkoloma’s defence was merely an afterthought and it has not been established that Beauty Nkonde testified in the manner that she did implicating them, as she was threatened by Mercy Lombe.
- 3.63 Further while Vincent Mwamba Nkonde testified that they were not in good terms with Mercy Lombe Mhango and she

was cross examined on the same, the cross examination does not reflect so. That assertion cannot reasonably be believed in any case, as Mercy Lombe Mhango called Vincent Mwamba Nkonde's mother, and told her that a thief had been apprehended when she could not reach Vincent Nkonde. Thus, no bad relationship was established.

- 3.64 Beauty Nkonde therefore corroborated Mercy Lombe Mhango's evidence that Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma were beating Samson Mulipukwa with iron bars and other instruments.
- 3.65 Mercy Lombe Mhango by her cross examination revealed that in fact, there was blood at her yard, entailing that Samson Mulipukwa's beating started from her yard and it continued up to and after Vincent Nkonde's house.
- 3.66 When Samson Mulipukwa was carried to the Ring Road, he was helpless. Thus, at that point he had been assaulted to an extent that he could not even walk.
- 3.67 He died, and the question is whether Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma had intention to kill Samson Mulipukwa.
- 3.68 **Section 21 of the Penal Code** provides for parties to offences. It states that;

*"21. (1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say:*

- (a) every person who actually does the act or makes the omission which constitutes the offence;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) every person who aids or abets another person in committing the offence;
- (d) any person who counsels or procures any other person to commit the offence.”

3.69 Further *Section 22 of the Penal Code* states that;

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

3.70 In the case of *Haonga and others v The People* <sup>(5)</sup> it was held that;

*“If a death results from the kind of act which was part of the common design then if the offence be murder in one, then it is murder in all.”*

3.71 From the evidence as was given in this matter, it can be concluded that a common purpose was formed to beat Samson Mulipukwa as he was thought to be a thief even

though Mercy Lombe Mhango contended that he appeared drunk.

3.72 The post mortem report shows that Samson Mulipukwa died as a result of the beatings.

3.73 In the case of ***Abednigal Kapesh and Best Kanyakula v The People*** <sup>(8)</sup>, the two appellants were indicted on two counts of the murder of the two deceased persons contrary to Section 200 of the Penal Code, Chapter 87 of the laws of Zambia. They were alleged to have, at Kasempa in the North-Western Province of Zambia, on or about the 30th October, 2011, jointly and whilst acting together with others unknown, murdered the two deceased persons in separate, but related incidents.

3.74 The Supreme Court in that matter, noted that in the case of ***Mutambo and 5 others v The People*** <sup>(2)</sup> the Court stated that:

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

3.75 The Supreme Court stated that they were satisfied in that case, that the design of the two appellants, together with the others in the group, was to harm the deceased persons who

had been identified as witches who were responsible for the death of the late Kabinga.

3.76 It was further stated in that matter, that even if it could be inferred that the appellants did not actively participate in assaulting the deceased, they actively assisted the assailants, and in accordance with the dictum in the case of ***London Chisulo and 2 others v R*** <sup>(1)</sup>, they were guilty of the offence for which they were charged, as they did not disassociate themselves from the malefactions of the rest of the assaulting mob.

3.77 The Supreme Court observed that as long as it was established that the Appellants were part of the gang that assaulted the two deceased persons, the precise extent of their contribution individually, to the death of the deceased, was in those circumstances largely irrelevant in determining their guilt.

3.78 Noteworthy, is also that in the case of ***Ernest Mwaba and Chabaya Ndala and Simushi Manyima and Wamunyima Walusiku and Erustus Kakumbi Banda v The People*** <sup>(6)</sup> it was held that;

***“(i) Where joint adventurers attack the same person then, unless one of them suddenly does something which is out of line with the common scheme and to which alone the resulting death is attributable, they will be liable.”***

3.79 In the case of ***Francis Mayaba v The People*** <sup>(7)</sup>, the appellant and his co-accused apprehended the deceased and

tied his hands. They did so on the suspicion that the deceased had stolen money from one Esnart Mpokota, the mother the appellant. When they failed to recover the money from the deceased they and other villagers assaulted him, burnt his back and tied him to a tree.

3.80 He was left overnight and the following night the deceased was found dead. The appellants were convicted of murder.

3.81 On appeal, the Supreme Court stated it was case of an instant justice, and it was not clear whose blow caused the death of the deceased. Therefore, the facts of this case did not support the conviction of murder, because quite apart from the element of provocation and drunkenness negating intent to kill, it was a case of mob instant justice, and there is no evidence that the appellant or indeed the juvenile offender delivered the fatal blow that caused the death of the deceased.

3.82 In this matter, Dr Victor Telendiy testified that Samson Mulipukwa had right subgaleal hemorrhage which was bleeding between the brain the and skull, and he concluded that Samson Mulipukwa died as a result of blunt impact trauma to the head, torso, that is from his neck up to the legs including his chest and back.

3.83 It was further his testimony, that subgaleal hemorrhage occurs due to blunt impact trauma to the head.

3.84 From Dr Victor Telendiy's testimony, Samson Mulipukwa died as a result of the beatings.

- 3.85 There is no evidence to show who delivered the fatal blow which resulted in the death, but what is clear is that a group of people, who included Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma as well as others, some who are alleged to have run away like Lombe and Chanda, brutally assaulted Samson Mulipukwa and caused his death with implements that included iron bars.
- 3.86 They joined in a common purpose to assault Samson Mulipukwa with the use of iron bars and other implements to inflict the assault, which is evidence of intention to cause him serious grievous bodily harm, and ultimately malice aforethought.
- 3.87 While it was not established independently that the driver of the white vehicle ran over Samson Mulipukwa, and he sustained injury, Dr Victor Telendity ruled out accident as the cause of death in view of the blunt impact injuries that Samson Mulipukwa sustained.
- 3.88 Thus, if at all the driver may have run over Samson Mulipukwa's legs as alleged, the driver in doing so, joined in the common purpose of assaulting Samson Mulipukwa.
- 3.89 It was alleged that Samson Mulipukwa may have been a thief, but the evidence which is undisputed, shows that he did not steal anything from Mercy Lombe Mhango's house. The evidence further does not show that he assailed any of the people that apprehended him.
- 3.90 Vincent Nkonde, as a member of the Neighbourhood Watch Association agreed that his duties involved taking suspected

criminals who were apprehended to the police. His testimony was that on that day his phone was off, and he carried the pieces of paper that had phone numbers for the police.

3.91 When he went outside and found Samson Mulipukwa being beaten, he did not make any effort to ask even his wife for her phone so that he could call the police to go and pick up Samson Mulipukwa.

3.92 Instead, he joined in beating Samson Mulipukwa who died. The video footage while it does show that Vincent Nkonde flagged down vehicles, and he spoke with one driver of a vehicle that turned into the road, also shows that he led his sons Vincent Mwamba Nkonde and Martin Nkoloma to dump Samson Mulipukwa's body across the Ring Road, and he did not report to the police thereafter, thereby cementing the evidence to do grievous bodily harm to Samson Mulipukwa and ultimately to kill him.

3.93 As such, the State has proved that Samson Mulipukwa was assaulted with intent to cause him grievous bodily harm and he died. The offence of murder is complete, and I find Vincent Nkonde, Vincent Mwamba Nkonde and Martin Nkoloma **GUILTY** of murder and I **CONVICT** each one of them for the said offence accordingly.

**DELIVERED IN OPEN COURT AT LUSAKA THE 8<sup>th</sup> DAY OF JANUARY, 2026**

*S. Kaunda*  
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**

