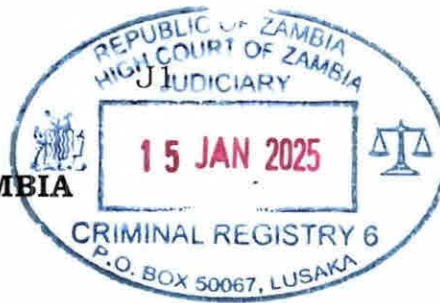


IN THE HIGH COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Criminal Jurisdiction)



HP/25/2021

THE PEOPLE
v
NIGEL MUSONDA MWABA

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 15th DAY OF JANUARY,
2025.

For the State : Mr F.M. Sikazwe, Principal State Advocate & Ms S. Malunga,
State Advocate, NPA
For the Accused : Ms M. Marabesa, Senior Legal Aid Counsel & Dr O. Kaaba,
Probono Legal Aid Counsel, LAB

J U D G M E N T

CASES REFERRED TO:

1. *R v Bryne 44 Cr R 286*
2. *Director of Public Prosecutions v Lukwosha 1966 ZR 14*
3. *Phiri and others v The People 1973 ZR 47*
4. *Bwanausi v The People 1976 ZR 103*
5. *David Zulu v The People 1977 ZR 151*
6. *Emmanuel Phiri and others v The People 1978 ZR 79*
7. *Simon Malambo Chooka v The People 1978 ZR 243*
8. *Wilson Mwenya v The People 1990 SCZ No 5*
9. *Dorothy Mutale and Richard Phiri v The people 1997 SJ 51*
10. *Kazembe Zulu v The People SCZ No 29 of 2015*
11. *Saidi Phiri v The People Selected Judgment No 30 of 2015*
12. *Saviour Mukanso v The People Appeal No 80/2017*
13. *The People v Peter Banda Appeal No 126/2020*
14. *Tshiabu Quibila Benos v The People Appeal No 201/2020*

LEGISLATION REFERRED TO:

1. *The Penal Code Chapter 87 of the Laws of Zambia*

1. INTRODUCTION

- 1.1 The accused person, Nigel Musonda Mwaba stands 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 Nigel Musonda Mwaba on dates unknown, but between 24th October, 2020 and 26th October, 2020 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia did murder Tasila Tembo.
- 1.3 Nigel Musonda Mwaba denied the charge. At trial, the State called Twenty-Seven (27) witnesses, while Nigel Musonda Mwaba gave his defence on oath and he called One (1) witness. The onus is upon the State to prove the case beyond all reasonable doubt.

2. EVIDENCE BY THE STATE

PW1-CRISPIN MWAMBA

- 2.1 The first witness who was called by the State was Crispin Mwamba a police officer. He testified that as at October, 2020, he was based at Chalimbana Police Station. Then on 26th October, 2020, whilst he was on duty at the said Chalimbana Police Station, he received phone calls from members of the public, as well as from Detective Inspector Kandongwe of Palabana Police Post who informed him that there was a dead body of a woman in Mikango area, who was suspected to be aged between Thirty (30) and Forty-Five (45) years old.
- 2.2 That was how Crispin Mwamba informed the Commanding Officer for Lusaka Rural, who provided him with transport to

go the scene the next day on 27th October, 2020. Further in his testimony, Crispin Mwamba requested that a postmortem be done on the body at the scene, and he proceeded to the scene with the Scenes of Crime Officer.

- 2.3 His evidence was that there, the Scenes of Crime Officer took photographs of the body as they waited for the Pathologist. However, the Officer in Charge Pathology informed them that the Pathologist was unable to go there, and he instructed them to bury the body so that the postmortem could be done the following day.
- 2.4 It was stated that this was done, and Crispin Mwamba returned to the office where he transmitted messages on a police radio to police stations describing the deceased and the clothes that she was wearing.
- 2.5 His evidence was that Simon Mwansa Kapwepwe Police Station informed him that they had received a report, and that was how he had sent the photographs of the body to that police station. Crispin Mwamba further testified that the body was identified by virtue of the t-shirt that the deceased wore, which had writings on it, "*The Right to Care, Equip Zambia*".
- 2.6 Then Simon Mwansa Kapwepwe Police Station took up the investigation. Crispin Mwamba told the Court that the scene was between Mikango area near Nanking, and that a few metres from the scene, was a reinyard, which is part of a police or army uniform. It was also stated that the deceased wore an orange t-shirt, and dark blue jeans trousers.

2.7 As to what injuries were on the body, Crispin Mwamba testified that there was a wound on the lower part of the abdomen, and that the face was deformed. Crispin Mwamba testified that the body was off Leopards Hill Road, but he was unable to estimate the distance from the road.

CROSS EXAMINATION OF CRISPIN MWAMBA

2.8 It was Crispin Mwamba's evidence in cross examination, that the reinyard was a few metres from body. He agreed that Mikango Area is used to train army officers, and therefore, it would not be strange to find a reinyard there.

2.9 He stated that the body had a head, and that there were no attempts to decapitate the head. Crispin Mwamba agreed that in his evidence in chief, he had not said that there was any visible injury to the head. He did not know how the injury to the abdomen was caused.

PW2-BRIAN ZYAKAKA

2.10 This witness, an ICT Technician at the National Road Fund Agency gave a background to his academic qualifications, stating that he held a diploma in Computer Systems Engineering and a Certificate in Computer Studies from the Northern Technical College. At the time of his testimony, he had worked at the National Road Fund Agency for Six (6) years.

2.11 In terms of his duties, Brian Zyakaka testified that he provided technical support and maintenance at the head office, and support for CCTV and tolling systems to toll stations across the country.

- 2.12 With regard to this matter, his evidence was that his supervisor requested him to search for a motor vehicle, Isuzu KB registration number BAG 1986. Thus, he logged onto the system and found that the vehicle passed at a toll station heading south on 24th October, 2020. Brian Zyakaka also told the Court that he checked the CCTV footage which also showed that the vehicle passed, heading south.
- 2.13 As to the security of the system, it was his testimony that the Tolling System and the CCTV were reliable, and were password protected, and were serviced monthly.
- 2.14 His evidence was that after that, the National Road Fund Agency, through him, wrote a letter to the Zambia Police Service explaining the details of the transactions for the vehicle, and the CCTV footage was handed over to the detective on a flash disc.
- 2.15 The letter that the National Road Fund Agency wrote to the Zambia Police Service was identified, and it was marked as 'ID1' for identification.
- 2.16 On the CCTV footage, Brian Zyakaka explained that it was retrieved using a laptop that the National Road Fund Agency had allocated to him. His evidence was that the said laptop was secure as it had a password and there was anti-virus installed on it. He identified the flash disc on which the CCTV footage was stored, and it was marked 'ID2'. He produced it in evidence, and it was marked 'P2'.
- 2.17 Thereafter, the CCTV footage was played with the first video showing the booth operator at the Toll. The second video

depicted the motor vehicle Isuzu KB, registration number BAG 1986 on 24th October, 2020 in lane 4, at 07:03:12 hours. The last video combined the two videos.

CROSS EXAMINATION OF BRIAN ZYAKAKA

2.18 This witness was not cross examined.

PW3-RICHARD GUUNA

2.19 Richard Guuna, a police officer testified that he was based at Mazabuka Police Station under Scenes of Crime. He stated that on 30th October, 2020, he was on duty around 11:00 hours, when the Officer in Charge detailed him to be part of a team of officers who were to conduct a crack down operation in Kaonga residential area at Plot No 815, in particular, Bwile Guest House.

2.20 He explained that the purpose of the operation was to capture, disarm and recover any articles from a suspect who was believed to be lodging at the said guest house. Richard Guuna also testified that the operation was necessitated by a report which had been made by Wilfred Simundo, a guard at the said guest house, to the effect that the person who was behind the murder of Tasila Tembo was at the guest house with an Isuzu KB registration number BAG 1986, charcoal grey in colour.

2.21 It was further his testimony that they rushed to Bwile Guest House and approached with caution in different directions, as the suspect was suspected to be armed and dangerous, and was of a military background.

2.22 Richard Guuna named the members of the team as Detective Chief Inspector Mulenga, Detective Inspector Banda,

Detective Constable Kazembe and himself. He stated that they gained entry to the guest house by climbing over the wall fence. Then once inside, they searched the outer rooms and they saw the motor vehicle parked in the northern direction.

- 2.23 He also testified that on engaging Brian Mugala, a worker at the guest house, they established that the suspect was booked on room 3, and on going there, they found the said room locked. As the room attendant did not have a key to the room, Richard Guuna and the others gained access to the room by damaging the mortice lock of the room.
- 2.24 However, they did not find the suspect or any weapons in the room. His evidence was that the car keys were on the side table with a brown religious book, which was inscribed Tasila Tembo and Nigel Mwaba M. Richard Guuna stated that there was also a plain paper on which Six (6) phone numbers were written. He recovered the items.
- 2.25 Still in his testimony, Richard Guuna's evidence was that they proceeded to the car, and he barricaded the area. He told the Court that he attempted to lift fingerprints from obvious points in the vehicle but they were blurred. Then on searching the vehicle, Richard Guuna recovered a camouflage cap, and a red plastic bag which contained some clothes.
- 2.26 He noted that the vehicle had an emblem for the Zambia Army, Arakan Baracks, and he documented the vehicle using an official camera, and he took it to Mazabuka Police station together with the other items which had been recovered. Thereafter, Richard Guuna compiled a photographic album,

which he identified and it was marked as 'ID3'. On producing it, it was marked 'P3'.

- 2.27 He explained that at page 1, was a picture of the motor vehicle which was parked facing north. Then the second picture, was of the front part of the vehicle, the third a closer view of the number plate for the vehicle, and the fourth one was a closer view of the front part of the vehicle.
- 2.28 Then the one at page 6 was closer view of the red plastic bag, that pages 7 and 8 were pictures of the cap, page 9, a picture of the vehicle, pages 10 and 11, pictures of the emblem of the Zambia Army, pages 12, 13 and 14 were pictures of the recovered items, page 15, the phone numbers, and page 16, a closer view of the car keys.
- 2.29 In concluding his testimony, Richard Guuna testified that he handed over the motor vehicle, religious book, keys and the piece of paper to Inspector Chama who was part of a team of investigators that went to Mazabuka from Lusaka. He stated that the suspect was not found in any of the other guest houses that they searched.

CROSS EXAMINATION OF RICHARD GUUNA

- 2.30 It was Richard Guuna's evidence in cross examination, that he carefully examined the inside of the vehicle, and that he did not find any weapon there. He agreed that there was no pool of blood in the vehicle.

PW4-VICTOR SHAMAPANGO

- 2.31 Victor Shamapango, another police officer was PW4. He testified that he was a Scenes of Crime Officer, and that on 1st

December, 2020, he was assigned to go to Mazabuka to photograph an identification parade. It was his testimony, that there were Nine (9) men on the parade, and that there were Two (2) witnesses who were to identify the suspect.

- 2.32 He further testified that a relative to the suspect, Bupe Musuku was present, and the first witness Brian Mugala identified the suspect, Nigel Musonda Mwaba in position Five (5) from left to right, and he took photographs of the identification.
- 2.33 Victor Shamapango also in his testimony, stated that the suspects were asked to change clothes but Nigel Musonda Mwaba did not, electing to only change his position on the parade. Thereafter, the second witness Wilfred Simundo identified Nigel Musonda Mwaba, and he added that Nigel Musonda Mwaba had a tatoo on the shoulder.
- 2.34 Thus, the In Charge of the parade, asked the men to remove their shirts and Nigel Musonda Mwaba was found with a tatoo on his shoulder.
- 2.35 Victor Shamapango testified that he prepared a photographic album which he identified, and it was marked as 'ID4'. On production, it was marked as 'P4'. He stated that at page 1, was his report, while page 2 showed Inspector Banda explaining to Bupe Musuku Kapinda, who was in the second position from the left. Then the second photograph was an overview of the parade with Inspector Banda explaining the rights and Nigel Musonda Mwaba was in position 5.

2.36 It was his testimony that third photograph was of Brian Mugala identifying Nigel Musonda Mwaba, then the fourth one showed an overview of Nigel Musonda Mwaba in position number 2. He stated that the fifth photograph was of Wilfred Simundo identifying Nigel Musonda Mwaba in position number 2. Then the sixth photograph, was an overview of the suspects with their shirts removed, and the seventh one showed Wilfred Simundo identifying the tatoo on Nigel Musonda Mwaba's shoulder.

CROSS EXAMINATION OF VICTOR SHAMAPANGO

2.37 In cross examination, Victor Shamapango's evidence was that the Two (2) witnesses identified Nigel Musonda Mwaba, as the person who took the vehicle to the lodge, and as the murderer.

PW5- MULUBWA SOKONTWE

2.38 Her evidence was that the deceased Dr Tasila Tembo, was her first cousin, their mothers having been sisters. She also gave a background of how she lived with the deceased Tasila Tembo, testifying that Tasila Tembo took her in, after she just completed school.

2.39 It was further Mulubwa Sokontwe's testimony, that she lived with Tasila Tembo and her former husband Mr Peters until she got married. Still in her testimony, Mulubwa Sokontwe stated that Tasila Tembo would tell her about the problems in her marriage.

2.40 Then in 2017, when Mulubwa Sokontwe was in Kafue with her husband, Tasila Tembo went there with a man whom she introduced as Nigel Musonda Mwaba, her boyfriend. It was

her testimony that Tasila Tembo was happy. She stated that after that in 2019, when Mulubwa Sokontwe and her husband were living in Chalala, Tasila Tembo went there with Nigel Musonda Mwaba.

- 2.41 Her evidence was that she had asked Nigel Musonda Mwaba what his thoughts were about marriage, seeing that he was living at Tasila Tembo's house with the children. She stated that in response, Nigel Musonda Mwaba had told her that he was ready, but Tasila Tembo was refusing. She went on to testify that when she had asked Tasila Tembo about marriage, she was informed that Nigel Musonda Mwaba insulted her, so it was better that he was just her boyfriend.
- 2.42 Mulubwa Sokontwe further in her testimony stated that in the same year, 2019, Tasila Tembo was offered a job in Kasama, and Tasila Tembo had told her that things were not well. She explained that she had asked Tasila Tembo why Nigel Musonda Mwaba had not left her house, but she just looked at her and kept quiet. Then thereafter, Tasila Tembo left for Kasama.
- 2.43 Continuing with her testimony, Mulubwa Sokontwe testified that on 20th October, 2020, whilst she was at her young sister Beatrice's house in Chilenje, Beatrice had called Tasila Tembo and told her that she should end things with Nigel Musonda Mwaba, in the presence of them the relatives in Lusaka, and not in Kasama.
- 2.44 Then on 23rd October, 2020, Tasila Tembo arrived around 06:00 hours and she was smiling. On being asked, Tasila

Tembo had informed her that she had told Nigel Musonda Mwaba that their relationship was over. However, Tasila Tembo had told her that she feared for her life, and she called aunt Pheddy, Mulubwa Sokontwe's mother whilst crying, and told her that she was dying.

- 2.45 It was Mulubwa Sokontwe's testimony that Tasila Tembo had asked Aunt Pheddy to go and help her end her relationship with Nigel Musonda Mwaba, and that she would send a vehicle.
- 2.46 Then the office called, and told Tasila Tembo that there was a workshop at Sandy's Creation. That was how Tasila Tembo asked Mulubwa Sokontwe's nephew Katongo Mandona to take her to Sandy's Creation. Her evidence was that Katongo Mandona took Tasila Tembo to Sandy's Creation in a charcoal grey Isuzu registration number, BAG 1986. Then around 15:00 hours Tasila Tembo was dropped off at Mulubwa Sokontwe's house by her friend, and Tasila Tembo informed Mulubwa Sokontwe that Katongo Mandona was still doing errands with the vehicle.
- 2.47 It was her evidence that as they sat outside, Tasila Tembo informed her that she really wanted to end things with Nigel Musonda Mwaba. She went on to state that Tasila Tembo even showed her messages that Nigel Musonda Mwaba had written to her, some which said *'you have wasted my time, you don't deserve to live. If I cannot have you, nobody ever will'*.
- 2.48 Mulubwa Sokontwe also testified that another message read, *'You bitch, I know you have moved on with another man'*. Then

another read, *'I will make sure I expose your nude photographs on social media'*.

- 2.49 Still in her testimony Mulubwa Sokontwe stated that she had told Tasila Tembo that she would not be the first person to have their nude photographs shown on social media, and that if he wanted, she should let Nigel Musonda Mwaba send them, and she would support her. She added that Tasila Tembo looked weak, and she had asked her if she had eaten.
- 2.50 It was stated that Tasila Tembo had responded that she had not eaten in Five (5) days, and Mulubwa Sokontwe asked her to eat and, to also send the messages that Nigel Musonda Mwaba had sent to her phone, so that she could take them to the police, should anything happen.
- 2.51 Then after they ate, Tasila Tembo slept for about Forty (40) minutes, and then Katongo Mandona and Lonjezo, the young brother to Tasila Tembo arrived. That was how Tasila Tembo said she would go home, assuring Mulubwa Sokontwe that she would be fine. She testified that Tasila Tembo drove the vehicle, and she went with Lonjezo.
- 2.52 Mulubwa Sokontwe's testimony was that this was the last time that she saw Tasila Tembo, stating that she wore an orange t-shirt, with the writings, *'A Right to Care, Equip Zambia'*, as well as navy blue skinny jeans, and she had sister locks on her hair.
- 2.53 Still in her testimony, Mulubwa Sokontwe testified that the next day on 24th October, 2024, her mother Pheddy Miti called her around 05:00 hours. Her evidence was that she was

informed that Tasila Tembo had called Pheddy Miti the previous day on 23rd October, and asked her to go there, but Tasila Tembo did not show up after she went out Lonjezo and Nigel Musonda Mwaba.

- 2.54 She also testified that Pheddy Miti asked if they had gone to her house. Then, thereafter, Mulubwa Sokontwe called Carol Simfukwe, Tasila Tembo's best friend, who was there when Mulubwa Sokontwe was being counselled before getting married, and asked her if Tasila Tembo had gone there.
- 2.55 It was her evidence that Carol Simfukwe went to the police and that she went to Zambia Army where Nigel Musonda Mwaba worked. Then on explaining, they were assigned an officer, whose name she did not recall to go with to Simon Mwansa Kapwepwe police. Mulubwa Sokontwe stated that there, they were informed that Carol Simfukwe had already reported the matter.
- 2.56 Mulubwa Sokontwe testified from there, they would go to the police every day. She explained that she found Lonjezo at the police. Mulubwa Sokontwe also stated that on 27th October, 2020, she went to Simon Mwansa Kapwepwe police with Carol Simfukwe and Pheddy Miti around 05:00 hours in the morning. Then around 06:00 hours, the Officer in Charge informed them that Tasila Tembo had been found dead, and they should proceed to Woodlands Police to obtain all the information.
- 2.57 Thus, they went to Woodlands Police, where they were shown photographs, and Mulubwa Sokontwe saw the clothes that

Tasila Tembo wore and that the t-shirt had blood stains. She added that her face was damaged, and that she had been beaten. When she looked at the legs, she had identified them by their uniqueness. It was also Mulubwa Sokontwe's testimony that they were told to go to Mikango Baracks, and they found that Tasila Tembo had been buried half way with a sack on the bottom and a black plastic bag on top.

2.58 Mulubwa Sokontwe identified the accused person as Nigel Musonda Mwaba.

CROSS EXAMINATION OF MULUBWA SOKONTWE

2.59 When cross examined, Mulubwa Sokontwe testified she had not shown the messages that she had talked about. She agreed that Tasila Tembo was not before Court to confirm the conversations that she had with her. She nevertheless testified that Tasila Tembo showed her a message where she was called a bitch, and that she had another man.

2.60 She reiterated that Tasila Tembo used to confide in her, but she denied that Tasila Tembo used to cheat on Nigel Musonda Mwaba with a man called Jimmy. Her evidence was that she believed the message that Nigel Musonda Mwaba wrote to Tasila Tembo, stating that if he could not have, nobody else would, and that it was a threat.

2.61 Mulubwa Sokontwe also testified that she had told Tasila Tembo that she should go to the police over the messages that Nigel Musonda Mwaba wrote, as she was worried.

2.62 She agreed that she loved Tasila Tembo and that she was like a mother to her, and that she would do anything to protect

her. It was agreed that Mulubwa Sokontwe had told Tasila Tembo that she would support her if the nude photographs of herself were exposed by Nigel Musonda Mwaba. Mulubwa Sokontwe still in cross examination, agreed that nude photographs of oneself were not a good thing, and that they portrayed one badly to the public.

- 2.63 However, Mulubwa Sokontwe's position was that she was ready to defend Tasila Tembo in the midst of those wrongs. It was her testimony that she would not defend Tasila Tembo's cheating. The evidence that was further given, was that on 23rd October, 2020, Tasila Tembo went and told Mulubwa Sokontwe that she had ended the relationship, and that Mulubwa Sokontwe had also testified that Tasila Tembo had called her mother, asking for help to end the relationship.
- 2.64 She contended that Tasila Tembo informed her that Nigel Musonda Mwaba was refusing to end the relationship.
- 2.65 It was also Mulubwa Sokontwe's testimony that she was a diplomat, and that her husband left first, and she was still in the country. She stated that Tasila Tembo told her that Nigel Musonda Mwaba used to insult her. Mulubwa Sokontwe maintained that Tasila Tembo showed her the messages that Nigel Musonda Mwaba wrote to her, even though they had not been produced in Court.
- 2.66 It was agreed that Mulubwa Sokontwe in her evidence in chief, did not tell the Court that in some messages Tasila Tembo praised Nigel Musonda Mwaba and appreciated him. She also admitted that she did not tell the Court that Nigel Musonda

Mwaba visited Tasila Tembo and that their relationship was good.

2.67 Further admission was made that Mulubwa Sokontwe did not inform the Court that Nigel Musonda Mwaba drove Tasila Tembo from Kasama to Lusaka prior to 23rd October, 2020 and that they were with Lonjezo.

2.68 On why Tasila Tembo did not send her the messages that Nigel Musonda Mwaba sent her on being requested, Mulubwa Sokontwe's evidence was that Tasila Tembo refused as Mulubwa Sokontwe was annoyed and serious, and because she had also said that anything could happen.

2.69 It was her evidence that Tasila Tembo lived with Nigel Musonda Mwaba and she knew him better. She agreed that Tasila Tembo had told her that she would be okay when she left with Lonjezo on 23rd October, 2020.

2.70 Her continued testimony was that Tasila Tembo's head was damaged. Mulubwa Sokontwe testified when she saw the pictures, and she did not know how long Tasila Tembo had been dead. She explained that the police informed her that the body was found in a decomposed state.

2.71 In conclusion, Mulubwa Sokontwe's evidence was that Tasila Tembo came to Lusaka for a workshop and not to end the relationship with Nigel Musonda Mwaba.

PW6-LUKHELE SICHELEKA

2.72 This witness, a police officer, told the Court that he was a Scenes of Crime Officer who was at the material time based at Woodlands Police Station. His evidence was that on 27th

October, 2020, he was on duty, when he was assigned to attend to a potential crime scene in Mikango area. Therefore, he went there in the company of other officers, and there, about Three hundred (300) metres from Nanking junction, they came across a body of a female, aged between Thirty (30) and Forty-Five (45) years.

- 2.73 Lukhele Sicheleka testified that he inspected the scene and saw that the body was covered with blankets, and was lying on it's back in a decomposing state. He stated that the most significant injury was the cut which was on the abdomen. On other observations that he made, Lukhele Sicheleka told the Court that the deceased wore an orange golf t-shirt which was branded '*Right to Care*', and dark trousers.
- 2.74 It was also his testimony, that they interviewed villagers in the area, but no one identified the body. He stated that they did not have logistics to move the body due to its' state, and he documented the scene and temporarily buried the body, and secured the scene.
- 2.75 The continued testimony was that back at the office, Lukhele Sicheleka as per procedure, started making enquiries from other police stations to establish whether any report had been made of a missing person, who matched the description of the dead body. He stated that he came to learn that a report was made at Simon Mwansa Kapwepwe Police station of a missing person.
- 2.76 He therefore contacted the Criminal Investigations Department there, and gave them the identity of the body,

showing them the hair style, clothes, face and a picture of the body.

- 2.77 Then from there, Simon Mwansa Kapwepwe Police Station took over the investigations. Lukhele Sicheleka identified the photographic album that he compiled, and it was marked 'ID5' for identification. On production, it was produced as 'P5'.
- 2.78 He explained that page 1, was a sketch plan not to scale, and that page 2 was an overview of the scene. Page 3 was testified as being a closer view towards the body with an article that was found near the scene. Page 4 was said to be a leinyard which was found at the scene, and page 5 a leinyard with suspected blood stains.
- 2.79 Page 6 was a closer view of leinyard, as well as page 7, while page 8 was branches. Page 9 was a closer view of the branches, and page 10 showed the body under the branches. He testified that page 11 showed the decomposed body and page 12 depicted the wound on the abdomen, while page 13 was an overview of the body from a different angle.
- 2.80 Lukhele Sicheleka further testified that page 14 showed the t-shirt which was branded '*Right to Care*', page 15, a closer picture of the decomposing body with muggots, and page 16 was a closer view of the t-shirt.
- 2.81 He stated that page 17 was the body with blood stains and page 18 the swollen right foot which was decomposing, page 19, the swollen decomposing left foot, as well as page 20 and page 21 was the index.
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2.82 In concluding his evidence, Lukhele Sicheleka testified that page 10 depicted branches on the body which were not completely dry.

CROSS EXAMINATION OF LUKHELE SICHELEKA

2.83 In cross examination, Lukhele Sicheleka's evidence was that the body had visible injuries on the face. He did not agree that villagers covered the body with leaves, even though he did not know who did so. He agreed that Nanking area is an area that is used for military training.

2.84 Lukhele Sicheleka testified that it was strange for a leinyard to be found in the area, as it had suspected blood stains. When cross examined further, he could not rule out that the leinyard could have possibly been dropped there.

2.85 His evidence was that some boys who were looking after animals in the area discovered the body. He agreed that the scene could have been tampered with. Lukhele Sicheleka estimated the distance from the junction to the scene as being about Three Hundred (300) metres on being referred to page 1 of the photographic album 'P5'.

2.86 His evidence was that after the body was processed, it was buried using a shovel, hoe and pick. Lukhele Sicheleka could not confirm that the tools which were used to bury the body could have caused further damage to it. He did not know how the body was transported to UTH.

PW7-ESIAH TEMBO

2.87 This witness in his testimony, told the Court that in October, 2020, he was taking care of cattle at the driving circuit for

soldiers from Mikango barracks. It was further his testimony that he sent his young brother Steven to go and take back the cattle from where they were herding. Esiah Tembo stated that Steven went and informed him that they had found a person who was sleeping and looked drunk.

2.88 He testified that Steven ran away as he was afraid when he told him to take him there. That was how Esiah Tembo went there, and he found a person lying with a cut on the abdomen and their arm was broken and it was folded.

2.89 It was his evidence that the face was covered with leaves and he went home and informed his mother about what he had found. That was how his mother informed the Chairlady of the village, Amai Mumba, who went and got soldiers from the Barracks to see the body. He testified that he led the soldiers to the body.

2.90 Esiah Tembo told the Court that the deceased wore an orange t-shirt and blue skinny jeans. He identified page 13 of 'P5', as the body that he found, stating that he found the body around 10:00 hours after Steven informed him.

CROSS EXAMINATION OF ESIAH TEMBO

2.91 It was Esiah Tembo's evidence in cross examination, that he lived in Mikango area, and that the body was along the road where the training vehicles passed. He also testified that people had built there, and it was not a bush with snakes and wild animals.

PW8-CHILIMA CHEESE

- 2.92 Chilima Cheese in his testimony, testified that he had lived with Tasila Tembo, and she was his boss. He stated that he built her house which was in Meanwood Ibex Hill and he completed the construction in 2014, and became her caretaker. Then from there, he became her garden boy when she lived at the house.
- 2.93 Still in his testimony, Chilima Cheese stated that Tasila Tembo moved to Salama Park, in 2017, and he continued working for her. He added that himself, his wife and Four (4) children lived with Tasila Tembo and her Four (4) children, as well as Four (4) maids and her parent.
- 2.94 Chilima Cheese also testified that in the said 2017, Tasila Tembo introduced him to Nigel Musonda Mwaba and they lived well with Nigel Musonda Mwaba, adding that he would even send him to take food to his mother. However, as time went by, things changed in the way that they lived. In that regard, Chilima Cheese testified that Nigel Musonda Mwaba asked him to leave saying it was not a compound.
- 2.95 Then from there, Nigel Musonda Mwaba started mistreating him saying that he should polish his shoes with his fingers. He added that after he would do so, Nigel Musonda Mwaba would get a white vest and pass it on the shoes and throw it, and tell Chilima Cheese that he should find that he had washed it. His evidence was that he did so, as he wanted the job to keep his children.
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- 2.96 In his continued testimony, Chilima Cheese stated that this continued and on 17th October, 2020, after he had just started working, Nigel Musonda Mwaba told him that he should stop what he was doing. That was when Chilima Cheese told Nigel Musonda Mwaba that if things were difficult, he was tired, and he should tell Tasila Tembo to pay him for the period that he had worked as garden boy and as a caretaker.
- 2.97 Further testimony was given that Nigel Musonda Mwaba went into the house, and when he came out, he had asked Chilima Cheese if he was still working. It was also stated that Nigel Musonda Mwaba told him that he had gone to Arakan to get a vehicle so that he could take him to Chainda. However, Chilima Cheese said that he would only go on being paid, and Nigel Musonda Mwaba had told him that he had started arguing with him.
- 2.98 Thus, when he returned from work and found him, he would shoot him, adding that he had killed others who were not like him.
- 2.99 He also testified that Nigel Musonda Mwaba locked the gate and he went with the keys, leaving Chilima Cheese outside the gate. His evidence was that he phoned Tasila Tembo, who was in Kasama, and informed her that he was not living well with Nigel Musonda Mwaba. It was stated that in response, Tasila Tembo told Chilima Cheese that she would come to Lusaka, and he went to the neighbours house who gave him iron sheets to cover as he waited for Tasila Tembo to go there.

- 2.100 He stated that he started sleeping outside the wall fence in the make shift cover. Then on the maid informing him that Tasila Tembo had come, they sat down and Chilima Cheese explained the issues that he had been having with Nigel Musonda Mwaba and that he was scared of him. He went on to testify that Tasila Tembo informed him that she too was afraid of Nigel Musonda Mwaba and that she would call her aunt Pheddy to go and remove him.
- 2.101 That was how Tasila Tembo sent her brother Lonjezo with a vehicle to go and collect her aunt Pheddy. His testimony was that Lonjezo took aunt Pheddy to the house whilst Tasila Tembo was at a workshop in Lusaka.
- 2.102 Chilima Cheese explained that aunt Pheddy had asked him why he was not found in the yard, and he had explained that Nigel Musonda Mwaba did not want him. That was how aunt Pheddy said they would sit down to discuss. Then the next day, Tasila Tembo's mother asked for him, and when he went there, and he was asked to call Tasila Tembo.
- 2.103 It was also testified that aunt Pheddy asked Chilima Cheese to call Tasila Tembo as she wanted to leave. He testified that when he called, Nigel Musonda Mwaba answered, and Chilima Cheese put the phone on loud speaker as he was not speaking with Nigel Musonda Mwaba, and he gave the phone to aunt Pheddy. It was his evidence that Nigel Musonda Mwaba said that they would be going home.
- 2.104 The testimony that was given, was that aunt Pheddy again asked Chilima Cheese to call Tasila Tembo, as she wanted to

go for work, and she was late. When he called, Nigel Musonda Mwaba said that Tasila Tembo was bathing and that they would be going home. He explained that this was around 07:00 hours, and after sometime, aunt Pheddy again asked Chilima Cheese to call Tasila Tembo. When he called, the phone just rang and it went off.

2.105 His evidence was that they became worried as the phone went off, and Tasila Tembo would always answer when she was called. That was how they went and reported at Simon Mwansa Kapwepwe Police Station that Tasila Tembo and Nigel Musonda Mwaba had not returned. However, they were informed that Carol, a friend to Tasila Tembo had already reported the matter.

2.106 Chilima Cheese's continued testimony, was that they went home and they started waiting and the days passed. Then when he went to Soweto market to buy food for the house, he was called by a Doctor Mwitwa from Ndola who said that he had seen something on face book concerning Tasila Tembo, and that she was dead, and she had been buried in Mikango.

2.107 As Chilima Cheese was on a bus, he had responded that it could be true as she had been missing. That was how he phoned the maid Mercy Mboko who was at home, and asked her if she had heard anything, and she had responded that she had also seen some postings on the same. Then when he returned from Soweto market, he confirmed that Tasila Tembo had died.

CROSS EXAMINATION OF CHILIMA CHEESE

- 2.108 In cross examination, Chilima Cheese testified that he did not stay well with Nigel Musonda Mwaba from 2019, stating that it worsened in October, 2020. He further stated that it started from April to October. Still on his relationship with Nigel Musonda Mwaba, Chilima Cheese stated that he liked Nigel Musonda Mwaba as he followed what he wanted.
- 2.109 He nevertheless testified that what Nigel Musonda Mwaba did was bad or strange, as that was not how he initially was. Chilima Cheese clarified that he was alone with Nigel Musonda Mwaba when Nigel Musonda Mwaba told him that he would shoot him as he cut the flowers.
- 2.110 He also stated that he did not see Tasila Tembo come from Kasama, but she told him in the morning that she wanted to leave Nigel Musonda Mwaba. When cross examined further, his testimony was that he did not discuss intimate things with Tasila Tembo, and that she did not tell him the problems that she had with her ex-husband.
- 2.111 Further in cross examination, Chilima Cheese stated that it was strange that Tasila Tembo told him about Nigel Musonda Mwaba. His testimony was that Tasila Tembo went missing the next day, even though he did not see her go to the house with Nigel Musonda Mwaba and Lonjezo the previous day around 22:00 hours.
- 2.112 The testimony that was also given was that Pheddy, Mulubwa Sokontwe's mother told Chilima Cheese that Tasila Tembo was missing from morning. He also testified that Mulubwa
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Sokontwe did not lie when she stated that Tasila Tembo had called her mother and asked to go there. Chilima Cheese told the Court that he was at home with Pheddy who went there before Tasila Tembo went missing.

2.113 Whilst testifying that there were Four (4) maids at the house who did the laundry and cleaning, Chilima Cheese stated that he would also wash. He maintained that Nigel Musonda Mwaba told him that in the army, shoes are polished using fingers. He explained that he had never heard of speed polishing in the army, but he obeyed as Nigel Musonda Mwaba was teaching him.

2.114 He denied that he was painting Nigel Musonda Mwaba badly, and Chilima Cheese testified that Tasila Tembo and Nigel Musonda Mwaba did not fire him for his bad drinking habits. He stated that Tasila Tembo allowed that he should live in the neighbourhood as he had been fired.

PW9- LUCHENGA ADAM MUCHELENGANGA

2.115 This witness, a State Forensic Pathologist conducted a postmortem on the body of Tasila Tembo. In setting the temple for his evidence, he testified that he held a post graduate Clinical Fellowship in Forensic Pathology, which was obtained from the University of Toronto, as well as a Masters of Medicine in Pathology, and a Bachelors of Medicine and Surgery, which were obtained from the University of Zambia.

2.116 He also testified that he had been working as a State Forensic Pathology for Seven (7) years. As for his duties, Luchenga Adam Muchelenganga stated that they included conducting

death investigations in Zambia where the police and the Coroner had interest. It was also his testimony, that he did administrative duties which were incidental to the office of the State Forensic Pathologist.

2.117 In respect of this matter, his evidence was that he received an Order for a postmortem in 2020 in a month that he did not recall, after Tasila Tembo was found dead in a bush in a decomposed state. The testimony that was given, was that Detective Sergeant Mukomongo took the body to UTH in a body bag which was white.

2.118 Thus, in the presence of the police officers, Luchenga Adam Muchelenganga opened the body bag, and he discovered a body which was wrapped in a black plastic. His testimony was that he unwrapped the plastic, and he found the body of a female adult, estimated at 155-160 metres in height, which was decomposing.

2.119 Further in in his evidence, Luchenga Adam Muchelenganga testified that there was a cut on the lower abdomen, and he took photographs as he processed. Then, on disrobing the body, he examined it externally, stating that that examination revealed a bruise on the chin, and on the lower arm and upper forearm on the right. He stated that he also photographed those findings.

2.120 It was his testimony that when he opened the body, he found that the organs had decomposed. Then on opening the head, Luchenga Adam Muchelenganga found that the bone of the lower jaw was broken in the middle and at the point that it

attaches to the skull on both sides. He stated that he removed that bone to examine it further and he took photographs.

2.121 Thereafter, Luchenga Adam Muchelenganga completed the Coroner's Authority to Bury on which he indicated that the cause of death was blunt impact trauma to the head. The continued testimony was that a report was authored by Luchenga Adam Muchelenganga on which he gave the opinion that based on the circumstances as reported to him by the police, and his findings on the postmortem examination, the cause of death was blunt impact trauma to the head due to assault.

2.122 Still in his testimony, Luchenga Adam Muchelenganga testified that he created a power point presentation which included the photographs that detailed how he had received the body and the injuries that were found on the body. His evidence was that he printed the power point presentation and he also stored it on a flash disc, which he gave to the investigations officer.

2.123 He identified the postmortem report and it was marked 'ID6' and he also identified the photographic album and it was marked 'ID7'. On production, they were marked as 'P6' and 'P7' respectively.

2.124 Luchenga Adam Muchelenganga explained that at page 4 of 'the post mortem report 'P6', he recorded that there were signs of recent injury, being a bruise or contusion on the right side of the chin. Then there was a break or fracture of the lower jaw on at least Three (3) plates. He also stated that there was

a bruise or contusion on the right forearm, a cut or incision on the lower abdomen which was about Twenty (20) centimeters long, and a curved cut or incision on the right side of the groin.

2.125 Further evidence was given that pages 2 and 3 of the Photographic album 'P7' showed how he received the body as a Pathologist, while page 4 showed the body which was wrapped in a black plastic bag. Then pages 6 and 7 showed the body in clothes before being dis-robbed.

2.126 He testified that page 8 was a picture of the gapping wound on the lower abdomen, while page 9 showed the deceased's face, and page 10 was a picture of the decomposing body with a bra. Page 14 was stated as being a picture of the body completely disrobed which also showed a complete breakdown of the body due to decomposition.

2.127 It was also stated that page 15 was a photograph of the chin while page 16 showed the cut that Luchenga Adam Muchelenganga made to show the bleeding which was under the chin. His testimony was further that pages 17-19 showed the flay dissection procedure, which allowed him to visualize any other injuries which were on the body.

2.128 It was stated that page 21 was a picture of the hand with no injuries, while page 22 showed the right hand with muggots on it. Luchenga Adam Muchelenganga testified that page 23 was also a picture which depicted the flay dissection which revealed bleeding in the right lower forearm. Then pages 25-27 showed the break on the lower jaw, and page 28 showed a

scalpel which pointed to the breaking or fracture of the lower jaw.

2.129 He further testified that pages 29, 30 and 31 showed the lower jaw which was broken at Three (3) points, that is one at the front and Two (2) at the back.

2.130 Luchenga Adam Muchelenganga's evidence was that he therefore came to the opinion that the cause of death was blunt impact trauma to the head, and that the manner of death was homicide. It was also his testimony that the incision wound on the abdomen may have been caused after the person had already died.

2.131 Luchenga Adam Muchelenganga testified that he did not notice any characteristic defensive wounds on the deceased.

2.132 In relation to pages 25-28 of the photographic album 'P7', his evidence was that interpretation of injuries is carried out as a whole. He testified that he had described blunt impact injuries, meaning that they were caused by a blunt impact object with the exception of the incision, which was caused by an edged instrument.

2.133 Luchenga Adam Muchelenganga further in his testimony, stated that based on the pattern of the injuries, a road traffic injury or jumping out of a moving vehicle was ruled out because there were no abrasions. On the alternative hypothesis that the injuries could have been caused by falling on a blunt object, the evidence that was given was that if one fell from a vehicle, there would be bruising, as if someone slid on a surface.

- 2.134 Note was made that incision wounds are not acquired from falling from a vehicle. Still in his testimony, Luchenga Adam Muchelenganga stated that for the jaw to break on Three (3) parts, it was difficult to explain, but it was due to significant trauma being mild to severe.
- 2.135 With regard to the contusion on the forearm, which was depicted at pages 23-24 of the photographic album 'P7', it was testified that they were blunt injuries and were bruises from moderate to severe injury, although moderate would be more applicable.
- 2.136 Reiteration was made that the incision on the abdomen may have occurred after death, as page 12 of the photographic album showed that there was no blood or very minimal bleeding. He added that this is seen when injuries are acquired after the heart has stopped beating or one has died. It was Luchenga Adam Muchelenganga evidence that the same went for the injury which was on the groin.
- 2.137 He went on to testify that page 23 was a control, as it showed an ante mortem wound, as there was bleeding in the right forearm. It was stated that when the heart is not beating, there is no blood supply, so there will be no bleeding. Luchenga Adam Muchelenganga clarified that he had used the word may, as there may be exceptions in life.
- 2.138 He noted that the incision wound was not in a position of an incision for a caesarian section, adding that based on the position and the size of the wound, the wound was not a result
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of a caesarian section scar that had separated as there would have been a scar on the edge of the wound.

2.139 He gave a razor blade, a knife, a machete and a scalpel as examples of edged instruments or instruments with a cutting edge.

2.140 In concluding his evidence in chief, Luchenga Adam Muchelenganga testified that the Inquests Act mandated them to determine the circumstances and manner of death. He stated that homicide is a public health issue which allows the Registrar of Births and Deaths to categorise deaths, and that homicide is a manner of death at the hands of another person.

CROSS EXAMINATION OF LUCHENGA ADAM MUCHELENGANGA

2.141 The testimony that was given in cross examination, was that the Inquests Act prescribes how a doctor should prescribe the cause of death. He explained that it states it required him to so prescribe from the circumstances as reported, and his findings, as well as the appearance of the body. In that regard, he referred to page 3 of the postmortem report 'P6'.

2.142 Therefore, his determination of the homicide was based on the history that was given, as well as his findings on examining the body, such the local trauma on the right forearm, and the incision on the abdomen, which was suggestive of death at the hands of another person and assault.

2.143 His position was that he could not tell how long after the death, the incision wounds on the abdomen and groin were

inflicted. However, the injury on the forearm was antemortem or before death, and it was due to blunt impact, as he called it a bruise.

2.144 Luchenga Adam Muchelenganga testified that the injury on the forearm was not a defensive wound as it was only one, but he stated that it could be. He explained that an assault is injury that occurs during a fight.

2.145 Further in cross examination, Luchenga Adam Muchelenganga's evidence was that the bruise on the chin was not a blunt force head injury, but was due to blunt impact trauma to the head. He went on to explain that the bruise on the right side of the chin was a sign of trauma to the chin which was caused by the fracture. He stated that the energy from the blunt surface hit the chin and the energy was transmitted to the bone, which broke, which was blunt impact to the head.

2.146 It was added that when the head was hit, the brain shook and caused the death, stating that the one impact transmitted the injury which caused the death. Luchenga Adam Muchelenganga testified that there was just one injury on the head which was on the chin. Further explanation was given, that a punch qualified to be blunt impact trauma and that the swelling on the body was due to decomposition.

PW10- MUKUKA CHALI

2.147 This witness was an IT Technician who was working at Hamms Engineering. His testimony was that he installed surveillance cameras, fibre installation, CCTV installations

and access control. In respect of his qualifications, his evidence was that he held a Diploma in Information Technology which he obtained from the Copperbelt University.

2.148 Mukuka Chali told the Court that he had worked for Nine (9) years as an IT Technician. In relation to this matter, he testified that Richard Siame who was working at Total Zambia at the time, called him on 30th October, 2020 and asked him to attend to an urgent issue at the said Total, which was situated in Ibex Hill.

2.149 Thus, he went there around 19:00 hours and he was requested to obtain footage from the Network Video Recorder (NVR). He explained that their company had installed the system after being contracted by Total. Mukuka Chali further in his evidence, testified that he managed to retrieve footage, which he put on a flash disc after he downloaded it for the period 22nd October, 2020 to 23rd October, 2020 which had been specified.

2.150 His testimony was that on the footage, was a dark greyish Isuzu and a gentleman. The flash disc was identified and it was marked 'ID8. On production, it was marked as 'P8'.

2.151 On the footage being played, it showed the date 24th October, 2020 at 00:56 hours from the front right camera depicting an Isuzu vehicle which reversed and parked. Then after sometime, at about 01: 00 hours, a man disembarked and he went into the shop at the service station. He returned at about 01:03 hours, and disembarked again at about 01:04 hours. The vehicle then drove off at 01:04:24 hours.

- 2.152 The footage further showed the man returning at 01:06 hours, and he found that the vehicle had left, He started waiting and he sat down at 02:13 hours when an officer walked up to him, and thereafter he left.
- 2.153 Footage from the centre camera was also played which captured the vehicle coming in and parking at 00:58 hours and the man walking into the shop.
- 2.154 The footage from the shop was also played, which showed the man who got off the vehicle picking a few items, paying for them and leaving the shop, at 01:02 hours.
- 2.155 The testimony that was given in conclusion, was that the company maintained the NVR every Six (6) months or after a year.

CROSS EXAMINATION OF MUKUKA CHALI

- 2.156 Mukuka Chali, when cross examined, stated that no sound could be heard from the camera as that type of camera only picked footage without the audio. He stated that the camera was unable to pick the persons who were in the vehicle but only the person who disembarked from it.
- 2.157 His assumption was that as the camera did not pick sound, the officer went to the person who had disembarked from the vehicle and told him to leave. It was also his testimony, that the man was constantly on the phone until 01:50 hours when he picked up a call.
- 2.158 Mukuka Chali's evidence was that the vehicle did not speed off on driving out. He stated that the man waited from 01:03

hours until 02:13 hours, which was about an hour and Ten (10) minutes.

PW11-DIANA MWACHULABANTU

- 2.159 She testified that on 28th November, 2020, she was working at Memorial Park as a Sales Assistant. Her evidence was that her duties included helping clients, and those who wished to buy burial sites, as well as those who were preparing for memorials, and those who wanted to visit the graves of their loved ones.
- 2.160 Continuing with her testimony, Diana Mwachulabantu stated that around 15:00 hours on 28th November, 2020, a man approached her, and he informed her, that he was there to visit his sister, Tasila Tembo's grave. She also testified that as she checked the system to establish where the grave was, the man asked her questions, saying that he had been out of the country when Tasila Tembo was buried.
- 2.161 On the questions that the man asked, Diana Mwachulabantu stated that he asked her if Tasila Tembo's burial site was expensive or just average, and whether there were any restrictions as it was during the COVID 19 outbreak, whether there was body viewing and whether the Minister of Health attended the burial.
- 2.162 She further testified that as she was checking the system, she noticed that the man was checking if there was a camera in front of him. Then Diana Mwachulabantu discovered that the names that the man had given were for a doctor who had been killed the previous month. Her evidence was that this

raised her suspicions due to the questions that the man was asking her, as well as the sitting arrangement.

2.163 On the said sitting arrangement, Diana Mwachulabantu testified that she sat facing the front, and there was a camera on the wall and a desk at which clients sat facing her. Her evidence was that the man turned the chair and he faced the other way, where the camera was on the wall. She added that when the man noticed the camera on the wall, he bowed his head down to avoid facing it.

2.164 Still in her testimony, Diana Mwachulabantu stated that when she asked him when Tasila Tembo died, he responded that it was on 25th October, 2020. However, on the system the date of death was recorded as 28th October, 2020 and that again raised her suspicion. She therefore took her eyes off the camera, and she tried to look at the man so that she could compare him with what she had seen on social media.

2.165 Diana Mwachulabantu's evidence as regards what she saw, was that she saw a masculine figure, similar to what was on social media. However, it was difficult to tell as he wore a mask and a cap. She continued testifying, stating that she gave the man the details of where Dr Tasila Tembo was buried.

2.166 It was stated that the said place was a bit far from the office and when the man walked out, Diana Mwachulabantu went to the General Manager, Lawrence Nsomba's office, to inform him of her suspicions.

2.167 In that regard, her evidence was that she found Lawrence Nsomba with one of her workmates, Victor Mvula and she told

Lawrence Nsomba about her suspicions. That was how Lawrence Nsomba checked the CCTV footage in the presence of Diana Mwachulabantu and two other workmates. Then a decision was made that the man be followed to the burial site, and Diana Mwachulabantu returned to her office.

2.168 Then before she knocked off, she hears sirens in the premises and on the radio, it was announced that the man had been caught by the Zambia Army. However, she did not go outside or see anything. Then on 1st December, 2020, she was called by police from Woodlands Police Station who asked her to go and give a statement.

2.169 Diana Mwachulabantu identified Nigel Mwaba Musonda as the person that she saw on 28th November, 2020.

CROSS EXAMINATION OF DIANA MWACHULABANTU

2.170 In cross examination, Diana Mwachulabantu's testimony was that she was in the manager's office when he checked the CCTV after she informed him of her suspicions. She denied that her testimony was that the CCTV showed the man's face. Diana Mwachulabantu clarified that the man wore a mask and a cap. Therefore, she could not identify his face.

2.171 It was also her evidence, that as part of her duties, she would assist relatives who wanted to visit the graves of their loved ones. She testified that the person did nothing wrong on 28th November, 2020, by requesting to see the grave.

PW12-LAWRENCE NSOMPA

2.172 The General Manager Leopards Hill Memorial Park, Lawrence Nsomba was PW12. It was his evidence, that he had worked

at Leopards Hill Memorial Park for Seven (7) years. In respect of his duties, he stated that they included overseeing the running of the Memorial Park, such as security, finances and operations.

- 2.173 He further testified that on 28th November, 2020, he reported for work just before 08:00 hours, and it was an ordinary day. Then around 15:20 hours, his colleague from Sales, Diana Mwachulabantu went to his office and informed him that a person, who she may have seen on social media, was asking suspicious questions. Further, she believed that he was the person that the police were looking for.
- 2.174 Lawrence Nsomba stated that as the person was still at her desk at the time, they looked at the CCTV footage, which was being monitored from his office. He testified that he had advised Diana Mwachulabantu to continue serving the clients normally, as they did not want to raise any suspicion and that she should give him any information that he wanted.
- 2.175 That was how Diana Mwachulabantu went back to her office and Lawrence Nsomba was able to monitor through the CCTV. He stated that he saw her write on a piece of paper what he believed was the number that the man had requested. Then shortly thereafter, the man left Diana Mwachulabantu's office.
- 2.176 It was his testimony, that he informed the head of security, Victor Mvula at the time, and the Two (2) other managers who were on duty that day, being Ms Kapinda Mulenga and Milner Nyela. Lawrence Nsomba testified that they decided to follow the man from a distance, to the northern end of Memorial

Park, observing what he was doing, and they saw him walk to a grave for Tasila Tembo.

2.177 He stated that they saw the man pray and at some point, he seemed to be chanting and crying. Then after Ten (10) to Fifteen (15) minutes, the man got up from the grave and he proceeded to exit Memorial Park from the Twin Palm entrance.

2.178 Further in his testimony, Lawrence Nsomba's evidence was that they continued observing the man and he talked to a taxi driver and shortly thereafter, he went into Pick N Pay along Twin Palm Road. It was stated that they were not sure if the man was the person that the police were looking for.

2.179 Nevertheless, the head of security called Inspector Singoyi of Nyumba Yanga Police, who said that he would assemble officers to go to Memorial Park. Meanwhile, the man came out of Pick N Pay holding Two (2) plastic bags, one which had a Six (6) pack of Castle Lite. Lawrence Nsomba stated that they were unable to see what was in the other plastic bag.

2.180 Then as the man stood outside Pick N Pay, they looked at the pictures which were on social media, and they observed that the man was wearing a gold watch which was also worn by the man who was on the pictures on social media. It was also stated that man removed the mask that he was wearing, and he took out what appeared to be polony from the plastic bag, so that he could take a bite.

2.181 Thus, Lawrence Nsomba and his colleagues agreed that man who was standing outside Pick N Pay, was the man who was on social media. Therefore, they called Inspector Nyangu

again to confirm what they had discovered. That in response, Inspector Nyangu informed them that he was still trying to get officers together so that they could go to Memorial Park.

2.182 His continued testimony was that the man put the mask back on, and he walked back into Memorial Park using the Twin Palm road entrance. However, at the gate he stopped and he spoke with the guard before proceeding to the central part of Memorial Park. Lawrence Nsompa explained that at that time, he was standing at the Filling Station for Lake Petroleum across Memorial Park, and he got back into the vehicle and they went back to the gate and asked the guard what the man had said to him.

2.183 In response, the guard had informed him that the man had enquired about a grave which was on the opposite side of Memorial Park. Meanwhile, Lawrence Nsompa observed the man walk along the main road and stop to talk to a member of staff Felix Siame. Then the two walked to the southern part of Memorial Park towards the Leopards Hill road entrance.

2.184 His testimony was that at some point, the two separated and Felix Siame walked towards where Lawrence Nsompa was. Lawrence Nsompa still in his testimony, told the Court that he had asked Felix Siame what he had discussed with the man and Felix Siame informed him that the man had asked him to look for a particular grave, but as they walked, the man had been insulting him.

2.185 It was also his testimony, that Felix Siame had told him that the man had asked him who was in vehicle which was

following him, and Felix Siame had told the man, that it was Lawrence Nsomba his boss.

- 2.186 Then Lawrence Nsomba noticed that when the man was close to the Leopards Hill entrance, he stopped but at a particular grave, and Lawrence Nsomba and his colleagues became suspicious that he was about to flee. That was when Kapinda Mulenga said that she had a brother in the military, General Kapatamoyo, and it was decided that they call him, as the police were taking long to arrive.
- 2.187 It was stated that Kapinda Mulenga called General Kapatamoyo who informed her that he would pick up the military police and they would proceed to Memorial Park. Lawrence Nsomba's evidence was that himself and Victor Mvula decided to confront the man and they proceeded to about Ten (10) metres from where the man was, and they informed that they wanted to speak with him.
- 2.188 However, the man did not respond, and they continued engaging him. He still did respond, and at about Ten (10) minutes later, they noticed a military land cruiser which was behind the man and which was heading in their direction. Then two military officers disembarked from the vehicle and they walked towards Lawrence Nsomba and Victor Mvula.
- 2.189 When the military officers were about Three (3) metres from the man, they asked him to turn around. His evidence was that the man did not know that the military officers were behind him, so when he turned, he was startled and looked like he was about to run.

2.190 Lawrence Nsompá stated that man lunged forward, and the Two (2) military officers cocked their rifles and they told him to halt. The testimony that was given, was that the man obliged and General Kapatamoyo was at the Landcruiser about Twenty-Five (25) metres away. He explained that the man put his hands in the air and he was told to lie down and he obliged.

2.191 Then one military officer proceeded to subdue the man and he removed all the items that were on his person. He testified that General Kapatamoyo went within about One (1) to Two (2) metres of the man and asked him to identify himself. It was stated that in response, the man said that he was Lieutenant Nigel Mwaba and the Three (3) military officers agreed that he was indeed Lieutenant Nigel Mwaba.

2.192 Thereafter, Two (2) military officers put him in the Landcruiser, and at that time, police officers from Nyumba Yanga police arrived, and they took custody of the man.

2.193 Lawrence Nsompá in concluding his testimony, told the Court that he gave a statement at Woodlands Police that very day, and he identified the accused as Nigel Mwaba.

CROSS EXAMINATION OF LAWRENCE NSOMPA

2.194 This witness was not cross examined.

PW13-LONJEZO TEMBO

2.195 The brother to the late Tasila Tembo, Lonjezo Tembo was PW13. In his testimony, he told the Court that on 8th October, 2020 he travelled to Kasama where he stayed with Tasila Tembo and her Three (3) children. Then on 16th October,

2020, whilst Tasila Tembo was in Mbala, Nigel Musonda Mwaba, who was Tasila Tembo's boyfriend, paid them an unexpected visit.

2.196 Lonjezo Tembo stated that Tasila Tembo went to Kasama and she picked up the children and took them to a Lodge, as she was in fear and she was panicking. Then later that day, Tasila Tembo went home and she complained that she had a headache and she was tired. He testified that Nigel Musonda Mwaba went to the house, and he wanted to speak with her, but Tasila Tembo refused stating that she had a headache.

2.197 His evidence was that Nigel Musonda Mwaba said that he was going to the barracks, and he would spend the night there, and he left. Lonjezo Tembo still in his testimony told the Court that after that Tasila Tembo called for a taxi to go and collect the children. He stated that the next day, Nigel Musonda Mwaba went to the house and they spent the day together.

2.198 Then on 18th October, 2020, Nigel Musonda Mwaba, Tasila Tembo and himself left for Lusaka using Tasila Tembo's Isuzu registration number BAG 1986, which was gray in colour. It was Lonjezo Tembo's evidence that they arrived in Lusaka around 15:00 hours, and he was dropped off in Avondale, while Nigel Musonda Mwaba and Tasila Tembo proceeded to Tasila Tembo's house in Ibex Hill.

2.199 He further told the Court that he kept in touch with Tasila Tembo asking when they would return to Kasama. Lonjezo Tembo stated that on 23rd October, 2020, around 21:30

hours, Tasila Tembo called him and she asked him to meet her in Chilenje at their cousin, Beatrice Sokontwe's house. That was how around 22:00 hours, their cousin Katongo Mandona picked him up from Avondale and they went to Chilenje where he found Tasila Tembo with Beatrice Sokontwe and Mulubwa Sokontwe.

2.200 Continuing with his evidence, Lonjezo Tembo testified that they spent time there, and Tasila Tembo and himself left for Meanwood Ibex Hill. He told the Court that when they arrived there, the maid opened for them as the rest of the people were sleeping. Then just as they entered the house around 24:40 hours, Nigel Musonda Mwaba went into the living room, and he said that he needed a lift to Total Filling Station so that he could pick up a car.

2.201 Lonjezo Tembo's evidence was that Nigel Musonda Mwaba asked him to accompany them using the Isuzu vehicle. He went on to state that at Total Filling Station, Nigel Musonda Mwaba gave him money to go and buy him Four (4) bottles of castle lite, and he did. Then Nigel Musonda Mwaba again sent him to buy Two (2) more bottles of Castle lite, and Two (2) loaves of bread, and Nigel Musonda Mwaba remained with Tasila Tembo in the vehicle.

2.202 It was stated that when Lonjezo Tembo came out of the shop, he found that Nigel Musonda Mwaba had driven off with Tasila Tembo. When he called, Nigel Musonda Mwaba informed him that he would return soon. Lonjezo Tembo testified that after Thirty (30) minutes, Tasila Tembo called and said the same

thing. However, Lonjezo Tembo waited for about Two (2) hours and Thirty (30) minutes and on becoming tired of waiting, he called his friend Zebron Chola who went and picked him up.

2.203 Still in his evidence, Lonjezo Tembo testified that he called Nigel Musonda Mwaba to go and pick him up from Avondale, and Nigel Musonda Mwaba told him that he was going to Mikango Barracks to pick up a car, and then he would go and get him.

2.204 His testimony was that at 06:00 hours he tried to call Tasila Tembo to find out what time they would travel to Kasama but her phone was off. When he tried to call Nigel Musonda Mwaba, his phone was equally off. That was how Lonjezo called the maid who informed him that Tasila Tembo and Nigel Musonda Mwaba did not go home. Efforts to call them were futile, as both their phones were still off.

2.205 Lonjezo Tembo stated that later in the afternoon, himself, Pheddy and Beatrice Sokontwe went and reported to the police, and they found that Tasila Tembo's friend, Carol Simfukwe had already reported the matter.

2.206 It was his testimony that on 28th October, 2020, police at Simon Mwansa Kapwepwe Police Station informed him that Tasila Tembo's body had been found in Mikango, and he was asked to go to Woodlands police to go and see photographs of her body.

2.207 There, he had identified Tasila Tembo by the clothes that she was wearing, being an orange t-shirt, and navy-blue jeans. He further testified that Tasila Tembo had short braids and she

had a curved toe on her right foot. Lonjezo Tembo's evidence was that from there, they proceeded to Mikango Barracks where the body was buried in a shallow grave. After that, the body was exhumed, and it was taken to UTH where a post mortem was done.

2.208 As to the cause of death, Lonjezo Tembo stated that it was blunt impact trauma to the head and a broken jaw.

2.209 Still in relation to the matter, his evidence was that on 3rd November, 2020, police called him to go and identify the car, which he did by its' charcoal gray colour, and the registration number BAG 1986. He added that there was a different shade of gray at the back as they had an accident when they were coming from Kasama.

2.210 It was stated that on 4th November, 2020, Lonjezo Tembo was shown a CCTV footage from Total Filling Station in Ibex Hill. Then at Central police, he was shown his clothes which he had left in the car, which were in a red Shoprite bag.

2.211 He told the Court that he knew Nigel Musonda Mwaba since October, 2017 as Tasila Tembo's boyfriend. On the CCTV footage in 'P8' being played, he identified the car Isuzu BAG 1986 driving into the Filling Station and it reversed and parked at 00:54 hours. Then at 01:24 hours, Nigel Musonda Mwaba drove the vehicle out with Tasila Tembo in the passenger seat.

2.212 Lonjezo Tembo further identified himself coming out off the vehicle wearing a red t-shirt and brown pants, and he went into the shop at 00:59 hours. He also identified himself come

out the vehicle again at 01:03 hours, and the vehicle driving off at 01:04 hours.

2.213 His testimony was that he was in the shop when the vehicle drove off and he identified himself come out of the shop at 01:06 hours. Lonjezo Tembo identified the vehicle in the photographic album 'P3', and he also identified the orange t-shirt on Tasila Tembo's body in the photographic album 'P5'. He testified that 'P15' had a picture of Tasila Tembo's braids and at page 20 of 'P15' was a picture of her toes.

CROSS EXAMINATION OF LONJEZO TEMBO

2.214 The evidence that Lonjezo Tembo gave in cross examination was that Nigel Musonda Mwaba's visit to Kasama on 15th October, 2020 was unexpected, as Tasila Tembo was not expected to return. He stated that when Tasila Tembo said that she was tired and they did not talk, and that herself and Nigel Musonda Mwaba did not argue. Rather, Nigel Musonda Mwaba said that he would go and spend the night at the barrack, and he left.

2.215 He further testified that Nigel Musonda Mwaba went back to the house on 17th October, 2020 and they spent the day together as a family. Lonjezo stated that Nigel Musonda Mwaba spent a night at the house in the bedroom with Tasila and the children. Then on 18th October, 2020, they travelled to Lusaka, after Tasila Tembo asked him to travel with Nigel Musonda Mwaba and herself.

2.216 Lonjezo Tembo explained that he was not supposed to travel to Lusaka, and that Tasila Tembo travelled to Lusaka for a

workshop. It was his testimony that he next met Tasila Tembo on 23rd October, 2020 and he did not know what transpired in between.

2.217 He could not recall that on 23rd October, 2020, Tasila Tembo went to the bedroom and she came out with Nigel Musonda Mwaba and she then asked him to accompany them. Lonjezo Tembo did not know what Tasila Tembo and Nigel Musonda Mwaba had discussed or where they were going. His continued evidence in cross examination, was that in the vehicle, himself and Nigel Musonda Mwaba were talking, but that Tasila Tembo was quiet, as she was tired.

2.218 He stated that he called Nigel Musonda Mwaba once after they left him at the Filling Station and he was informed that Nigel Musonda Mwaba would go back soon. Then Tasila Tembo called him, and she too said that they would be back soon. Lonjezo Tembo was unaware of what the two discussed when they left him at the Filling Station.

PW14-DAVID MBAO

2.219 David Mbaao, an Out Bound Calling Specialist at ZAMTEL was PW14. His testimony was that he held a Diploma in Information Systems and Programming, which he obtained from NIPA. He also stated that he had worked in that position for Ten (10) years.

2.220 As to his duties, he testified that they included working on search warrants which were sent by police stations, working on instructions, such as call records or Know Your Customer (KYC) details of a phone number, that was indicated. It was

his evidence that do so, he would log into the system and retrieve the details, as well as the call log application, using his password and user name, which were known by himself.

2.221 Then he would work on what the warrant had instructed, being either to retrieve call records or the KYC details. David Mbaio testified that after that, he would print the details and stamp them.

2.222 With regard to the security of the system, David Mbaio's evidence was that it was protected by anti-virus and it was maintained weekly. He also stated that he used an HP printer from his office, which had a password which he knew.

2.223 In respect of this matter, David Mbaio testified that he received a warrant which had Two (2) phone numbers, and it requested for the KYC details and call logs between the said two numbers. His evidence was that he searched the call log for outgoing calls, and he found that there were no call records. Then thereafter, he proceeded to search the KYC which brought up two names, being Nigel Musonda Mwaba and Tasila Tembo.

2.224 David Mbaio's testimony was that he printed, and he had the details stamped by the Legal Department. He identified the KYC details for Nigel Musonda Mwaba and Tasila Tembo and the outgoing calls, and they were marked 'ID9'. He produced it, and it was marked 'P9'. His evidence in conclusion was that on that day, Nigel Musonda Mwaba did not make any calls.

CROSS EXAMINATION OF DAVID MBAO

2.225 When cross examined, David Mbao's evidence was that he was asked to check the call records for the period November, 2020 to February, 2021. He stated that according to the records, there were no calls that were made between the Two (2) KYC's.

PW15-MWILU SIANAGOWA

2.226 This witness who was a Data Protection and Compliance Manager at Airtel Networks Zambia Plc, was PW15. In terms of his qualifications, his evidence was that he held a Bachelors of Business Administration from the Copperbelt University and a Diploma in Telecommunications Management from the Commonwealth Organisation.

2.227 Mwilu Sianagowa also testified that he had been in that position for Seven (7) years, and that his duties included ensuring that the company's data bases were compliant with the various regulations. Further, he worked with law enforcement agencies, to ensure that all warrants which were served on the company were executed.

2.228 His testimony as regards this matter, was that in November, 2020, he received a warrant from Detective Inspector Changwe, which requested for call records as well as KYC details for the numbers 0979145009 and 0972600401.

2.229 Mwilu Sianagowa told the Court that he logged onto the two different data bases, that is the call record data base, and the Know Your Customer data base, and queried them for the requested information. He stated that he produced two call

record reports for the two numbers, as well as the KYC report for the two numbers.

2.230 Then, he thereafter printed the reports and submitted them to the requesting officer, and he kept a copy on the file. Further in his testimony, Mwilu Sianagowa stated that the results of the KYC reports showed the number 0979145009 was registered in Mercy Tasila's name, and that the number 0972600401 was registered in Nigel Mwaba's name.

2.231 He explained that the two data bases were protected by firewalls which ensured that there was no unauthorised access. Mwilu Sianagowa further explained that the only access was via a unique user name and password.

2.232 As to how well the system was serviced, he testified that Information Technology Department serviced the hardware and software on a regular basis to ensure that they were working optimally at all times.

2.233 Mwilu Sianagowa also testified that he used an HP printer which was in his office to print the two reports. He identified the call records and the KYC for the phone number 0979145009 in the names if Mercy Tasila and they were marked 'ID10'. He produced them and they were marked 'P10'.

2.234 Mwilu Sianagowa also identified the call records and the KYC for the phone number 0972600401, which were in the names of Nigel Mwaba, and they were marked 'ID11'. On production, they were marked as 'P11'.

2.235 It was his evidence, that the call records on 'P10' for Mercy Tasila Tembo, showed that on 23rd October, 2020 at 05:00

hours the phone was in Waterfalls, and on the same day at 07:00 hours, the phone was in Woodlands Stadium area. After that, at 08:58 hours, the phone was located in Chilenje South, and at 15:54 hours, it was in Baobab.

2.236 He also testified that the call records also showed that 23:03 hours, the phone was located in Waterfalls, then on 24th October, 2020, at 05:42 hours, the phone was in Leopards Hill. Mwilu Sianagowa's evidence was that the last activity on the phone that day, was at 06:29 hours, with the location being Makeni East.

2.237 Further in his testimony, he stated that the next activity on the phone was on 25th October, 2020 at 22:49 hours in Mazabuka town. He stated that the last activity after that was at 23:04 hours again in Mazabuka town on the same day.

2.238 As for the call records on 'P11' for Nigel Mwaba Musonda's phone, Mwilu Sianagowa's testimony was that on 23rd October, 2020, the first call record was at 11:35 hours in Arakan, and then at 21:33 hours on the same day, it was located in Waterfalls area. Then on 24th October, 2020, there was one call activity at 14:23 hours in Chirundu. After that, on 25th October, 2020, there was call activity at 11:23 hours in Mazabuka town.

2.239 Mwilu Sianagowa's testimony was further that on 28th October, 2020, there was call activity on the phone at 14:13 hours.

CROSS EXAMINATION OF MWILU SIANAGOWA

- 2.240 In cross examination, Mwilu Sianagowa testified that his Bachelors degree and his Diploma did not qualify him as an IT Expert. His evidence was that his role was simply to retrieve information from the system. He also stated that he played no role in registering the names on the system.
- 2.241 Still in cross examination, he told the Court that the phone number 0979145009 was for Mercy Tasila and not Tasila Tembo. Mwilu Sianagowa stated that he did not inspect the devices for which the phone numbers were registered.
- 2.242 He agreed that from the records, he could not tell who used the device, and that one number was recorded as being in Chirundu at a certain time, while the other was not. He also agreed that it was not possible to be in Chirundu and Mazabuka at the same time.

PW16-COLONEL ELIAS ZULU

- 2.243 In his evidence, Colonel Elias Zulu testified that as at October, 2020, he was based at the Army headquarters Administration Branch in Arakan Baracks. He continued his testimony, by stating that in the week preceding 24th October, 2020, he was processing recruitment letters, and the officers, Lieutenant Mwaba and Lieutenant Lukonga were assisting him together with some soldiers.
- 2.244 It was his testimony, that the process was projected to last for Two (2) weeks having commenced on 20th October, 2020. He added that there was a lot to be done, and therefore, they would work beyond 17:00 hours, and on the weekends.

Colonel Elias Zulu stated that from Tuesday 20th October, 2020 to Friday, 23rd October, 2020 all went well. Then on 24th October, 2020 a Saturday, Lieutenant Mwaba was absent, and when they tried to call his phone, it was off.

2.245 The testimony that was further given, was that they tried calling the number up to 10:00 hours to no avail, so they took it that he was absent. Colonel Elias Zulu in his continued testimony, told the Court that by Sunday, 25th October, 2020, Lieutenant Mwaba was still absent. He stated that around 11:00 hours, Lieutenant Mwaba office mate, then Major Kainga, and at the time Colonel Kainga, had called requesting to speak with him.

2.246 However, Colonel Elias Zulu informed him that Lieutenant Mwaba had not reported for work. It was his evidence that Major Kainga had told him that he had been trying to call Lieutenant Mwaba, but his phones were off. Colonel Elias Zulu stated that he had informed Major Kainga that he had also been trying to call Lieutenant Mwaba the previous day, but his phones were off.

2.247 Then around 14:00 hours, Major Kainga had called Colonel Elias Zulu and informed him that Lieutenant Mwaba had sent him text messages, and Colonel Elias Zulu checked his phone and found messages which had been sent around 11:15 hours, which Major Kainga had forwarded to him, which Major Kainga had informed were scary.

2.248 In respect of the said messages, his testimony was that although he could not exactly recall how they read, he stated

that one was *"I tried with them, one Zambian, one South African for a small debt that I got. He tried to squeeze something down. I failed. He got my woman. We were blind folded. Look out for me if I will not make it. Tasila screamed, I do not know where she is"*.

2.249 He also testified that a second message was short and read, *"Look out for mother's number"*. Colonel Elias Zulu stated that the third message was a phone number with the name Dr Gillian, and that the last message read, *"I have been given chance with my phone to try what I can do"*.

2.250 In his continued testimony, Colonel Elias Zulu told the Court that Lieutenant Mwaba instructed Major Kainga to call the number and confirm whether it was for his mother, and to find out if she was aware of where he was. He testified that Major Kainga later informed him that the phone number belonged to Lieutenant Mwaba's mother, and that she was aware that Lieutenant Mwaba and his girlfriend were missing, and that the girlfriend's relatives had reported the matter to the police, and they were looking for him.

2.251 Colonel Elias Zulu also in his evidence, stated that he informed the Provost Marshal about what had happened and he shared the messages that Lieutenant Mwaba had sent. After that, he had informed Lieutenant Mwaba's immediate supervisor that Lieutenant Mwaba had been absent since Saturday.

2.252 He stated that he had given the messages that Lieutenant Mwaba had sent to Major Kainga which were forwarded to him

on WhatsApp to the police. However, in March 2021, he was deployed for peace keeping outside the country for a year, and he had left his phone with his wife who deleted the messages when she set up a WhatsApp account.

2.253 He did however state that when the police interviewed him, a statement was recorded. He identified the statement which he gave to the police, and it was marked 'ID12' and he produced it and it was marked 'P12'. Colonel Elias Zulu's evidence was that the phone number for Dr Gillian was 0977850324, who Major Kainga had called and had confirmed that she was Lieutenant Nigel Mwaba's mother.

2.254 He identified the accused person as Lieutenant Mwaba.

CROSS EXAMINATION OF COLONEL ELIAS ZULU

2.255 Colonel Elias Zulu, when cross examined, stated that he was not Major Kainga, and that he had told the Court some of the things that Major Kainga had told him, including that the phone number 0977850324 was for Lieutenant Mwaba's mother. It was his testimony that he did not verify that information as Major Kainga was his officer.

2.256 He agreed that the messages that he had referred to, had not been produced in Court, and that he could not exactly say what they said, due to passage of time. It was also his evidence that he retrieved the messages from a phone number for Lieutenant Mwaba.

2.257 Colonel Elias Zulu told the Court that he was shocked at the messages, and that he had never exchanged such messages with Lieutenant Mwaba. He stated that he had not told the

Court the phone numbers for Major Kainga and Lieutenant Mwaba, but that Lieutenant Mwaba's number was in the statement that he gave to the police.

PW17-JAMES PHIRI

2.258 This witness, a Military Officer, testified that on 28th November, 2020, he was on duty at Maina Soko Military Hospital around 15:30 hours, when Commandant General Kapatamoyo went there, and called him together with a Sentry and Staff Sergeant John Machila to go to his vehicle.

2.259 It was his evidence that they got firearms and they proceeded with Commandant General Kapatamoyo telling them to be alert as they were going to apprehend a person who had killed Dr Tasila Tembo, and was believed to be at Memorial Park. Further in his testimony, James Phiri stated that Commandant General Kapatamoyo also told them that the person may be armed.

2.260 He explained that they entered Memorial Park using the road which goes to Bauleni Compound near Mary Immaculate Church, and upon entering, they saw a van which flashed its' lights to the Commander. Then the Commander drove the vehicle to that vehicle, and he spoke with the people who were in the van. Thereafter, the Commander went and pointed to them to the left, about Six (6) metres away, and directed them to go and apprehend the person.

2.261 James Phiri's evidence was that himself and Staff Sergeant John Machila jumped over the flowers in the graveyard and they cocked their guns. Then James Phiri told the person who

was shouting to stop, and that he should lift up his hands, as he was behind the person. He added that he asked the man to turn around and to take off the cap and the black face mask that he was wearing.

2.262 He stated that he told Staff Sergeant John Machila to give him covering fire, and he told the person that they had gone to apprehend to lie down, and he drew near, and he pointed the gun at the person.

2.263 James Phiri continued testifying, stating that he told Staff Sergeant John Machila to search the man and make sure that he did not have a firearm. Then, the Vivo blue and black phone, a plastic bag which had Two (2) slices of polony, Two (2) bottles of castle lite, One (1) which was empty were put aside on the person being searched.

2.264 Then thereafter, the Commander went near them, and he had asked the person his name, and he had responded saying, Mwaba Sir. It was stated that the Commander informed them that he was the person, and they took him to the Commander's vehicle.

2.265 Then from there, the police arrived, and James Phiri handcuffed the man, and they put him in the Commander's vehicle. His evidence was that they followed the police to Woodlands Police, where the man and what was found on him were officially handed over to the police.

2.266 By way of concluding his testimony, James Phiri testified that he had identified the phone which was recovered from the

man in the previous proceedings. He identified Nigel Musonda Mwaba as the person that he apprehended.

CROSS EXAMINATION OF JAMES PHIRI

2.267 James Phiri in cross examination, testified that he had identified the phone in the previous proceedings. He stated that he did not fail to identify the person that he apprehended in the previous proceedings. He did however agree that the person wore a cap and a face mask.

2.268 Testimony was also given, that the man wore a stripped t-shirt, sweat pants, and that he had a phone and polony. It was agreed that the person did not have a firearm and that James Phiri had not identified the phone or the other things that were recovered, testifying that they were left at Woodlands Police.

PW18-SIMONJE KELVIN

2.269 Kelvin Simonje, a police officer who was based at Woodlands Police at the material time, testified that on Saturday, 28th November, 2020, he was on duty at the said Woodlands Police Station, when he received information that a suspect had been spotted at Leopards Hill Memorial Cemetery.

2.270 Thus, acting on that information, together with Detective Sergeant Shawa and others, they booked out to the said cemetery, and they found that some army officers had already arrived there. His evidence was that together with the army officers, they apprehended the suspect whom he came to know as Nigel Musonda Mwaba, an officer from the Zambia Army.

2.271 Simonje Kelvin testified that Nigel Musonda Mwaba was handcuffed, and he was taken to Woodlands Police Station where he was briefly detained before being taken to Lusaka Central Police. He identified the accused as Nigel Musonda Mwaba.

CROSS EXAMINATION OF SIMONJE KELVIN

2.272 Simonje Kelvin was not cross examined.

PW19-BERNARD FUNDI

2.273 A Digital Forensic Analyst at the National Forensic Unit of the Ministry of Home Affairs, Bernard Fundi was PW19. He explained that he was a holder of a Bachelor of Science Degree in Computer Studies, which he obtained from the University of Greenwich and that he had also done specialized training in computing and digital forensic analysis, and on how to use Cellebrite mobile forensic extraction devices in Israel.

2.274 He told the Court that between 2020 and 2022, he was based at the Zambia Police Forensic Department, and that his duties, included retrieving, analyzing and retrieving electronic data from electronic devices.

2.275 In relation to this matter, his testimony was that on 28th December, 2020, during the course of his duties, Detective Inspector Changwe of Simon Mwansa Kapwepwe Police Station submitted Five (5) mobile phones, and requested that they be forensically analysed.

2.276 The Five (5) phones were stated as being a Blue Vivo 13, a blue Infinix S5, a black Infinix HOT 8, a Gold Infinix HOT 8 and a blue Samsung Galaxy phone. He stated that the said

mobile phones were fully functional, and he proceeded to examine them.

2.277 Bernard Fundi stated that he was specifically requested to extract pictures and video images which were obscene in nature from the Vivo mobile phone. Then from the Infinix S5, he was asked to extract the audio mobile conversations for 24th October, 2020.

2.278 As for the Infinix Hot 8, he was requested to extract WhatsApp messages and messages, and messages from the Samsung Galaxy mobile phone.

2.279 Therefore, using the forensic extraction mobile device, Bernard Fundi imaged each mobile phone by creating identical copies of the mobile devices and retrieved the contents. It was his evidence, that he later downloaded the contents on the evidence server for analysis. He also stated that he reviewed the respective image files for each mobile device, and the investigative file was preserved.

2.280 As to what he found, Bernard Fundi testified that from the Vivo mobile phone, he preserved Twelve (12) video files and Twenty-Seven (27) pictures which were obscene in nature.

2.281 It was his evidence that from the Infinix S5, he recovered 5 audio phone conversations for 24th October, 2020. Then from the Infinix HOT 8, Bernard Fundi recovered WhatsApp messages, as well as from the Gold Infinix HOT 8 and WhatsApp messages and messages from the Samsung Galaxy Phone.

- 2.282 Bernard Fundi testified that on concluding the examination, he saved the files on the external storage media and he made hard copies of the WhatsApp messages and the sms messages, and he prepared a report. He identified the forensic report which was marked 'ID13' for identification and it was produced and marked 'P13'.
- 2.283 He went on to testify that from the Vivo phone he preserved the Twelve (12) videos in soft copy, and that the pictures were printed and a photographic album was compiled. The flash disc containing the soft copies was identified and marked 'ID14', and it was produced and marked 'P14' after I overruled the objection relating to authenticity of the said flash disc.
- 2.284 The photographic album was identified and it was marked 'ID15', and on production it was marked as 'P15'.
- 2.285 In respect of the mobile device Infinix S5, Bernard Fundi testified that it was assigned the number 0979874123. His evidence was that on 24th October, 2020, there were Five (5) audio conversations which were extracted and they were saved on the flash disc.
- 2.286 Thus, on the document 'P14' being opened, Bernard Fundi identified the audio recordings with the date 24th October, 2020, with the phone numbers 0954023644, 0969169093 and 0972023124, stating that they were recorded at 14:01 hours on 24th October, 2020.
- 2.287 He stated that the third phone was the Infinix HOT 8 in which he recovered WhatsApp messages between the phone numbers 0979549181 with the profile name Beatrice and

0955145009 with the profile name Dr Tasila Cell Z with messages from 19th July, 2020 to 23rd October, 2020, and he printed them. He identified the WhatsApp Photographic Album, and it was marked as 'ID16'. On production, it was marked as 'P16'.

2.288 With regard to the fourth phone, Bernard Fundi's testimony was that it was an Infinix HOT 8, which had WhatsApp messages between the phone number 09731845531 with the profile name IAM and 0955145009 with the profile Dr Tas. He stated that the messages were for the period 20th July, 2020 to 27th October, 2020 and he printed them.

2.289 The photographic album for the Infinix HOT 8 was identified and marked 'ID17' and on production, it was marked 'P17'.

2.290 Then with respect to the last mobile phone, a Samsung Galaxy, it was Bernard Fundi's testimony that it had WhatsApp messages between the phone number 0976823131 with the profile name Carol and 0955145009 with no profile name, with messages from 7th October, 2020 to 24th October, 2020.

2.291 The Photographic Album for these WhatsApp messages was identified and marked as 'ID18' and on production, it was marked as 'P18'. Bernard Fundi's continued testimony was that he also recovered WhatsApp messages between the phone number 0976823131 with the profile name Carol and 0962080294 with the profile name Lieutenant Nigel Mwaba.

2.292 The photographic album for those messages was identified and marked as 'ID19' and on production as 'P19'.

2.293 The last messages that were retrieved by Bernard Fundi were instant messages between the phone numbers 0976823131 and 0979145009. He testified that he printed an extraction report from the Cellbrite extraction device testifying that it was secured by having a user authentication facility, which was regularly updated. He added that it was a stand-alone system with no interphase from the external environment, and gave highly reliable results.

2.294 The report was identified and marked as 'ID20', and on being produced, it was marked as 'P20'.

2.295 Bernard Fundi stated that he gave the files and the mobile devices to the investigations officer, Detective Inspector Chanda, and he told the Court, that when he had testified in the previous proceedings, he had spoken about the phones which were before the Court.

CROSS EXAMINATION OF BERNARD FUNDI

2.296 Bernard Fundi, in cross examination testified that he received the mobile phones from the investigations officer from which he extracted the information. He stated that he had no documents to show that he signed for the phones after the investigations officer transferred the phones to him, after the officer gave him a request of what to extract.

2.297 It was further Bernard Fundi's testimony that the documents that he had produced were in his possession, and that at the time of his testimony, he was based at the Ministry of Home Affairs. He explained that he took the files as the police was under internal security at the Ministry of Home Affairs.

- 2.298 It was his evidence that files at the Zambia Police were not personal to holder, and that he carried some even though he had not shown any authority that was granted to move with the files.
- 2.299 He agreed that in the previous proceedings, he identified Five (5) phones, and he was unaware that Tasila Tembo's phone was not recovered and produced in Court. Bernard Fundi told the Court that he just extracted information from the phones, and he did not know the relationship between the owners of the phones.
- 2.300 It was also Bernard Fundi's testimony that on 23rd October, 2020 there were no messages between Dr Tassy to the Vivo Phone via WhatsApp. He clarified that from the Vivo phone, he only extracted videos and pictures as per the request and that the Vivo phone received the videos and pictures through WhatsApp. It was stated that Bernard Fundi did not establish from which phone number they were sent, but the time stamps were there.
- 2.301 Agreement was made that Bernard Fundi could not tell who was holding the phone when the messages were sent. He testified that the phone number 0955145009, which was a Zamtel line, had voice messages. It was acknowledged that Zamtel as a service provider saved information even though someone from Zamtel had stated that there was no activity on that number on that day.

PW20-MICHAEL MWELWA MWABA

- 2.302 This witness was a Forensic Auditor at MTN Zambia Limited. His evidence with regards to his qualifications, was that he held a Bachelors Degree in Forensic Science and Technology, and in ACCA, and that he also held a Masters Degree in Finance.
- 2.303 In respect of his duties, Michael Mwelwa Mwaba testified they included managing the fraud risk management system with the internal management system. He also stated that he was involved in proactive fraud prevention, investigations and liaising with Government and law enforcement agencies to support requests for information and testifying before the Courts of law.
- 2.304 Also, in his testimony, Michael Mwela Mwaba testified that they supported information provision through warrants which were submitted to the Legal Department, which validated the stamp and the credentials of the officer who was requesting for the information, by checking the Officers ID with what was on the warrant.
- 2.305 Then after a true copy was certified, they would request his department to extract the information that was needed such as call records, KYC, mobile money statement, live location or the number or the device if it was on their network.
- 2.306 In relation to this matter, Michael Mwelwa Mwaba testified that a warrant was served on MTN in 2022 on a date that he did not recall, which requested for KYC and call records for a

certain number. His evidence was that information was extracted, and it was presented to law enforcement.

2.307 As to the extraction of the information, his testimony was that KYC was extracted from an application within MTN called Coacierge, on which customers information was stored, being the names, an image of the nrc, age, address and the ZICTA registration form, which he stated was no longer required at the time.

2.308 On the security of the system on which the information was stored, Michael Mwelwa Mwaba testified that they used a two-factor authentication system to log on to the system which was determined by the roles in the organisation in terms of access to avoid breach of customer data privacy.

2.309 He further stated that the customer's phone number was used to query the system using a search window and it would give the customer's details. It was also his evidence, that the phone number was stated on the warrant which was issued to MTN, and on extracting the details, they revealed that they were for Nigel Mwaba whose residence at the time of registration was Makeni.

2.310 In his continued testimony, Michael Mwelwa Mwaba stated that they also ran the call records for the phone number for a specified period. This he testified, was extracted from the system which was interlinked to the live call interface, and was called Coreva. He told the Court that log on to the system required privileges which were rule based.

- 2.311 His evidence was that he had view and print privileges which enabled him to extract the information, and that access to the interphase on approval was facilitated by IT installing the application on his work cab and creating credentials. Then using his credentials, he set up his own password using specific parameters. He also stated that to log in, the system would prompt for a one-time password, which was automatically generated and sent to his work line.
- 2.312 Still in his testimony, Michael Mwelwa Mwaba's evidence was that once he logged in, he entered the phone number into the search bar, and specified the date range that he was looking for, and he entered click. Then, the system would ask him if he wanted the file in Excel, PDF or Text.
- 2.313 It was further his testimony that he asked that the information be availed in PDF, due to the sensitivity of the information that was requested. Michael Mwelwa Mwaba testified that MTN was required to make physical information which was done, using the printer in the Legal and Forensic Department, after a password that was linked to himself was entered.
- 2.314 Further in evidence, Michael Mwelwa Mwaba stated that the printer was serviced frequently, and that it was updated monthly, as per company policy. Addition was made that the two applications were cloud based, and were updated quickly on cloud, and were linked to the company.
- 2.315 He identified the call records document in the names of Nigel Mwaba, and it was marked 'ID21' and it was produced and
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marked 'P21'. Further identification was made of the call records and they were marked 'ID22' for identification and 'P22' on production.

2.316 In respect of the call records 'P22', Michael Mwelwa Mwaba's testimony was that after 21:00 hours on 23rd October, 2020, the number was in Ibex Hill, and it sent an sms around 24:00 hours. Then after midnight which was now 24th October, 2020 around 01:26 to 01:50 hours, the phone number was in State Lodge. After that around 02:49 to 03:18 hours the phone number was Mikango area.

2.317 Then prior to that, around 01:00 hours, the phone number was in Avondale, and it made a call around 01:20 hours. At 06:00 hours, it was at the ZESCO tower at Kafue roundabout.

2.318 The testimony that was further given, was that on 25th October, 2020 around 11:25 hours, the number received an sms whilst it was in Mazabuka, and at 11:32 hours the number was in Nakambala until 13:19 hours when it went to Mazabuka as it received an sms. The last call on that phone on that date was at 12:41 hours.

CROSS EXAMINATION OF MICHAEL MWELWA MWABA

2.319 Michael Mwelwa Mwaba's evidence in cross examination, was that the phone number whose information was extracted was an MTN number. His testimony was that there was nothing wrong with one subscribing to MTN or calling from the various points that he had stated. He was unaware whether the strength of the signal determined the location of a person physically using the call records.

2.320 He also did not know the person who had the phone, but he testified that the information that he had given was for a phone number which was on a warrant, and that the number ended with the numbers 294, and that he had not given the number.

2.321 Michael Mwelwa Mwaba agreed that he had not produced the warrant that requested the information, and that he had not told the Court which phone numbers called that number. It was his evidence that on 'P22', was a column for the serial number of the phone which was queried, but it did not say that it was for a Vivo phone.

2.322 Further admission was made, that recordings for the voice calls had not been produced and Michael Mwelwa Mwaba told the Court that he was not competent to say whether Nigel Musonda Mwaba used the phone as indicated on the call records 'P22' or what conversations were exchanged or what the people were doing in the locations that had been indicated.

PW21-CAROL PHIRI

2.323 This witness is a half sister to Nigel Musonda Mwaba. In her evidence, she explained to the Court that Tasila Tembo was her best friend for over Twelve (12) years. In that regard, she testified that they met in 2008, and they were friends since then and when Tasila Tembo divorced in 2017. She stated that in 2018 during the cholera operations, Tasila Tembo informed her that she had met someone.

2.324 Then within a few weeks of meeting that person, Tasila Tembo introduced the man to her, informing her that he was

Nigel Mwaba. It was her testimony that Tasila Tembo was in love and the relationship was very good. Then a month into the relationship, Tasila Tembo mentioned Nigel Musonda Mwaba's mother's name as being Gillian Mukula.

2.325 Her evidence was that she recognised that name, as she had an affair with her father, the late Winston Phiri some time back, and they had Three (3) children together, one of them being Nigel Musonda Mwaba. That was how Carol Phiri knew that Nigel Musonda Mwaba is her brother, and she had informed him. She also explained that growing up, she had known of Nigel Musonda Mwaba's existence but they were never formally introduced.

2.326 Further in her testimony, Carol Phiri stated that in 2018, the relationship between Nigel Musonda Mwaba and Tasila Tembo continued, and they had their on and offs. However, overall, it appeared that they were doing well. Then by October, 2020, they had concurrent issues and Tasila Tembo had earlier in the year got a job with Equip Zambia and she had moved to Kasama, and Nigel Musonda Mwaba had remained in Lusaka.

2.327 It was her continued testimony that Tasila Tembo had confided in her that her relationship with Nigel Musonda Mwaba was strained, as they were frequently arguing. Then in October, 2020, Tasila Tembo had discovered that Nigel Musonda Mwaba had accrued a lot of debt, and she had been put as next of kin for most of his debts.

2.328 Her evidence was that one of the debts that had put Tasila Tembo under pressure was from a South African national

named Dolo, who according to Dolo had engaged Nigel Musonda Mwaba in his capacity as a lawyer to collect money on his behalf. She testified that Tasila Tembo had further informed her that Dolo was making threats and Tasila Tembo decided to end her relationship with Nigel Musonda Mwaba as a result of that.

2.329 Thus, Tasila Tembo had blocked Nigel Musonda Mwaba by phone and later by text message.

2.330 She went to testify that during that period, herself and Tasila Tembo engaged Nigel Musonda Mwaba's elder brother Mabvuto Winston Phiri to assist in paying the debt. Her evidence was that when Nigel Musonda Mwaba discovered that Tasila Tembo had blocked him, he started sending ordinary text messages to Tasila Tembo.

2.331 She stated that Tasila Tembo forwarded her the text messages, which showed that Nigel Musonda Mwaba had threatened to send out intimate pictures of her, which she had shared with him. Then when Carol Phiri received the messages that Tasila Tembo had forwarded to her, she informed Tasila Tembo that she would speak with Nigel Musonda Mwaba.

2.332 Thus, on calling Nigel Musonda Mwaba, he became very upset and he informed her that he had nothing to lose. Carol Phiri's evidence was that there was a lot of back and forth about Nigel Musonda Mwaba exposing Tasila Tembo with her discouraging him from doing so. She told the Court that at the

end of the conversation, Nigel Musonda Mwaba had informed her that Tasila Tembo did not deserve to live.

2.333 She testified that immediately the conversation was ended, she had sent a voice note to Nigel Musonda Mwaba pleading with him not to send the pictures. Then in response, Nigel Musonda Mwaba sent a message to Carol Phiri on WhatsApp stating repeating that Tasila Tembo did not deserve to live. Then he sent another message, which read that Tasila Tembo was an animal, and Carol Phiri's evidence was that these messages were sent around 14th October, 2020.

2.334 In her continued testimony, Carol Phiri stated that she had shared the messages with Nigel Musonda Mwaba's elder brother Winston who was alarmed, and he told Carol Phiri that Nigel Musonda Mwaba had been violent before.

2.335 Then two days later, around 17th October, 2020, they tried to find Nigel Musonda Mwaba with a view to calm him. Her evidence was that she believed that she received a message from Tasila Tembo informing her that Winston suspected that Nigel Musonda Mwaba had travelled to Kasama from Lusaka to follow Tasila.

2.336 Carol Phiri testified that Tasila Tembo confirmed the position on 17th October, 2020, as she informed her that Nigel Musonda Mwaba had arrived in Kasama, and that she was in Mbala at the time. She added that Tasila Tembo informed her that officers from work place had informed her that Nigel Musonda Mwaba had collected her vehicle from her work place, and he had followed her to Mbala.

- 2.337 Then, due to the alarm that had been raised by Winston Phiri, they were trying to get Tasila Tembo to a safe place in Kasama, and Tasila Tembo told her that she was stressed and she had a headache and she needed to sleep.
- 2.338 That was how Tasila Tembo cut communication until the 19th, when she informed Carol Phiri that she was on the way back from Kasama to Lusaka with Nigel Musonda Mwaba and the children. Carol Phiri's continued evidence was that on 20th October, 2020 Tasila Tembo informed her that they arrived in Lusaka and that Nigel Musonda Mwaba was pretending that everything was okay.
- 2.339 It was her testimony that Tasila Tembo insisted that the relationship was over, and that she would inform Nigel Musonda Mwaba. That was how Carol Phiri had advised her to involve the family and Tasila Tembo told her that she had called aunt Pheddy to witness the conversation.
- 2.340 Then on 23rd October, 2020 Aunt Pheddy was at Tasila Tembo's house, and Tasila Tembo asked Carol Phiri to join them. However, as Carol Phiri's maid was not at home, Carol Phiri did not go there. She told the Court that from there, she did not know what transpired, but Tasila Tembo told her earlier that day, that she would take her Isuzu motor vehicle there.
- 2.341 Then at midnight, Carol Phiri sent WhatsApp messages to Tasila Tembo but they did not reflect the double confirmation of ticks. Carol Phiri's testimony was that she went to sleep and the next morning, she called both Tasila Tembo's phones but
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they were off. Then she called Tasila Tembo's mother who was an invalid at the time, who responded that as she had assumed that Tasila Tembo had gone to her house, she had slept there.

2.342 It was testified that soon thereafter, Carol Phiri received a call from Tasila Tembo's first born daughter Sherine, who informed her that the previous night, Tasila Tembo had gone out with Nigel Musonda Mwaba in her Isuzu motor vehicle and they did not return. The evidence that was given was that Sherine had also informed Carol Phiri that Lonjezo, Tasila Tembo's brother was a passenger in the vehicle.

2.343 It was Carol Phiri's continued testimony that she called Nigel Musonda Mwaba on his two phone numbers, but the calls did not go through. Then she recalled that he had that one phone number which he did not often use, and it went through, and Nigel Musonda Mwaba answered and he informed Carol Phiri, on being asked where Tasila Tembo was, that he had left her at Crossroads, Olympia.

2.344 When Carol Phiri called Crossroads Olympia, she was told that they did not have a woman there, who fit Tasila Tembo's description. Carol Phiri testified that she decided to report Tasila Tembo as missing at Simon Mwansa Kapwepwe police. It was her evidence that days went by, and a week later on a Friday, they were informed that a woman who fit Tasila Tembo's description had been found in Mikango area.

- 2.345 Thus, Carol Phiri and Tasila Tembo's relatives went to Woodlands Police to identify the body, and Carol Phiri became emotional, and the rest was a blur.
- 2.346 Her evidence was that she would communicate with Tasila Tembo using phone calls, sms messages and WhatsApp messages using a Samsung A50 black phone which had a blue rear. She identified the phone which was marked as 'ID23' for identification, and on production, it was marked as 'P23'.
- 2.347 When referred to 'P23', 'P19' and 'P18' she read the messages which were on 'P23' which were also on 'P18' stating that on 'P18', was a message which she sent to Tasila Tembo saying 'you okay'. Carol Phiri testified that it did not have a double click, and that it was the last message on 'P18'.
- 2.348 On comparing 'P23' and 'P19', Carol Phiri testified that the message dated 14th October, 2020 on 'P23' was also on the last page of 'P19'.
- 2.349 She further played the audio where she told Nigel Musonda Mwaba that Tasila Tembo had informed her that he would send out nude pictures of her, and he had responded that Tasila Tembo did not deserve to live, and that she was an animal.
- 2.350 Carol Phiri also stated that she had texted Nigel Mwaba Musonda on 27th October, 2020 saying bro, but he did not respond.
- 2.351 On comparing the messages on 'P23' to the messages that Tasila Tembo sent to her between 14th October, 2020 and 16th October, 2020 Carol Phiri read the message that stated that

'you have taken me for a ride'. It was also Carol Phiri's evidence that Tasila Tembo had texted her saying look at the messages sent, and that she forwarded them to Sherine. Her evidence was that there was a forwarded message which said 'as long as you don't pick, I have nothing to lose, you have already messed up my life'.

2.352 Then thereafter, Tasila Tembo said that she wished that she had not gone into the relationship, and that her children were affected because they saw he treated her. It was testified that Tasila Tembo then sent a message saying that she had a throbbing headache.

2.353 Carol Phiri then read the message, which said 'you have walked out on us and there is nothing more for us to fight for. You have stripped me of all my integrity'.

2.354 Carol Phiri after reading the other messages, testified that Nigel Musonda Mwaba is her brother, and that growing up, they never met. Thus, it was like the hand of God by him meeting her best friend, and it felt like a blessing. She ended her evidence, by stating that she was older than Nigel Musonda Mwaba, and that the serial number for her phone was IEMI1 357180102980603, and the second IEMI for the phone was 237518102980601.

CROSS EXAMINATION OF CAROL PHIRI

2.355 When cross examined, Carol Phiri's evidence was that Nigel Musonda Mwaba is her brother, and that it was not easy testifying against him. She agreed that doing so required extra motivation. Carol Phiri also agreed that Nigel Musonda

Mwaba's mother had an affair with her father, and she testified that his mother would have to prove that it was a traditional marriage, as her father was not a polygamist.

2.356 Further agreement was made that Three (3) children namely, Winston, Nigel and Chishimba were born from her father and Nigel Musonda Mwaba's mother and that Carol Phiri's father died. She testified that her sister was the Administrator of his estate. Carol Phiri admitted that she was a recipient under the estate, but she denied that she was responsible for distribution of the estate, and that the Three (3) children did not receive anything under the estate.

2.357 It was also denied that Carol Phiri had animosity towards Nigel Musonda Mwaba as he claimed under the estate. She agreed that Tasila Tembo was her best friend from 2008 and that she knew Tasila Tembo's relationships with other men. Carol Phiri testified that Tasila Tembo divorced in 2017. It was denied that Tasila Tembo had an affair, and Carol Phiri testified that Tasila Tembo's ex-husband had an affair and there was a child whilst they were still married.

2.358 The testimony that Carol Phiri also gave in cross examination, was that Pastor Jimmy was Tasila Tembo's friend, and her evidence was that Tasila Tembo did not inform her that she had an affair with Pastor Jimmy. Carol Phiri was aware whether Tasila Tembo sent the nude pictures of herself to Nigel Musonda Mwaba but she was unaware that the same were sent to Pastor Jimmy as well, or that Tasila Tembo had

continued her relationship with Pastor Jimmy whilst she was seeing Nigel Musonda Mwaba.

2.359 Her evidence was that on one of the phone calls, Nigel Musonda Mwaba was very angry, and that she had not produced the audio recording. Carol Phiri testified that Nigel Musonda Mwaba on 14th October, 2020 sent her a message that Tasila Tembo did not deserve to live, and that she was an animal. It was her testimony that they were a normal couple who would quarrel.

2.360 Whilst agreeing that Nigel Musonda Mwaba travelled to Kasama, Carol Phiri's testimony was that she was not privy to what he went to do. She agreed that Nigel Musonda Mwaba returned to Lusaka with Tasila Tembo who came to attend a workshop, and not to end the relationship.

2.361 She stated that when she spoke with Winston, she understood that Nigel Musonda Mwaba had been violent before, and he had referred to a particular incident. Carol Phiri's evidence was that she described Nigel Musonda Mwaba as a narcissist because of the messages that Tasila Tembo forwarded to her. She agreed that she had stated that it appeared that Nigel Musonda Mwaba was unhinged, and she doubted his capacity to control his anger at the time.

2.362 She did however deny that herself and Tasila Tembo discussed that Nigel Musonda Mwaba had a paranoid personality disorder in the messages. It was her evidence that when Nigel Musonda Mwaba travelled to Kasama, Winston and herself were worried about Tasila Tembo's safety. She

agreed that nothing happened, and he travelled back to Lusaka with Tasila Tembo.

2.363 Still in cross examination, Carol Phiri's evidence was that on 24th October, 2020, the two phone numbers that Nigel Musonda Mwaba regularly used did not go through on being called. However, the ZAMTEL line went through, and Nigel Musonda Mwaba had informed Carol Phiri that Tasila Tembo was at Crossroads. She maintained that she spoke with Nigel Musonda Mwaba using her phone 'P23', on that day, even though someone from Zamtel testified that there were no calls on that date.

2.364 In concluding the cross examination, Carol Phiri's testimony was that the phone 'P23' had been in her custody even when she testified, and that she had not shown any evidence to establish that she had handed in the phone or that she got it back during the previous proceedings.

PW22-PHEDDY MITI

2.365 The aunt to Tasila Tembo, Pheddy Miti was PW22. She narrated that Tasila Tembo was her elder sister's daughter and that she was the last born in the family. In her continued testimony, Pheddy Miti testified that Tasila Tembo used to keep her sick mother in Ibex Hill Meanwood, and that she used to go and visit her in 2020.

2.366 Further evidence was given, that Tasila Tembo was free with Pheddy Miti, and that she would tell what she was going through. She explained that when she was nursing Tasila Tembo's mother in 2017, Tasila Tembo had gone to the house

with Nigel Musonda Mwaba who wore an army combat uniform, and informed her that they were working together during the cholera outbreak, in Mtendere, and that they were friends.

2.367 Then Nigel Musonda Mwaba took his clothes to the house and they started living together at Tasila Tembo's house. It was also Pheddy Miti's testimony, that she saw that it was too much as the man was staying in a lady's house. Thus, she tried to ask her elder sister, but she could not due to her elder sister's condition. Then she told Tasila Tembo that Nigel Musonda Mwaba should take plates so that he could be charged.

2.368 However, Tasila Tembo refused stating that he was just a drunkard who insulted her, and he was cheeky, and he had chased the workers. Pheddy Miti stated that she respected Tasila Tembo's decision that she did not want marriage.

2.369 Then on 23rd October, 2020 around 09:00 hours, Tasila Tembo had called her using Mulubwa Zulu's phone, and told her that she was dying, and that she had told Nigel Musonda Mwaba that she did not want him as her manfriend, and that he had responded that no one would have her, and she would die. It was stated that Tasila Tembo had asked Pheddy Miti to go to Ibex Hill Meanwood, so that she could talk to Nigel Musonda Mwaba, so that he could release her.

2.370 That was how around 16:00 hours, Tasila Tembo had sent a vehicle, an Isuzu, charcoal grey in colour, which her nephew Mulubwa Zulu was driving to go and pick her up. Pheddy Miti

stated that they arrived in Ibex Hill Meanwood around 17:30 hours, but they only found her elder sister and the workers. Thus, she asked the workers to wake up when Tasila Tembo went home, as she was tired due to her work.

2.371 Her testimony was that around 00:30 hours, she had asked Mercy if Tasila Tembo had returned, who responded that Tasila Tembo went there around 22:00 to 23:00 hours, and they had picked up Lonjezo.

2.372 Then on 24th October, 2020, she had called Tasila Tembo's phone around 05:00 hours, but she did not answer. She testified that around 07:00 hours, she used Tasila Tembo's mother's phone to call Tasila Tembo, and Nigel Musonda Mwaba had responded, stating that Tasila Tembo was bathing. Her evidence was that she waited until 07:30 hours when she again called Tasila Tembo's number, and the phone was off.

2.373 Pheddy Miti also testified that she decided to call Lonjezo Tembo who informed her that he was at home in Avondale after Tasila Tembo and Nigel Musonda Mwaba left him at the Filling Station when they asked him to go and buy bread, and they drove off. It was stated that, that was how they decided to go to the police to report the matter, and the police also told them to report to Arakan Barracks.

2.374 Her evidence was that after that, they would report to the police every day, and on 28th October, 2020, police informed her that a dead body of a woman had been found in Mikango area, and the matter was been dealt with by police at

Woodlands. Pheddy Miti testified that on going to Woodlands police, she was shown photographs on a phone, and she identified the body as that of Tasila Tembo, by virtue of the orange t-shirt which was written '*Right to Care*'.

2.375 It was also her testimony, that Tasila Tembo's feet were almost like hers. Then on identifying the body, they went to Mikango barracks with the police and army officers, and they found that Tasila Tembo had been buried in a shallow grave with the body in a sack which was tied with fibers.

2.376 Her evidence was that on the body being dug up, it was taken to UTH mortuary. Pheddy Miti identified the accused person as Nigel Musonda Mwaba, stating that she had known him from 2017 until 2020, as Tasila Tembo's boyfriend, and that he lived at her house. It was stated that Pheddy Miti's phone number was 0977977258, while Nigel Musonda Mwaba's number was 0979145009.

2.377 Pheddy Miti reiterated that Nigel Musonda Mwaba did not answer when she called him on his phone, but he did so when she called him using her elder's sister's phone.

CROSS EXAMINATION OF PHEDDY MITI

2.378 In cross examination, Pheddy Miti testified that Tasila Tembo told her that she could not marry Nigel Musonda Mwaba, as he was a drunkard, and he would insult her. She added that she had also observed Nigel Musonda Mwaba as she would live with them. On why she had not earlier informed the Court of her observations of Nigel Musonda Mwaba, Pheddy Miti

stated that she had only said what Tasila Tembo had told her, as she was still in mourning.

2.379 Her continued testimony in cross examination, was that she spoke with Tasila Tembo on 23rd October, 2020 through Mulubwa Zulu's phone, and that Tasila Tembo had informed her that she was dying, and she was crying. However, her evidence was that she did not know that it would happen, as they would speak on all the days. Pheddy Miti agreed that she had not brought any recordings of the phone conversations.

2.380 She testified that on 24th October, 2020, she called Tasila Tembo Four (4) times around 05:10 hours, but she did not respond, and then she used her sister's phone to call Nigel Musonda Mwaba, who informed her that Tasila Tembo was bathing. It was agreed that the voice message which said that Tasila Tembo was bathing was not before Court.

PW23-SHERINE PETERS KANTENGA

2.381 The first-born child to Tasila Tembo, Sherine Peters Kantenga was PW23. It was her testimony, that she was living with her mother, Three (3) siblings and her grandmother in Ibex Hill in 2016. Then sometime in 2018, Tasila Tembo introduced them to Nigel Musonda Mwaba as the person who would be their step father. Her evidence was that Nigel Musonda Mwaba moved into their home, and started living with them.

2.382 Sherine Peters Kantenga testified that throughout, she did not relate well with Nigel Musonda Mwaba, and Tasila Tembo was aware that she was not fond of him, because of how he

treated people. She explained in that regard, that he would drink alcohol excessively, and he would become aggressive and use vulgar language in front of her younger siblings.

2.383 It was further her testimony, that Tasila Tembo would not share most of what went on in the relationship, but she would observe that the Two (2) would get moody with each other, and she would know that something was wrong.

2.384 She added that Tasila Tembo would share her relationship troubles with her younger sister, and tell her not tell Sherine Peters Kantenga, because of how Sherine Peters Kantenga felt about Nigel Musonda Mwaba. Thus, when Tasila Tembo indicated that she wanted to end the relationship with him, Sherine Peters Kantenga felt relieved.

2.385 Still in her evidence, Sherine Peters Kantenga testified that Tasila Tembo sent her messages on 25th October, 2020 informing her that she had ended the relationship with Nigel Musonda Mwaba, whom she referred to as dad M. She explained that the messages also read that Nigel Musonda Mwaba had reacted badly, and she was scared for her life.

2.386 She continued with her testimony, stating that prior to that on 22nd October, 2020, Tasila Tembo had visited her at school with aunt Beatrice, as Tasila Tembo intended to travel back to Kasama on 24th October, 2020. It was stated that during the visit, Tasila Tembo had called Lieutenant Mwape, who was Nigel Musonda Mwaba's boss in Sherine Peters Kantenga's presence, and explained to him that she was scared for her life, and that she felt unsafe in her own home.

- 2.387 Sherine Peters Kantenga stated that she continued communicating with Tasila Tembo, via text messages after the visit, and that Tasila Tembo had repeated that she felt scared for her life until 23rd October, 2020 when she disappeared.
- 2.388 Her evidence was that on 24th October, 2020, she called Nigel Musonda Mwaba asking him on the whereabouts of Tasila Tembo, after making serial attempts to reach her on her phones. Sherine Peters Kantenga's testimony was that she had used her phone with the number 0979874123 and that she had called Tasila Tembo on the phone numbers 0979145009 and 0955145009.
- 2.389 As for the phone numbers for Nigel Musonda Mwaba, she testified that they were 0972600401 and 0962080294 and that both of them were off. She told the Court that she made a final attempt on the Nigel Musonda Mwaba's phone number 0954023644 around 14:01 hours, using her Infinix S5 phone, and it went through, and she recorded the conversation.
- 2.390 Sherine Peters Kantenga told the Court that Nigel Musonda Mwaba made it seem as if everything was okay, and he had told her that he had just left Tasila Tembo in Olympia, and that she was about to travel to Kasama. She testified that during the last proceedings after she testified, the Court gave her back the phone, but it was stolen, so she did not have it.
- 2.391 It was also her evidence that she had called Nigel Musonda Mwaba twice that day, and that the second one was a conference call, on which her sister was on. Sherine Peters Kentenga's evidence was that she made two recordings, but

she only recalled the contents of one conversation. She identified 'P14' as the recording of the telephone conversation that she had with Nigel Musonda Mwaba.

2.392 On the recording being played, Sherine Peters Kantenga stated that Mercy whom the male voice referred to in the recording was the house help at the time.

CROSS EXAMINATION OF SHERINE PETERS KANTENGA

2.393 Sherine Peters Kantenga when cross examined, testified that Tasila Tembo introduced her to Nigel Musonda Mwaba in 2018 and that she did not like him from the beginning, and that she was not fond of him. Therefore, Tasila Tembo did not initially tell her how she related with him. Her evidence was that other people told her about Tasila Tembo and Nigel Musonda Mwaba's relationship.

2.394 She disagreed that those people lied, even though she agreed that not all information that is relayed by third parties is correct.

2.395 Sherine Peters Kantenga reiterated that Nigel Musonda Mwaba drank excessively, and that he smoked in front of her younger siblings, and that he was aggressive, cursed and he used abusive language which she found troubling. Her continued testimony, was that she thought that there was something wrong with Nigel Musonda Mwaba, which she still believed. She went on to testify that on 20th October, 2020, when Tasila Tembo opened up to her, she attributed their relationship to his behaviour, which Sherine Peters Kantenga stated was not normal.

- 2.396 She also reiterated that when Tasila Tembo visited her at school on 20th October, 2020, she had called Nigel Musonda Mwaba's boss, Lieutenant Mwape, and she had informed him that she was scared for her life due to Nigel Musonda Mwaba's behaviour.
- 2.397 Her testimony was that there was a pattern of misconduct on Nigel Musonda Mwaba's part. She stated that she had a conversation with Nigel Musonda Mwaba which had just been played in Court on his ZAMTEL cell phone. Sherine Peters Kantenga told the Court that she was unaware that there were no ZAMTEL call records which recorded the conversation which had just been played.
- 2.398 She agreed that her Infinix S5 phone had not been produced in Court, and that she had not demonstrated how the phone conversation was transmitted from her phone to the police. Sherine Peters Kantenga thereafter testified that she knew how the conversation was transmitted to the police, but that she had not produced the flash disc. It was her evidence that the Court gave back the phone to her in the previous proceedings, but it was stolen, even though she had not produced a police report to evidence the theft.
- 2.399 Whilst stating that Nigel Musonda Mwaba was the person that she had conversation with in the recording, Sherine Peters Kantenga agreed that she could not physically see him at the time, and that she did not know where he was. It was also agreed that in Order to identify a person, one needed to know their voice. Sherine Peters Kantenga agreed that she

had not told the Court how she had identified Nigel Musonda Mwaba's voice, and that she was not a voice recognition expert.

2.400 Sherine Peters Kantenga told the Court that she did not know Pastor Jimmy.

PW24-ASSAN BANDA

2.401 A police officer, Assan Banda was PW24. This witness testified that at the material time, he was based at Mazabuka police station as Deputy Criminal Investigations Officer. He explained that on 1st December, 2020, he was assigned to conduct an identification parade by his supervisor, the Criminal Investigations Officer in which the suspect was Nigel Musonda Mwaba who was facing a charge of murder.

2.402 He explained that the identification parade comprised Nine (9) men, who were of the same height, same body stature and of the same appearance. Assan Banda testified that he explained the rights to suspect, being that he was entitled to have a lawyer or a close relative present during the parade. It was testified that Nigel Musonda Mwaba opted to have his relative Bupe Musuku Kapinda of Lusaka present.

2.403 He then went on to testify, that during the parade the first witness Brian Mugala, a worker at Bwile Guest House positively identified Nigel Musonda Mwaba in the fifth position from left to right. Then thereafter, the men who were on the parade were allowed to changed their clothes, but Nigel Musonda Mwaba opted not to change his clothes, but his position on the parade.

2.404 Assan Banda told the Court that the second witness Wilfred Simundo, another worker at Bwile Guest House then, identified Nigel Musonda Mwaba who stood in position number 2 from left to right, and this witness also stated that he would be able to identify the tattoo of a snake that Nigel Musonda Mwaba had on either the left or right shoulder.

2.405 That was how Assan Banda asked the men who were on the parade to take off their shirts, and the tattoo on Nigel Musonda Mwaba's left shoulder was identified. His evidence was that after the parade was called off, he had asked Nigel Musonda Mwaba if he had any complaints, and he said that he had none. He identified Nigel Musonda Mwaba and the tattoo on the right shoulder.

CROSS EXAMINATION OF ASSAN BANDA

2.406 Assan Banda's evidence in cross examination, was that the Two (2) witnesses who identified Nigel Musonda Mwaba on the identification parade did not witness any act of murder. Rather, they identified him as the person who stayed at the Guest House in Mazabuka. He agreed that being at the Guest House, and in Mazabuka, was not a crime. Assan Banda's testimony was that he had not produced any photographs of the identification parade.

PW25-SHABANGAMBA CHOOMPO

2.407 This witness, also a police officer, who was based at Lusaka Division Criminal Investigations Department Headquarters, testified that on Wednesday, 2nd December, 2020, he took charge of a scene reconstruction in which Nigel Musonda

Mwaba, was the accused person in Room A59, at the Lusaka Division Homicide office on the 3rd floor.

2.408 The testimony that was given, was that the atmosphere in the office was conducive and free, and Nigel Musonda Mwaba was informed of his rights to legal representation, and that the process would be video recorded by a Crime Scenes Technician using a video camera. It was also stated that he was informed that the recording would be produced in Court.

2.409 Shabangamba Choompo stated that Nigel Musonda Mwaba chose to be represented by his cousin, Bupe Musuku, and Nigel Musonda Mwaba was introduced to Detective Inspector Shamapango, the Scenes of Crime Officer who explained the rights to Nigel Musonda Mwaba, and asked him if he was ready to lead him to the scene.

2.410 However, Nigel Musonda Mwaba in response objected, asking Shabangamba Choompo to rely on the statement which was in the Warn and Caution statement. He identified the accused person as Nigel Musonda Mwaba.

CROSS EXAMINATION OF SHABANGAMBA CHOOMPO

2.411 The evidence that was given in cross examination, was that Shabangamba Choompo was present during the video recording, and that Nigel Musonda Mwaba did not say that he had a misunderstanding with Tasila Tembo in the vehicle. It was also his testimony, that the interview was not recorded but the caution was recorded in the video, and Nigel Musonda Mwaba Mwaba said that he could not lead the police to the scene.

PW26-WILFRED SIMUNDO

- 2.412 It was the testimony of this witness, that he used to work at Bwile Guest House in Mazabuka in 2020 as a guard. He testified that on 26th October, 2020, he exchanged shifts at the Guest House with Keagan Simbayi, and on entering the premises, he found a man standing outside, and he greeted him. It was further his evidence that when he came out after registering with Madam Tapelesha, he found the man still standing outside.
- 2.413 Wilfred Simundo testified that the man asked him where he could buy some bread, and Wilfred Simundo gave the man directions to Kaonga market. It was further his testimony that after the man went, he returned shortly without any bread, and he informed Wilfred Simundo that he did not buy the bread as it was bad.
- 2.414 Then the man asked Wilfred Simundo where else they sold bread, and Wilfred Simundo directed him to Moonlight Bakery. Wilfred Simundo explained that man left and returned shortly, again empty handed, and he told Wilfred Simundo that he would buy lunch. His evidence was also that man asked him where Brian Mugala was, as he wanted him to wash the car, and Wilfred Simundo had responded that he could help to do so.
- 2.415 That was how the man went inside and he returned with the car keys, and he asked Wilfred Simundo how much it would cost to clean the car. Wilfred Simundo told the Court that he

had informed the man that he could give him whatever he could afford.

2.416 He described the car that he washed, as an Isuzu registration number BAG 1986, which was gray in colour. Then when he finished washing the car, he went and informed the man, and he gave him back the car keys. After, that Wilfred Simundo left to go and collect a radio from his friend.

2.417 He testified that on his return, he found the man sitting in the car, and he asked to go and withdraw money from Airtel money in town. However, Wilfred Simundo responded that he could not go, as his boss would not be happy to find him in town. It was his testimony, that the man went and he returned with some lunch and some beer called scaw, and he sat on a chair, and he started eating.

2.418 Then after he finished eating, he sent Wilfred Simundo to go and get the scaw beer, which he had put in the fridge, and he started drinking. His continued evidence was that the man slept for about One (1) hour, and then woke up and he went to sleep in the room, and that was last time that Wilfred Simundo saw him.

2.419 He went on to testify that the next day, which was 27th October, 2020, when he reported for work, he found the vehicle in the same spot. When he went inside, he had asked Madam Tepelesha where the owner of the vehicle was, as he did not pay him for washing the car. It was his evidence that Madam Tepelesha said that he had gone to conduct his business in South Africa.

- 2.420 Then, the next day around 10:00 hours, Madam Lontiya Chinkubala, had called Wilfred Simundo, and asked him if he had seen the pictures and the letter that she had sent him on WhatsApp. He told the Court that when he opened his WhatsApp, he saw a vehicle, and a man on a poster who was being sought by the police, as he had killed someone.
- 2.421 He stated that he had asked Madam Tepelesa to compare the number plate which was on the vehicle which was at the Guest House, with that which was on the picture on the poster, and they found that it was the same vehicle, registration number BAG 1986.
- 2.422 He described the picture as being that of a man and a woman on boat, and on comparing, he was of the view that the man on the picture was the same man who was staying at the lodge, and had parked the vehicle which was in the photograph at the said Guest House. That was how Lontiya told Wilfred Simundo to and report to the police, and he did so in the company of Brian Mugala.
- 2.423 His testimony was that the police went to the Guest House and they went to the room where the man was staying in before they impounded the vehicle. He stated that in December, 2020, police called him and asked him if he could identify the man who had left the vehicle. Wilfred Simundo testified that he was able to identify the man as he spoke with him.
- 2.424 He further stated that at Mazabuka police, he identified the man on the identification parade in position 2 from his left,

stating that he spent time with him, when he gave him the car keys so that he could wash the vehicle, and he was wearing a vest, and he had informed the police that the man had a tattoo of a snake on his right shoulder.

2.425 Wilfred Simundo identified Nigel Musonda Mwaba as the person who went to the Guest House with the vehicle, Isuzu registration number BAG 1986. He further identified the tattoo on Nigel Musonda Mwaba's right shoulder after he was asked to take off his shirt.

2.426 With reference to the photographic album 'PW4, Wilfred Simundo's testimony was that he was in the picture at page 5 where he had identified Nigel Musonda Mwaba on the identification parade, and that at page 7, he had identified the tattoo which was on Nigel Musonda Mwaba's shoulder.

2.427 He also identified a picture of the vehicle Isuzu BAG 1986 in 'P3'.

CROSS EXAMINATION OF WILFRED SIMUNDO

2.428 This witness was not cross examined.

PW27-PATRICK KALUMBA CHANGWE

2.429 The last witness who was called by the State was Patrick Kalumba Changwe a police officer. His testimony was that as at 2020, he was based at Simon Mwansa Kapwepwe Police Station. His testimony that on 27th October, 2020, he was assigned to investigate a report of abduction which was reported on 24th October, 2020.

2.430 He stated that the details of the report, alleged that Dr Tasila Tembo was taken by her boyfriend Nigel Musonda Mwaba

using her Isuzu motor vehicle, registration number BAG 1986 which was gray in colour in suspicious circumstances. He further stated that this was witnessed by Dr Tasila Tembo's young brother, Lonjezo Tembo.

2.431 Therefore, Patrick Kalumba Changwe interviewed witnesses, among them Lonjezo Tembo, and he visited Total Filling Station in Ibex Hill along Main Street where on interviewing the witnesses, he retrieved CCTV footage which confirmed Lonjezo Tembo's statement.

2.432 Further in his evidence, Patrick Kalumba Changwe testified that he sent messages to all police stations, to be on the look out for Dr Tasila Tembo and Nigel Musonda Mwaba together with the vehicle. It was also his testimony that they got in touch with the National Road Fund Agency which is in charge of toll gates in the country, to query their toll gates, with a positive report being given, that the vehicle had passed through the Shimabala toll gate on 24th October, 2020, heading south.

2.433 In his continued testimony, Patrick Kalumba Changwe stated that on 28th October, 2020, information was received by Woodlands Police, that a dead body of a female had been found in Mikango area. Thus, a Scenes of Crime Officer at Woodlands Police processed the scene and he sent photographs of the deceased, whose description matched Dr Tasila Tembo, by virtue of the clothes that she was last seen wearing.

- 2.434 His evidence was that Dr Tasila Tembo's relatives were contacted, and he accompanied them to Woodlands Police Station, and they identified that body as that of Tasila Tembo on looking at the photographs. Patrick Kalumba Changwe testified that arrangements were made to conduct a post mortem, which was done on 28th October, 2020 at UTH by Doctor Muchelenganga, after the body was exhumed from Mikango area at an unmarked grave, where the relatives in the company of the police had identified the body.
- 2.435 He told the Court that the postmortem report showed that Dr Tasila Tembo died due to impact trauma to the head due to assault, and that the manner of death was homicide.
- 2.436 It was also Patrick Kalumba Changwe's evidence, that investigations for murder were instituted, and he submitted warrants to the network service providers to search the phone numbers for Dr Tasila Tembo being 0979145009 and 0955145009 as well 0954023644, 0972600401 and 0962080294 for Nigel Musonda Mwaba.
- 2.437 He testified that the printouts from Airtel and MTN mapped the location of where the phones were going, and they followed through with a location of Ibex Hill Service Station to Mikango Barracks where the body was found to Mazabuka, passing through the Shimabala Toll Plaza.
- 2.438 Patrick Kalumba Changwe went on to testify that a message was sent to look for the vehicle and to locate Nigel Musonda Mwaba to all police stations. He stated that feed back was obtained through a message from Mazabuka Police Station,

stating that they had recovered the vehicle Isuzu registration number BAG 1986 from a guest house.

2.439 Accordingly, arrangements were made to go and recover the vehicle from Mazabuka police station, and it was handed over to Patrick Kalumba Changwe. Then on 28th November, 2020, he was informed that Nigel Musonda Mwaba had been apprehended and he was detained at Central Police Station. He testified that on 30th November, 2020, he went to Central Police Station and there Nigel Musonda Mwaba informed him that he needed his lawyer to be present during the interview.

2.440 It was stated that Nigel Musonda Mwaba's lawyer, Willa Mutofwe was present on 1st December, 2020 when Nigel Musonda Mwaba was interviewed in connection with the murder of Dr Tasila Tembo under Warn and Caution. Patrick Kalumba Changwe also testified that prior to interviewing Nigel Musonda Mwaba, he had prepared a pre-interview certificate which he went through with Nigel Musonda Mwaba, which reiterated that Nigel Musonda Mwaba was interviewed in the presence of a lawyer of his choice, and that he had had private consultation with his lawyer before he gave a statement.

2.441 He identified the pre-interview certificate as an extract from his police notebook at pages 5-9, and it was marked as 'ID24'. He produced it and it was marked 'P24'. The testimony that was given was that at page 8 of 'P24', it was recorded that the lawyer who was present was Willa Mutofwe. Patrick Kalumba Changwe also identified the warn and caution statement for

Nigel Musonda Mwaba, and it was marked 'ID25' for identification.

2.442 His evidence was that the Warn and Caution statement was given in an environment which was friendly, and that Nigel Musonda Mwaba was seated comfortably on a seat next to his lawyer, in a well-ventilated room, and there was enough light.

2.443 It was also his testimony that Nigel Musonda Mwaba was not forced to speak but rather, that he did so freely and without any interruption, after he was informed that he was not obliged to say anything. The Warn and Caution statement was produced and marked 'P25'.

2.444 Continuing with his evidence, Patrick Kalumba Changwe stated that on the same 1st December, 2020, they proceeded to Mazabuka with Nigel Musonda Mwaba, where an identification parade was conducted, at which Nigel Musonda Mwaba, was identified as the person who drove a vehicle to Bwile guest house, and he left it there.

2.445 Then on return to Lusaka, Nigel Musonda Mwaba was on 2nd December, 2020 interviewed with respect to scene reconstruction, but he declined to proceed with the said scene reconstruction, stating that he would rely on the statement that he had earlier given, after Inspector Choompo conducted the interview which was video recorded.

2.446 Patrick Kalumba Changwe told the Court that on 3rd December, 2020, after he reviewed the evidence that had been gathered, he made up his mind to charge and arrest him for the offence of murder.

- 2.447 He stated that during his investigations, he received a Vivo cell phone which was found with Nigel Musonda Mwaba, and it was submitted together with Four (4) other phones which belonged to the witnesses to the Forensic Department for analysis. Patrick Kalumba Changwe's testimony was that reports were generated, which showed extracts of WhatsApp message conversations, audio conversations, videos and pictures which were obscene in nature.
- 2.448 He told the Court that the Vivo phone and the motor vehicle were produced before the Court in the previous proceedings and they were handed back to the owners. 'ID1' was identified as the report which the National Road Fund Agency produced after it queried the toll system for the vehicle BAG 1986. He produced it, and it was marked 'P1'.
- 2.449 On identifying Nigel Musonda Mwaba as the person that he charged and arrested, Patrick Kalumba Changwe testified that he was not satisfied with Nigel Musonda Mwaba's response as he agreed that he hit Dr Tasila Tembo, and that she was eventually found dead, but he did not give any justification for her death, and he did not state any efforts that he made to save her life.
- 2.450 He also stated that there were no records on the Cell Z line but the Airtel Network captured the Cell Z calls which were made during the period, an indication that there was a technical problem with Cell Z.
- 2.451 With reference to 'P9', 'P10' and 'P11', Patrick Kalumba Changwe testified that the call records 'P11' from Airtel

showed the phone number 0954023644 on 24th October, 2020 at 05:42 hours, and at 05:44 hours. He stated that 'P11' was for records for Dr Tasila Tembo's phone number 0979154009. Patrick Kalumba Changwe's evidence was that the phone number 0954023644 was registered in Nigel Musonda Mwaba's name, and it called 0979154009 which was registered in Dr Tasila Tembo's name.

CROSS EXAMINATION OF PATRICK KALUMBA CHANGWE

- 2.452 When cross examined, Patrick Kalumba Changwe told the Court that he did not say that the call records showed that Sherine called Nigel Musonda Mwaba around 05:42 hours. He clarified that there was a call, but not at that time. It was also his testimony, that there were no records at Cell Z, which may have been an indication that the line was not in use. However, the records at Airtel showed that the phone number 0954023644 which was for Nigel Musonda Mwaba was active.
- 2.453 The evidence that Patrick Kalumba Changwe further gave in cross examination, was that Sherine's phone was not submitted for call records. He agreed that ZAMTEL indicated that no call records were found, and that no calls were made.
- 2.454 Still on Sherine, Patrick Kalumba Changwe stated that she called Nigel Musonda Mwaba around 14:01 hours and not in the morning. He stated that Lonjezo Tembo was the only eye witness to Nigel Musonda Mwaba having taken away Dr Tasila Tembo in suspicious circumstances on 24th October, 2020.
- 2.455 He could not confirm that Dr Tasila Tembo and Nigel Musonda Mwaba agreed to leave Lonjezo Tembo or that

around 23:00 hours, Dr Tasila Tembo had called Lonjezo and had told him that everything was okay, and that she would return. It was agreed that Dr Tasila Tembo and Nigel Musonda Mwaba had on and off quarrels.

2.456 Patrick Kalumba Changwe also agreed that in one of the WhatsApp messages, Dr Tasila Tembo had conferred with her cousin, in which she had stated that Nigel Musonda Mwaba had a mental disorder. He further admitted that Dr Tasila Tembo was a medical doctor, and that she was scared of Nigel Musonda Mwaba's mental disorder. However, she appreciated their bedroom life.

2.457 It was admitted that in the Warn and Caution statement, Nigel Musonda Mwaba did not say that he murdered Dr Tasila Tembo, but he gave an explanation as to what happened, stating that there was a fight as they drove on Leopards Hill Road.

2.458 Patrick Kalumba Changwe testified that he was unaware that the fight was because Nigel Musonda Mwaba discovered that Dr Tasila Tembo had been sending nude pictures of herself to Pastor Jimmy. Nevertheless, he was aware that Dr Tasila Tembo took nude pictures of herself which she sent to Nigel Musonda Mwaba, as his phone was subjected to forensic examination.

2.459 His testimony was that Dr Tasila Tembo's phone was never found, and therefore, he would not know whether she sent nude pictures of herself to other people, including Pastor Jimmy. It was his evidence that Nigel Musonda Mwaba told

him that Dr Tasila Tembo jumped off the vehicle during the quarrel. He stated that he was not sure where she landed, but his testimony was that landing on a tarmac may cause blunt impact trauma.

2.460 It was agreed that there is no obligation on an accused person to lead the police to a crime scene. Patrick Kalumba Changwe testified that in the Warn and Caution, Nigel Musonda Mwaba stated that after Tasila Tembo lost consciousness, he was confused and he drove around. Agreement was made, that a confused person could behave unreasonably, but that it was unreasonable to leave the body in Mikango, and not report to the police.

2.461 Still in cross examination, Patrick Kalumba Changwe told the Court that Nigel Musonda Mwaba drove the Isuzu registration number BAG 1986 to Mazabuka, adding that it was crime, as the vehicle was not his, and it was not given to him. Notwithstanding, Patrick Kalumba Changwe's evidence was that he was not aware if Nigel Musonda Mwaba was allowed to go with the vehicle. He stated that driving is not a crime.

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

3. EVIDENCE BY THE DEFENCE

DW1-DR PATRICK MSONI

3.1 The first witness who was called by the defence was Dr Patrick Msoni, a Consultant Psychiatrist. He began his testimony by running the Court through his qualifications, testifying that he held a Bachelor of Science Degree in Human Biology, a Bachelor of Medicine and Surgery which he obtained from the

University of Zambia, and a Diploma in Psychiatry which he obtained from the University of Manchester.

- 3.2 As to his experience, Dr Patrick Msoni testified that he had been practicing as a Consultant Psychiatrist for the past Thirty-Five (35) years.
- 3.3 He identified the medical report for Nigel Musonda Mwaba and it was marked 'DDI'. On production, it was marked 'D1'. In respect of how he came up with the report, told the Court that he interviewed Nigel Musonda Mwaba, so that he could get his history and he also interviewed Nigel Musonda Mwaba's relatives, and he made a diagnosis that Nigel Musonda Mwaba has borderline personality disorder.
- 3.4 He explained that the disorder usually starts in childhood with irritability, mood changes and anger and thereafter, it proceeds to unstable interpersonal relationships and outbursts of anger, and that violence may ensue. He attributed the main factor of the disorder to disturbance in the relationship between the parents and the individual, and it spreads to siblings and children at school, with the causal factor being stated, as being the environment.
- 3.5 After Counsel for the defence advised the doctor that he could proceed to divulge the information which was contained in the medical report as Nigel Musonda Mwaba, when the doctor said that the information contained in the report was confidential, Dr Patrick Msoni went on to testify that he obtained collateral history from Nigel Musonda Mwaba's mother, who stated that his childhood was characterized by a

turbulent relationship his step father. It was stated that Dr Patrick Msoni established that Nigel Musonda Mwaba's father died in 2001, and his mother re-married and that Nigel Musonda Mwaba has two half siblings.

- 3.6 He explained that Nigel Musonda Mwaba's mother described his step father as distant to Nigel Musonda Mwaba, self centred and rejecting, and that he was not interested in the affairs of his step children. Therefore, Nigel Musonda Mwaba was brought up in that environment since 2000.
- 3.7 Further on the disorder, Dr Patrick Msoni testified that it was classified as Statistical Diagnostic Manual (DSM) Five, being borderline personality disorder, which was characterized by unstable interpersonal relationships, variable moods and impassivity.
- 3.8 It was further his testimony, that once established, the disorder is always there, and it does not suddenly disappear, but it continues throughout the life of a person. He stated that internationally, there is no treatment for the disorder, but it can be alleviated by use of cognitive behavioural therapy and psychotherapy. He added that treatment takes long, and that one who is diagnosed with the disorder can live in society, and they need to be observed over time.
- 3.9 Further evidence was given, that one who is diagnosed with the disorder can be treated in the community or at an institution, as long as strict observation is undertaken. Dr Patrick Msoni testified that it would be difficult to state in what circumstances one may be confined, as they would have

to be in the community, and be observed, before institutional care is advised.

- 3.10 As for Nigel Musonda Mwaba, his evidence was that in his assessment, he could be treated in society. With reference to the medical report 'D1', Dr Patrick Musoni told the Court that he was given only One (1) opportunity to interview Nigel Musonda Mwaba, and he did not show remorse which was part and parcel of borderline personality disorder, adding that it was a manifestation of the disorder.

CROSS EXAMINATION OF DR PATRICK MSONI

- 3.11 Dr Patrick Msoni testified that the medical report 'D1' stated that Nigel Musonda Mwaba was born on 20th May, 2020. He clarified that it was an error, as on the first page, his age was indicated as Thirty-Three (33) years. His testimony was further that the environment is a major factor in borderline personality disorder.
- 3.12 He stated that he did not interview Nigel Musonda Mwaba's siblings or his school mates, but he only interviewed his mother. Dr Patrick Msoni agreed that it was important to interview Nigel Musonda Mwaba's siblings and school mates as people do not come forward to give information. He concluded the cross examination, by stating that a person who is suffering from borderline personality disorder will appreciate the consequences of their actions.

DW2-NIGEL MUSONDA MWABA

- 3.13 In his defence, Nigel Musonda Mwaba testified that he met Tasila Mercy Tembo around the late 2017 going into 2018, in the work circles, after he was deployed in an area which she was responsible for. He told the Court that Tasila Tembo was a Public Health Specialist, who was in charge of Zone D, being Chelstone, PHI and the surrounding areas.
- 3.14 It was further Nigel Musonda Mwaba's evidence, that during that period, Zambia had a cholera outbreak and a threatened state of emergency was declared by the President and Tasila Tembo was overseeing the health workers, while he was overseeing the military personnel.
- 3.15 Nigel Musonda Mwaba stated that he started dating Tasila Tembo, and that their relationship had ups and downs just like any other couple. He further stated that a few months into the relationship, they sat down and agreed due to logistical issues that had between them, to move in together. It was stated that initially, the idea was that Tasila Tembo moves in with him, but she vehemently refused, as she had a bigger family, and she was taking care of her mother.
- 3.16 Thus, it was resolved that Nigel Musonda Mwaba moves in with her, and he abandoned his house.
- 3.17 Then in 2020, on a date that he did not recall, Tasila Tembo got a job with Equip Zambia, an NGO, and she moved to Kasama, and Nigel Musonda Mwaba remained with Tasila Tembo's mother and her children. He testified that later, they planned a trip to South Africa with both their children, firstly

to grow their business which they had started, and secondly because after Tasila Tembo's last child, she had undergone a medical procedure which was semi permanent, and she wished to undo the tubal ligation, as she wanted to have a baby. However, being advanced in age, no one was willing to undo the procedure in Zambia.

- 3.18 Therefore, they sought an IVF clinic in South Africa, to undo the tubal ligation, and they were successful and they returned to Zambia, with all the children except one, being Sherine Peters, who did not travel with them to South Africa.
- 3.19 On what business they were doing, Nigel Musonda Mwaba's testimony was that they were selling health products and that they would put money into the business at the month end, and depending on the profits that they made, they would pump in more money.
- 3.20 Continuing with his defence, Nigel Musonda Mwaba stated that as his supervisor was aware that Tasila Tembo was working in Kasama, he assigned him a task in Mbala, Northern Province a few weeks before 24th October, 2020, where he was training Drug Enforcement Officers at the Special Forces Training School in Mbala.
- 3.21 It was stated that the business that himself and Tasila Tembo were doing, had gone down terribly, and they owed quite some amount of money. Thus, they sold Two (2) of his vehicles and they remained with One (1) vehicle. He testified that on completing his task in Mbala, he returned to Lusaka.
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- 3.22 Nigel Musonda Mwaba's continued evidence, was that whilst he was in Mbala, he was provided with accommodation, which included a spouse, and over the weekends he would travel to Kalambo Falls with Tasila Tembo.
- 3.23 Therefore, he denied having gone to Kasama to threaten Tasila Tembo when she said that she would end the relationship. He further told the Court that he had informed Tasila Tembo that he was going to her house in Kasama, and she was scheduled to return to Lusaka with him, and he had to write a report to his supervisors. It was his evidence that on that basis, they had timed that they would travel together. Nigel Musonda Mwaba testified that the house in Kasama was quite small, and that it was a temporal place.
- 3.24 Thus, when he was in Kasama, they would take the children to a lodge called Gracewood, which was owned by a friend, so that space could be created in the house.
- 3.25 It was Nigel Musonda Mwaba's continued defence, that he gave the report to his supervisors in Kasama, and the next day he travelled to Lusaka with Tasila Tembo and her brother Lonjezo Tembo, adding that Tasila Tembo travelled to attend a workshop in Lusaka with Equip Zambia.
- 3.26 Over their relationship, Nigel Musonda Mwaba's evidence was that he was unaware that Tasila Tembo had travelled to Lusaka to end the relationship with him. He testified that they had their differences, but not to that extent. He further testified that they had a small accident at a Filling Station in
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Mpika, as he accidentally rammed into a pillar there, and Tasila Tembo was not happy about that.

- 3.27 Nigel Musonda Mwaba stated that the problem was sorted out on arrival in Lusaka. He continued testifying, stating that in the following week, he was assigned to be part of an officers' selection, and they worked very long hours. Therefore, when he knocked off before Tasila Tembo, he would pick her up, and if he worked late, she would pick him up.
- 3.28 It was his evidence, that on 23rd October, 2020, they were scheduled to go for prayers, and as he knocked off early, he found his way home, and she proceeded for prayers. Nigel Musonda Mwaba's testimony, was that he went to sleep after he ate, and that Tasila Tembo went home between 21:30 hours and 22:00 hours.
- 3.29 He told the Court that she woke him up, and she informed him that a friend who was in the car business, had agreed to give them a small vehicle at a fee, and they had agreed to put the big vehicle on hire, so that they could bring in more money.
- 3.30 He added that Tasila Tembo had insisted that the vehicle be picked up that very day, as the person who was to rent the vehicle had been found, and they were ready to pay, and it would be going in the morning. The testimony that Nigel Musonda Mwaba further gave, was that secondly, Tasila Tembo would go back to Kasama the next morning with the team from Equip Zambia, and Nigel Musonda Mwaba would remain with the small vehicle, so that he could take the

children to school and Tasila Tembo's sick mother to the hospital.

- 3.31 Thus, Nigel Musonda Mwaba woke up, and he invited Lonjezo Tembo, who was scheduled to travel to Kasama with Tasila Tembo to go with them. Then after Tasila Tembo asked him who would drive after jumped into the passenger's seat, Nigel Musonda Mwaba got into the driver's seat, and he drove the vehicle to Ibex Filling Station, but the gentleman, who was supposed to take the vehicle for hire was not there.
- 3.32 His testimony was also that he sent Lonjezo Tembo to go and buy bread at the quick shop at Total Filling Station, and when Lonjezo Tembo returned, Nigel Musonda Mwaba decided that he wanted drinks, and he sent Lonjezo Tembo to go and buy alcoholic drinks. Then at that point, Tasila Tembo's phone rang, and the person who was calling was Pastor Jimmy who he had earlier raised eye brows, as months earlier, Nigel Musonda Mwaba had suspected infidelity with him, as he would call Tasila Tembo around 22:00 and 23:00 hours, just like on that night.
- 3.33 His evidence was that Tasila Tembo had answered the phone saying that she would call him back, and she cut the line. He explained that the car was designed in such a way that when that when a device was connected to the speaker, he could pick up everything that was being said.
- 3.34 The continued defence was that Tasila Tembo cut the line as there was an incoming call from the person who was bringing the vehicle, and Tasila Tembo told Nigel Musonda Mwaba that
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they should drive off as they could not have the conversation when Lonjezo Tembo was around, as Nigel Musonda Mwaba was interrogating Tasila Tembo over why the calls had continued late in the night.

- 3.35 He testified that they drove off, and they slowed down around Crossroads, after he had asked Tasila Tembo where the person who was bringing the vehicle was coming from. It was stated that Tasila Tembo stated that he would be coming from either New Kasama or Leopards Hill Road.
- 3.36 Nigel Musonda Mwaba stated that Tasila Tembo's phone rang on WhatsApp, and he insisted that she should pick up the call, and she responded that he should pick up the call if he wanted, and she answered the phone and she gave it to him. However, when Nigel Musonda Mwaba got the phone and he put it to his ear, it cut.
- 3.37 He further testified that the phone was unlocked, and he went to the name and media for Pastor Jimmy, and he copied everything, that is the pictures and videos, and he forwarded them to himself, and the pictures and videos started sending to his phone, which he put on the right side of the vehicle. In the meantime, Tasila Tembo said that they should move slowly and follow the person who was coming with the vehicle.
- 3.38 Then when Tasila Tembo noticed that Nigel Musonda Mwaba was transferring the media from her phone to his, she had asked for her phone. It was Nigel Musonda Mwaba's testimony, that he had asked her why she was panicking and if there was a problem. He then put down her phone, and he

picked up his, so that he could see what had been sent and Tasila Tembo said that he should not open as some things should just be left.

- 3.39 Nigel Musonda Mwaba testified that there was pulling and tugging in the vehicle, as Tasila Tembo tried to get her phone. His evidence was that he saw a combination of different pictures of nude materials and videos, which were exchanged between Tasila Tembo and Pastor Jimmy, of Tasila Tembo and Pastor Jimmy.
- 3.40 Further in his defence, Nigel Musonda Mwaba said that two or three of the videos were also sent to him by Tasila Tembo and that for the ones that he sent to his phone, he was seeing for the first time. Thus, after he saw the first video he had asked Tasila Tembo how many they were, and she was trying to get her phone, and she succeeded as he could not let go of the steering wheel with both hands.
- 3.41 It was also his testimony, that his right hand held the wheel and Tasila Tembo struck him with an object that he did not know, on his lower abdomen, and he realised later that he was a bleeding, and he later had a small scar there. Nigel Musonda Mwaba showed the Court a small scar on the left side of his abdomen.
- 3.42 Still in his defence, Nigel Musonda Mwaba's evidence was that when Tasila Tembo tried to grab the phone, he hit her with his left hand on her facial area, and on the second attempt, she managed to leap, and she grabbed the phone and she opened the door and jumped out of the vehicle, after the State

Lodge junction where there is a depression on Leopards Hill Road.

- 3.43 His testimony was that they were moving at a speed of 80-90 kilometers per hour, and when he heard a thump sound, he immediately stopped the vehicle and he went and found Tasila Tembo kneeling down a few meters on the lawn on the side of the road. That was how he had helped her into the vehicle, and she limped inside as he held her.
- 3.44 Nigel Musonda Mwaba testified that he drove slowly, and he turned on the lights inside the vehicle. When he asked her why she had done something like that, Tasila Tembo did not answer, but she dropped the sunscreen with the mirror and Nigel Musonda Mwaba noticed that some blood was coming out. Then Tasila Tembo asked for some water and there was none in the vehicle.
- 3.45 Nigel Musonda Mwaba's testimony was that he recalled that they had bought drinks at the Filling Station which were in the glove compartment, and he opened one and he gave it to her. His testimony was that Tasila Tembo put some drink in her mouth, and she gurgled it, and she opened the window and she spat it out. She told Nigel Musonda Mwaba that she needed to go to the hospital as she was hurt, and she was failing to open her mouth, and she was struggling to speak.
- 3.46 He told the Court that he estimated that the nearest hospital to them was Mikango hospital, and he increased the speed of the vehicle and asked Tasila Tembo what was happening but she did not respond, and she was leaning on the door side.
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The testimony that was given, was that Nigel Musonda Mwaba shook Tasila Tembo on her thigh and her shoulder and he stopped by the road side, and he went out of the vehicle. When he opened the door by her side, Tasila Tembo fell out, and he carried her out of the vehicle, and he put her on the ground.

- 3.47 After checking her pulse, he found that she had none, and he sat there for sometime, before he went back to the vehicle and he left her by the road side off the steep slopes about a metre away, and drove back and forth. Nigel Musonda Mwaba added that the body was not covered and he eventually drove to Southern Province in panic.
- 3.48 His evidence was that he drove to Mazabuka and Chirundu as he did not know what to do, as he did not anticipate that death would happen.
- 3.49 Then when he thought of returning to account for what had happened, he went to Memorial Park to pay his last respects to Tasila Tembo, after he called his colleague, Captain Chongo, as military protocol demands that before going to the police, military police is informed, so that they accompany one there.
- 3.50 His evidence was that as he did not know where her grave was, he went to the Reception, where he was shown where the grave was. Nigel Musonda Mwaba's testimony was that he went to Spar to buy flowers, but there were none, and he went and spent time at the grave. Then as he headed to the Reception, a military vehicle drove into the cemetery and he was apprehended.
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- 3.51 The explanation that was given, was that Nigel Musonda Mwaba did not take Tasila Tembo to the hospital, as he panicked and he did not know what to do, as everything happened very quickly. He reiterated that his relationship with Tasila Tembo had its ups and downs, with good and bad moments, some which were shared with Mulubwa.
- 3.52 Nigel Musonda Mwaba testified that he cherished Mulubwa as he met her even before the families met. He added that Mulubwa did not say that Tasila Tembo had said to her that a lot of money had been borrowed.
- 3.53 It was Nigel Musonda Mwaba's testimony, that the message did not sit well with him, as the over K350, 000.00 which was owing, was borrowed for the children. He stated in respect of the second and third messages, that he would never call Tasila Tembo a female, and that he would not have sent the third message.
- 3.54 Further in his defence, Nigel Musonda Mwaba testified that a month passed after the issues arose in September, and they were resolved, and that the message that Carol had referred to, was in relation to the issues over money.
- 3.55 He also stated that if discipline was being cruel, then Chilima needed panel beating. Nigel Musonda Mwaba stated that he would speak with Chilima, and that on some mornings, he did raise his voice, when Chilima was intoxicated.
- 3.56 It was further his evidence, that himself and Tasila Tembo agreed that Chilima was a security risk, and that Tasila Tembo was adamant in getting rid of Chilima. Therefore, they
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agreed that Chilima finds accommodation away from the property. Nigel Musonda Mwaba denied having been cruel to Chilima.

- 3.57 As for Lonjezo Tembo, Nigel Musonda Mwaba testified that he had testified that they left him at the Filling Station, and that he called his friend to go and pick him up. Nigel Musonda Mwaba however testified that they were in touch with Lonjezo Tembo, and they told him that they would pick him up when they collected the vehicle.
- 3.58 In respect of Colonel Elias Zulu, his evidence was that he had never been deployed in any capacity where he had to relate with Colonel Elias Zulu, except during the 2018 State of Emergency. He denied having communicated with him on his mobile phone.
- 3.59 As regards his mental issues, Nigel Musonda Mwaba testified that most times he did not discuss the same with Tasila Tembo, but when they did, she had suggested that they seek help from her colleagues at Chainama Hospital, and he had reacted, asking her if she thought he was crazy. Tasila Tembo had however stated that it would be good for them, and Nigel Musonda Mwaba was open to the idea, even though it was not discussed further.
- 3.60 He denied having spoken to Sherine Peters Kantenga at any point, and Nigel Musonda Mwaba testified that their relationship was not as it should have been. He added that Sherine Peters Kantenga rarely called him, and on that specific day, his Airtel and MTN lines were active.

- 3.61 Nigel Musonda Mwaba explained that the ZAMTEL line although it was registered in his name, was ZAMTEL property and it was usually inactive, except for work. He did not understand why Sherine Peters Kantenga had testified that he spoke with her.
- 3.62 Nigel Musonda Mwaba concluded his defence by stating that Tasila Tembo was a wonderful person, and that he spent a lot of time with her. It was his testimony, that he felt bad about what had happened, adding that it would stick with him for the rest of his life. Nigel Musonda Mwaba further testified he felt bad not having Tasila Tembo around, and that he knew that if he returned, it would bring closure for everything that had happened.

CROSS EXAMINATION OF NIGEL MUSONDA MWABA

- 3.63 Nigel Musonda Mwaba's evidence in cross examination, was that he was in a relationship with Tasila Tembo for about Three (3) years. He also agreed that Tasila Tembo got a job with Equip Zambia, and that she was posted to Kasama. It was agreed that Nigel Musonda Mwaba heard Carol Simfukwe's testimony that he followed Tasila Tembo to Kasama, as she had threatened to end the relationship.
- 3.64 Nigel Musonda Mwaba denied having threatened Tasila Tembo, stating that he was assigned to go and train Drug Enforcement Officers in Mbala, even though he had not produced any documents to evidence so. It was his evidence that he would not call his boss to testify.

- 3.65 Further in cross examination, Nigel Musonda Mwaba agreed that himself, Tasila Tembo and Lonjezo Tembo travelled from Kasama to Lusaka in an Isuzu registration number BAG 1986, which was owned by Tasila Tembo. He admitted that on 23rd October, 2020, he drove to the filling station in Ibex Hill with Tasila Tembo and Lonjezo Tembo in the said Isuzu motor vehicle, and that there, he had asked Lonjezo Tembo to go and buy him alcohol in the quick shop.
- 3.66 Nigel Musonda Mwaba agreed that he drove off with Tasila Tembo, leaving Lonjezo Tembo at the filling station, and that he was with Tasila Tembo when he drove to Crossroads and Mikango area. He stated that he was injured on the waist and he bled, although he had not produced any medical report to show so.
- 3.67 It was Nigel Musonda Mwaba's testimony, that he loved Tasila Tembo very much, and that he panicked, and he did not take her to the hospital, but he drove to Mazabuka. His testimony was that he transferred the media files from Tasila Tembo's phone, and that the videos and pictures were already before Court, so he did not produce them, adding that a Forensic Expert transferred them from his phone.
- 3.68 Nigel Musonda Mwaba agreed that he did not watch any video of Tasila Tembo and Pastor Jimmy before Court, and that in the video in 'P14', Tasila Tembo mentioned his name.
- 3.69 Still in cross examination, Nigel Musonda Mwaba agreed that he hit Tasila Tembo on the face, and his position was that thereafter, Tasila Tembo grabbed the phone, and she jumped

off the vehicle. On being referred to the post mortem report 'P6' at page 5, Nigel Musonda Mwaba testified that the cause of death was blunt impact trauma to the head.

3.70 His evidence was that he hit Tasila Tembo on her head.

RE-EXAMINATION OF NIGEL MUSONDA MWABA

3.71 In re-examination, Nigel Musonda Mwaba clarified that his movements to Kasama, Mbala and Lusaka were accounted for by the witnesses, including Carol Simfukwe and Lonjezo Tembo. He also stated that he sent a lot of videos from Tasila Tembo's phone to his phone, but Tasila Tembo had earlier sent him videos, and he had asked her how many they were.

3.72 Clarification was also given, that Nigel Musonda Mwaba saw some videos for the first time from Pastor Jimmy and that the one which was played was on his phone, and it was quite old.

3.73 That marked the close of the case for Nigel Mwaba Musonda.

4. DECISION OF THIS COURT

4.1 I have considered the evidence and the submissions.

FACTS NOT IN DISPUTE

4.2 It is not in contention that the accused person, Nigel Musonda Mwaba and the late Tasila Tembo were in a relationship and they lived together in Lusaka at Tasila Tembo's house, before Tasila Tembo got a job with Equip Zambia, and she was posted to Kasama where she worked from. The facts which are also common cause, are that Nigel Musonda Mwaba continued living in Tasila Tembo's house in Lusaka.

4.3 It is also not in contention, that Nigel Musonda Mwaba travelled to Kasama from Lusaka around the 17th October,

2020, and that he travelled back to Lusaka on 18th October, 2020 with Tasila Tembo and her brother Lonjezo Tembo in an Isuzu motor vehicle, registration number BAG 1986 which was gray in colour.

- 4.4 The facts which are further common cause, are that on the night of 23rd October, 2020, Nigel Musonda Mwaba whilst driving the Isuzu motor vehicle went to a Total Filling Station in Ibex Hill with Tasila Tembo and Lonjezo Tembo. Also, not in dispute, is that Nigel Musonda Mwaba drove off from the Filling Station with Tasila Tembo leaving Lonjezo Tembo there.
- 4.5 It is not in dispute that some Three (3) days later Tasila Tembo was found dead in Mikango area. It is common cause that the Isuzu motor vehicle registration number BAG 1986 was recovered at Bwile Lodge in Mazabuka.
- 4.6 It is not in contention that Nigel Musonda Mwaba was apprehended at Leopards Memorial Park Cemetery on 28th November, 2020.

FACTS IN DISPUTE

- 4.7 It is in dispute whether Nigel Musonda Mwaba did kill Tasila Tembo.

ANALYSIS

- 4.8 Murder is defined in **Section 200 of the Penal Code, Chapter 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.”

4.9 **Section 204 of the Penal Code** stipulates what constitutes *malice aforethought* as:

“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.”

4.10 Therefore, in Order to prove the case against Nigel Musonda Mwaba, it must be proved beyond all reasonable doubt that he, with malic aforethought killed Tasila Tembo.

4.11 The testimony as given by Lonjezo Tembo who testified as PW13 this matter, shows that after himself, Tasila Tembo and Nigel Musonda Mwaba travelled to Lusaka from Kasama on

18th October, 2020, they had left him at his home in Avondale. Then on 23rd October, 2020, Tasila Tembo had called him around 21:30 hours, and he met her at Beatrice Sokontwe's house. It was further his testimony, that after spending sometime at Beatrice Sokontwe's house, they left for Tasila Tembo's house in Meanwood, and they arrived there around 24:40 hours.

- 4.12 Lonjezo Tembo testified that just as they entered, Nigel Musonda Mwaba went into the living room, and he had informed them that he needed a lift to go to Total Filling Station to go and collect a car, and that Lonjezo Tembo should accompany them. That was how they went to Total Filling Station, and Nigel Musonda Mwaba sent him to buy Four (4) bottles of Castle lite beer in the quick shop there, and when he returned, Nigel Musonda Mwaba sent him to buy Two (2) loaves of bread.
- 4.13 When Lonjezo Tembo bought the bread and he went out of the quick shop, he found that Nigel Musonda Mwaba had driven off with Tasila Tembo. That was how he started waiting for them, after he had called Nigel Musonda Mwaba who informed him that they would return soon. Then after Thirty (30) minutes, Tasila Tembo had called him and she equally told him that they would return soon.
- 4.14 Lonjezo Tembo also in his evidence, stated that he waited for about Two (2) hours and Thirty (30) minutes and he called his friend Zebron Chola who went and picked him up. He further stated that he had called Nigel Musonda Mwaba to go and pick

him from Avondale, and Nigel Musonda Mwaba had responded saying that he was going to Mikango Barracks to pick up a car, and he would go and pick him up.

- 4.15 When Lonjezo Tembo called Tasila Tembo around 06:00 hours to find out what time they would start off for Kasama her phone was off, and so was Nigel Musonda Mwaba's phone.
- 4.16 The testimony that is on record, shows that Pheddy Miti, who was PW22, and an aunt to Tasila Tembo, testified that on 23rd October, 2020, Tasila Tembo had called her using Mulubwa's phone, stating that she did not want her manfriend, Nigel Musonda Mwaba, but he had said that if he could not have her, no one else would, and she would die. She also stated that Tasila Tembo has asked her to go and speak with Nigel Musonda Mwaba to release her.
- 4.17 Her evidence was further that Tasila Tembo sent her Isuzu vehicle to go and pick her up, which was being driven by her nephew Mulubwa Zulu, and when Pheddy Miti arrived at Tasila Tembo's house around 17:30 hours, she did not find her. She stated that as she was tired she had gone to sleep and she had asked the maid to wake her up when Tasila Tembo went home.
- 4.18 It was stated that when Pheddy Miti woke up around 00:30 hours, she was informed that Tasila Tembo had gone home between 22:00 and 23:00 hours. When she called Tasila Tembo's phone around 05:00 hours, Four (4) times, there was no answer. Then around 07:00 hours, Pheddy Miti used the
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phone for Tasila Tembo's mother, and Nigel Musonda Mwaba answered saying that Tasila Tembo was bathing.

- 4.19 Her evidence was that at about 07:30 hours, she again called, but the phone was off.
- 4.20 Tasila Tembo's daughter, Sherine Peters Kantenga, who was PW23 told the Court, that on 24th October, 2020, she called Nigel Musonda Mwaba to ask where her mother Tasila Tembo was, after she had made several attempts to call her using her phone number 0979874123, which was in an Infinix S5 cell phone, on Tasila Tembo's phone numbers 0979145009 and 0955145009, which were both off.
- 4.21 She stated that she had tried to call Nigel Musonda Mwaba on the phone numbers 0972600401 and 0962080294 but they were both off. Her evidence was that it was on the phone number 0954023644, that she went through to Nigel Musonda Mwaba around 14:01 hours, and he had told her that he had left Tasila Tembo in Olympia, and she was about to travel to Kasama.
- 4.22 Nigel Musonda Mwaba did not in his defence deny that he was with Tasila Tembo after he drove off from Ibex Filling Station leaving Lonjezo Tembo in the quick shop there. He also did not deny that Lonjezo Tembo had called him shortly thereafter, and he had told Lonjezo Tembo that he would return shortly to collect him.
- 4.23 Lonjezo Tembo was not cross examined on his testimony that after he had called his friend Zebron Chola to go and pick him from the service station, and he was taken to Avondale, he

had called Nigel Musonda Mwaba, who had told him that he was going to Mikango Barracks to pick up a vehicle, and that he would go and pick him up. Therefore, Lonjezo Tembo's evidence remained credible evidence as it was not shaken in cross examination.

- 4.24 Nigel Musonda Mwaba further did not deny that Pheddy Miti had called him the next morning around 05:00 hours asking where Tasila Tembo was, and he had responded that she was bathing.
- 4.25 What Nigel Musonda Mwaba denied, was that Sherine Peters Kantenga phoned him on his ZAMTEL phone number 0954023644. When Sherine Peters Kantenga was cross examined, she maintained that she spoke with Nigel Musonda Mwaba on the said ZAMTEL line, after she called him on 24th October, 2020 around 14:01 hours using her Infinix S5 phone.
- 4.26 PW14, David Mbao, the Outbound Calling Specialist at ZAMTEL testified that he received a warrant from the police which requested for KYC and call records for Nigel Musonda Mwaba and Tasila Tembo. He produced as 'P9', the KYC and call records for Tasila Tembo and Nigel Musonda Mwaba. David Mbao testified that there were no outgoing call records during the period.
- 4.27 A perusal of 'P9', shows that the outgoing call report was for the period 1st February, 2021 to 8th April, 2021. This evidence establishes that during that period there were no calls that were made between Tasila Tembo and Nigel Musonda Mwaba,

and it did not establish that Sherine Peters Kantenga did not call Nigel Musonda Mwaba on 24th October, 2020 around 14:01 hours, as David Mbao did not query the system for any calls that were made to Nigel Musonda Mwaba's phone with the number 0954023644 by Sherine Peters Kantenga phone number 0970874123 on 24th October, 2020.

- 4.28 Therefore, it cannot be said that Sherine Peters Kantenga was an untruthful witness, when she testified that she called Nigel Musonda Mwaba on 24th October, 2020, and she had asked him the whereabouts of her mother, Tasila Tembo, and she was informed that Nigel Musonda Mwaba had left her in Olmpia, and she was about to travel back to Kasama.
- 4.29 PW15, Mwilu Sianagowa produced as 'P10', the KYC and call records for Tasila Tembo's phone number 0979145009, and as 'P11' the KYC and call records for Nigel Musonda Mwaba's phone number 0972600401. The call records on 'P10' picked Tasila Tembo's phone number at 23:10 hours on 23rd October, 2020 in Waterfalls area, where an outgoing call was made. Then on 24th October, 2020, the phone was picked at 05:42 hours in Leopards Hill, when an incoming call was made, and at 06:29 hours as the last activity on that day in Makeni East, which another incoming call.
- 4.30 There was no other activity on that phone until 25th October, 2020 at 22:49 hours in Mazabuka town.
- 4.31 As for Nigel Musonda Mwaba's phone, the call records on 'P11' show that on 28th October, 2020 the number was active in Kawambwa at 14:13 hours, as an sms was sent.

- 4.32 PW20, Michael Mwelwa Mwaba, a Forensic Auditor at MTN produced the KYC details for the phone number 0962080294 for Nigel Musonda Mwaba, as 'P21', and as 'P22' the call records for the said phone number. He told the Court that 'P22' showed that the number on 23rd October, 2020 around 21:00 hours, was in Ibex Hill, and after midnight on 24th October, 2020 around 01:26- 01:50 hours it was in Mikango area, and at around 03:17 hours, it was in Avondale. Then around 06:00 hours the number was at Kafue Roundabout.
- 4.33 Then on 25th October, 2020, the number received an sms around 11:25 hours, whilst it was in Mazabuka, and the last call on that number was in Mazabuka around 12:41 hours.
- 4.34 Therefore, the call records established that the phone numbers for Tasila Tembo being 0979145009, and Nigel Musonda Mwaba's phone number 0962080294, were active on 23rd October, 2020 through to 25th October, 2020 from Lusaka to Mazabuka town.
- 4.35 'P1' and 'P2' the covering letter and the video footage from the National Road Fund agency, as testified by PW2 Brian Zyakaka, an ICT Technician from the National Road Fund Agency, established that the motor vehicle Isuzu registration number BAG 1986, passed through the Shimabala Toll plaza at 07:03:12 hours on 24th October, 2020.
- 4.36 The witness, Wilfred Simundo, who was PW26 identified a photograph of the vehicle Isuzu registration number BAG 1986 in the photographic album 'P3', which taken by the Scenes of Crime Officer Richard Guuna, as the vehicle that

Nigel Musonda Mwaba went and parked at Bwile Guest House in Mazabuka, where Richard Guuna recovered it from.

- 4.37 It is not in dispute that the said motor vehicle belonged to Tasila Tembo, and that Nigel Musonda Mwaba was the person who was last seen driving the vehicle by Lonjezo Tembo.
- 4.38 The facts that are not in contention, are that Tasila Tembo died. The doctor, Luchenga Adam Muchelenganga in the post report 'P6', found that Tasila Tembo died to blunt impact trauma to the head as a result of assault.
- 4.39 Nigel Musonda Mwaba in his defence, testified that after they went to the Filling Station in Ibex Hill, and he sent Lonjezo Tembo into the quick shop, drove off with Tasila Tembo as she received a phone call from Pastor Jimmy a person who had earlier raised eye brows, and Nigel Musonda Mwaba had suspected infidelity, as Pastor Jimmy would call Tasila Tembo around 22:00 and 23:00 hours.
- 4.40 It was stated that Tasila Tembo had cut the line, as there was incoming call from the person who was bringing the vehicle that they were supposed to hire. Nigel Musonda Mwaba's evidence, was that he had queried Tasila Tembo as he drove off about why the late-night calls had continued, and in that process, Tasila Tembo had informed him that the person who was bringing the vehicle was either on Crossroads or Leopards Hill road.
- 4.41 Further in his defence, Nigel Musonda Mwaba stated that when they reached cross roads, this time, Tasila Tembo received a WhatsApp call, and he had insisted that she should

pick it. That in response, she had answered the phone, and passed it on to him, saying that he should answer it. Then when Nigel Musonda Mwaba put the phone to his ear, the line cut.

- 4.42 He told the Court that the phone was unlocked at the time, and he went to the name and media for Pastor Jimmy and he copied everything, being the videos and the pictures and forwarded them to his phone. Then as the pictures and videos were sending, Tasila Tembo noticed and she asked for her phone.
- 4.43 Nigel Musonda Mwaba's evidence was that he had asked Tasila Tembo why she was panicking and if there was a problem. He stated that he had put down Tasila Tembo's phone, and he got his, to check what had been transferred from her phone. He testified that in those vidoes, some were of Tasila Tembo, while some were of her and Pastor Jimmy.
- 4.44 Nigel Musonda Mwaba testified that the Digital Forensic Analyst Bernard Fundi, who was PW19 produced a number of videos, and that two or three of those videos, were sent to him by Tasila Tembo from her phone, and that some of the ones which were sent to his phone, were those that he saw for the first time.
- 4.45 It was his testimony that as he had asked how many of them they were, Tasila Tembo tried to grab the phone, and she succeeded in doing so, as she went beneath him, and he could not let go of the steering with both hands.

- 4.46 Nigel Musonda Mwaba alleged that Tasila Tembo struck him with an object on his lower abdomen, and he bled. He stated that the wound left a small scar there. He nevertheless testified that as Tasila Tembo grabbed the phone, he hit her with his left hand on her facial area, and when Tasila Tembo grabbed the phone she opened the door of the vehicle and she jumped out.
- 4.47 It was stated that the vehicle was moving at a speed of between 80-95 kilometers per hour, and Nigel Musonda Mwaba immediately stopped when he heard a thump. His evidence was that when he got out of the vehicle, he found Tasila Tembo on the lawn on the side of the road, and he helped her up, and she limped back into the vehicle. Then, he started driving slowly, and when he questioned her, she did not answer at first, but gestured. His evidence was that she dropped the sun screen with a mirror, and he saw that she was bleeding.
- 4.48 Further testimony was given that Tasila Tembo asked for some water, and he gave her the drink which was in glove compartment, as there was no water. He testified that Tasila Tembo took some drink, and gurgled and she opened the window and spat. Then she told Nigel Musonda Mwaba that she needed to go to the hospital as she was hurt, and she was struggling to speak, and her mouth was not opening.
- 4.49 As Nigel Musonda Mwaba tried to get to the nearest hospital, he noticed that Tasila Tembo was not responding. Thus, he stopped the vehicle by the road side, and he went out and opened the door by her side, and she fell out and he held her.

When he checked her pulse, he found that there was none, and he went back into the vehicle, and he sat there for some time before he drove off, leaving her there uncovered, as he did not know what to do. He stated that he drove to Mazabuka.

4.50 Nigel Musonda Mwaba in his submissions, stated that Luchenga Adam Muchelenganga, the Forensic Pathologist attributed Three (3) instances, as having been the possible cause of the blunt impact trauma to the head. These were named as:

- i. Being hit;
- ii. Punching with a body part;
- iii. Hitting oneself against a blunt object.

4.51 The further submission, was that in cross examination, Luchenga Adam Muchelenganga found that there were no defensive wounds on Tasila Tembo's body, entailing that she was not assaulted, and therefore Nigel Musonda Mwaba did not cause her death. It was also submitted that Nigel Musonda Mwaba was consistent in his version of what happened on the material night, both in his testimony and in his Warn and Caution statement, which was that Tasila Tembo jumped from the vehicle, during a passionate argument, and she injured herself.

4.52 Thus, looking at the possible causes of death as stated by Luchenga Adam Muchelenganga, anyone of them was possible. It was stated that, that being the position, the decision in the case of ***Dorothy Mutale and Richard Phiri v***

The People ⁽⁹⁾ applied, which was also the decision in the case of **Bwanausi v The People** ⁽⁴⁾.

- 4.53 In the alternative, Nigel Musonda Mwaba submitted that there was insufficient evidence on record to establish that he had the necessary mens rea to commit the offence. It was stated that Carol Simfukwe who was PW21, testified that the relationship between Nigel Musonda Mwaba and Tasila Tembo was on the rocks, and that Tasila Tembo wanted to end it.
- 4.54 Further submission was made, that Carol Simfukwe's testimony was that Nigel Musonda Mwaba sent her a text message, in which he said that Tasila Tembo was an animal who did not deserve to live. However, at the time that Tasila Tembo died, her relationship with Nigel Musonda Mwaba was well, and they had reconciled, and Tasila Tembo had sent a message that all was well, when she was in Kasama on 20th October, 2020.
- 4.55 It was stated that in any event, Carol Simfukwe was a witness with an interest to serve, as she had deprived Nigel Musonda Mwaba, her brother, of his inheritance from their father's estate, which she was administering.
- 4.56 The case **Simon Malambo Chooka v The People** ⁽⁷⁾ was relied on, and it was submitted that the cases of **Wilson Mwenya v The People** ⁽⁸⁾ and **Emmanuel Phiri and others v The People** ⁽⁶⁾ held that corroboration is independent evidence, which confirms that an offence was committed and connects the accused to the commission of the offence.

- 4.57 Nigel Musonda Mwaba further submitted that there was no independent evidence on record, which corroborated Carol Simfukwe's testimony, and therefore the danger of falsely implicating Nigel Musonda Mwaba had not been ruled out.
- 4.58 The submission in the alternative, was that Nigel Musonda Mwaba was suffering from abnormality of mind at the material time. Reliance in that regard, was placed on the testimony of DW1, Dr Richard Msoni, stating that his evidence was that Nigel Musonda Mwaba suffers from Borderline Personality Disorder, which causes deeply ingrained abnormal pattern of behaviour.
- 4.59 Therefore, the provisions of **Section 12 or 12A of the Penal Code** are applicable, as Nigel Musonda Mwaba's mental condition was at play at the time of the incidence, although Dr Richard Msoni testified that Nigel Musonda Mwaba could have had mens rea.
- 4.60 On the provisions of **Section 12A of the Penal Code**, the case of **The People v Peter Banda** ⁽¹³⁾ was relied on, stating that the Court of Appeal in that matter, held that the evidence before the Court pointed to the provisions of **Section 12A of the Penal Code**, which provides for diminished responsibility.
- 4.61 The submission was that the Court of Appeal referred to the case of **R v Bryne** ⁽¹⁾ where abnormality of mind in respect of the defence of diminished responsibility in **Section 2 of the Homicide Act of 1957** was considered, which is nearly word for word with the defence of diminished responsibility under

Section 12A of the Penal Code. That in that case, the term abnormality of mind was defined as:

“A state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal.”

- 4.62 The submission was that the definition was broad enough to cover activities of the mind in all its’ aspects, not only the perception of physical acts and matters, and the ability to form rational judgment, whether an act is right or wrong, but also the ability to exercise will power to control physical acts in accordance with rational judgment.
- 4.63 It was also stated that in that case, the expression mental responsibility for his acts pointed to consideration of the extent to which the accused’s mind is answerable for his physical acts, which must include consideration of the extent of his ability to exercise will power to control his physical acts.
- 4.64 Thus, the Court of Appeal in that matter found that even though epilepsy is not a mental illness, an epileptic patient whose perceptions of matters and ability to rationally judge whether an act is right or wrong is affected by the disease, and could be said to suffer abnormality of mind.
- 4.65 Nigel Musonda Mwaba submitted that the Court of Appeal in the above case, noted **Section 12A (3) of the Penal Code** places the burden of proving diminished responsibility on an accused person on a balance of probabilities. They found that when the accused attacked his wife and daughter because of the predisposition to his condition.

- 4.66 The State on the other hand, submitted that the evidence on record showed Nigel Musonda Mwaba inflicted the injuries on Tasila Tembo, and he ran away with her vehicle to Mazabuka which was recovered at Bwile Guest House where he abandoned it.
- 4.67 On Nigel Musonda Mwaba's defence, that he had argued with Tasila Tembo over her infidelity, the contention was that this was just afterthought which was conjured to extricate himself from the case. In that regard, the submission was that Nigel Musonda Mwaba admitted that he left Tasila Tembo unattended to, a few metres from Mikango road.
- 4.68 The further contention by the State, was that his Borderline Personality Disorder did not assist him with respect to culpability in this matter, because Dr Richard Msoni in his evidence, stated that he was able to appreciate the consequences of his actions.
- 4.69 It was also submitted that Nigel Musonda Mwaba's actions post the murder, showed that it was well calculated, as he could not fathom a life without Tasila Tembo, after the fairytale affair was over, and when his attempts to go through with his threats of exposing her nude photographs failed, he decided to kill her.
- 4.70 The cases of ***David Zulu v The People*** ⁽⁵⁾, ***Saidi Phiri v The People*** ⁽¹¹⁾ and ***Saviour Mukanso v The People*** ⁽¹²⁾ were relied on, on when circumstantial evidence is cogent to convict an accused person. It was stated that in line with the case of ***Saidi Phiri v The People*** ⁽¹¹⁾ there were basic facts which had

been established, which when taken together, implicated Nigel Musonda Mwaba, which pointed to nothing less than his guilt.

4.71 Therefore, this case had been taken out of the realm of conjecture, and it had attained the degree of cogency which permitted, only an inference of guilt to be drawn. The submission was that the State had proved its' case beyond all reasonable doubt.

DECISION

4.72 The evidence which was given by Luchenga Adam Muchelenganga with reference to the post mortem report 'P6' was that an external examination of Tasila Tembo's body revealed that she had bruising on her chin, and her lower and upper right arm.

4.73 On the internal examination, he found that the internal organs were decomposed. It was further his testimony, that when he opened her head, he found that the bone of the lower jaw was broken in the middle at the point that it attaches to the skull on both sides. He stated that his finding was that Tasila Tembo died due to blunt impact trauma to the head, which he documented by way of the photographs which were in 'P7', the photographic album.

4.74 Luchenga Adam Muchelenganga's evidence was also that the photograph on page 16 of 'P7', showed that there was bleeding on the chin, which was reflected on page 15 with the picture on page 23, showing that there was no injury on the lower right forearm. Then pages 25-27 showed the breaking of the lower jaw.

- 4.75 On his finding, that the cause of death was due blunt impact trauma, Luchenga Adam Muchelenganga stated that the injuries were caused by a blunt object. He ruled out a road accident or jumping out of a vehicle as having caused the injuries, based on the pattern of the injuries. This he stated was that, if that were the position, there would have been abrasions, and if one jumped out of a moving vehicle, there would have been bruising as if someone had slid on a surface. The same went for falling on a blunt object.
- 4.76 On the incision wound on the abdomen, the testimony that Luchenga Adam Muchelenganga gave, was that it could not have been acquired by falling from a moving vehicle, and that in fact the wound on the abdomen and the groin were possibly made post mortem, as there was no evidence of bleeding, entailing that the wounds were inflicted after the heart had stopped beating, as when the heart stops beating there is no blood supply, although there may be exception to the rule.
- 4.77 He also ruled out the possibility that the wound on the abdomen was from a caesarian section which separated, stating that if that were the position, there would have been a scar at the end of the wound.
- 4.78 In relation to the jaw having been broken, Luchenga Adam Muchelenganga testified that for it have broken on Three (3) parts, it was due to significant trauma being mild to severe.
- 4.79 In cross examination, his evidence was that the bruise on the right side of the chin was a sign of the trauma which caused the fracture. He further explained that the energy from the

blunt surface, hit the chin and the energy was transmitted to the bone which broke, being the blunt impact trauma to the head, and that the brain shook and caused the death.

- 4.80 It was his testimony, that the one impact transmitted injury which caused the death. Luchenga Adam Muchelenganga testified that Tasila Tembo did not have any defensive wounds, which was a finding that was reflected at 5 of the postmortem report 'P6'.
- 4.81 Going by the testimony that Luchenga Adam Muchelenganga gave, the submission by the defence that he gave Three (3) possibilities as to what may have caused Tasila Tembo's death is inaccurate. In his testimony, Luchenga Adam Muchelenganga ruled out a road traffic accident or falling out of a moving vehicle, and falling on a blunt object as being the cause of death, stating that in those situations, there would have been abrasions and bruising as if one was sliding, which were not present in this case.
- 4.82 He did in cross examination agree that punching with a blow could cause blunt impact trauma.
- 4.83 However, as seen, Luchenga Adam Muchelenganga testified that for the jaw to have been broken in Three (3) parts there was significant trauma, which was mild to moderate and that the energy from the blunt impact was transmitted to the bone and the brain shook and caused death, just by that one impact.
- 4.84 Consequently, in light of the evidence that Nigel Musonda Mwaba gave in his defence, which was that he struggled with

Tasila Tembo before she grabbed her phone from him and he hit her with hands on her facial area before she jumped from the vehicle, and he observed that she was bleeding after he put her in the vehicle after she limped into the vehicle, before he noticed that she was not responding, and he checked her pulse, and he found that she had none, after she asked for water, that defence cannot stand.

- 4.85 Tasila Tembo was hit with a blunt object and her jaw broke in Three (3) parts which single impact caused her brain to shake and she died.
- 4.86 Thus, it was not possible that she jumped off the moving vehicle and she was helped up by Nigel Musonda Mwaba and she got into the vehicle where she took some drink and gurgled and spat before she stopped breathing, as she had no bruises like she had slid.
- 4.87 Luchenga Adam Muchelenganga testified that there was a single impact to Tasila Tembo's head after she was hit with a blunt object which broke her jaw on Three (3) parts and her brain shook and she died.
- 4.88 In the case of *Phiri and others v The People* ⁽³⁾ it was held that:

“Where the conflict between the eyewitness's evidence and medical evidence goes beyond acceptable limits of exaggeration, the eyewitness must be regarded as an untruthful witness.”

- 4.89 The eye witness Nigel Musonda Mwaba was untruthful, in view of the medical evidence which is on record in the postmortem report 'P6.
- 4.90 Tasila Tembo did however have a contusion on her right arm which Luchenga Adam Muchelenganga said was a bruise which was moderate but that did not cause her death. Tasila Tembo died after blunt impact trauma to her head which was caused by a blunt object, and not due to having jumped out of a moving vehicle. Nigel Musonda Mwaba's defence therefore fails.
- 4.91 It consequently follows that the assertion that Nigel Musonda Mwaba had quarreled with Tasila Tembo as he suspected that she was cheating on him with Pastor Jimmy and the two had exchanged nude pictures of themselves which Nigel Musonda Mwaba sent to his phone on the material day, as he drove the vehicle equally lacks merit, as that was the basis upon which Nigel Musonda Mwaba said Tasila Tembo jumped out of the vehicle with her phone to avoid Nigel Musonda Mwaba seeing the said nude pictures and vidoes.
- 4.92 The evidence in this matter shows that PW19, Bernard Fundi the Forensic Expert at the Ministry of Home Affairs, extracted nude pictures and videos that Tasila Tembo sent to Nigel Musonda Mwaba on his Vivo phone, which were produced as 'P14' and 'P15'.
- 4.93 Tasila Tembo's phone was not found, and the 'P10' the call records put the last activity on her phone in Mazabuka on 25th
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October, 2020, which is where Nigel Musonda Mwaba's phone number 0962080294 was at the time.

- 4.94 Therefore, a reasonable inference can be drawn is that he was the person who was in possession of Tasila Tembo's phone, and he was the last person who was seen with her. In fact, in his Warn and Caution statement 'P25' Nigel Musonda Mwaba he stated that got Tasila Tembo's phone from the person who had picked it up, and thereafter he went to Mazabuka. Thus, he was the person with the phone and there was no dereliction of duty on the part of Bernard Fundi to extract evidence from Tasila Tembo's phone as it was not found.
- 4.95 It is on record that Bernard Fundi, testified that he forensically examined the phones which were submitted to him and as Tasila Tembo's phone was not found, he could not image its' contents.
- 4.96 Having found that Tasila Tembo died of blunt impact trauma to her head, the next question that arises is whether Nigel Musonda Mwaba have malice aforethought to commit the murder. It has been seen that in his submissions, he stated that there is insufficient evidence which was adduced by the State to establish so.
- 4.97 It was stated that Carol Phiri's testimony that he had threatened to kill Tasila Tembo, as she had ended the relationship were not true. That this was because the differences that the two had were ironed out by the time they came to Lusaka from Kasama. It was also submitted that

Carol Phiri, in any event was a witness with an interest to serve who testimony required corroboration.

- 4.98 Nigel Musonda Mwaba also submitted in the alternative, that due his Borderline Personality Disorder, he did not appreciate the events that happened.
- 4.99 The submission by the State was that all the evidence put together showed that Nigel Musonda Mwaba committed the offence, and he ran away to Mazabuka in Tasila Tembo's vehicle, which he abandoned at Bwile Guest House there.
- 4.100 They further contended that Nigel Musonda Mwaba's Borderline Personality Disorder did not assist him in escaping culpability in this matter, as Dr Richard Msoni who was his witness, testified even with that disorder, Nigel Musonda Mwaba appreciated the consequences of his actions.
- 4.101 The State through Bernard Fundi produced the forensic report 'P13' which contained the WhatsApp messages that he extracted from the phones which were submitted for forensic examination. The WhatsApp messages for the phone numbers 0979549181 with the profile name Beatrice and 0955145009 for Dr Tasila Cell Z were produced as 'P16'. These were for the period 19th July, 2020 to 23rd October, 2020.
- 4.102 He also produced as 'P17', the WhatsApp for the mobile number 0973184531, with profile name I AM and 0955145009 for Dr Tasseer for the period 19th July, 2020 to 27th October, 2020.
- 4.103 Bernard Fundi also produced as 'P18', the WhatsApp messages between the phone number 0976823131 for the

profile name Carol and 0955145009 from the period 7th October, 2020 to 24th October, 2024.

4.104 Further, he produced the WhatsApp messages that he extracted from the phone number 097682313 with the profile name Carol and 0962080294 with the profile name Nigel Mwaba for the period 9th October, 2020 to 14th October, 2020.

4.105 'P20' was stated as being the extraction report using Cellbrite which contained sms messages for the phone number 0977645979.

4.106 On 'P16' WhatsApp messages were exchanged between Tasila Tembo and Beatrice, with page 6 having a message that read that Tasila Tembo told Beatrice that she had told him that it over. Then she said that love had been put on halt. At page 7, Beatrice said that she saw him going back and that she thought that he would ask his mother to talk to her.

4.107 Then at page 8, Tasila Tembo wrote that she had been ignoring his calls, and she had seen threats that he would expose her nude pictures and videos, and that he had said that she had destroyed his life.

4.108 These messages were exchanged on 19th July, 2020. On 8th August, 2020, Tasila Tembo sent a message to Beatrice explaining what paranoid personality disorder is, and she also stated that she had been studying him, and she had realized that he was a definite mental case with the said disorder and that he needed help.

4.109 Then on 9th August 2020, Tasila Tembo sent Beatrice a message asking her if she had read the message about

paranoid personality disorder, and Beatrice responded that she did. Tasila Tembo repeated that he needed help, and that she was thinking psychotherapy and spiritual deliverance. Then when Beatrice stated that Batuke had said Nigel was stable with her, Tasila Tembo replied that he was beyond normal and he needed help.

- 4.110 Other significant messages are at page 40 which were exchanged on 15th October, 2020, when Tasila Tembo sent a message to Beatrice, stating that she was scared as he had not taken the break up well, and he had even told Carol that she did not deserve to live.
- 4.111 On 16th October, 2020, Tasila Tembo sent a message to Beatrice saying that she had left Mbala as her headache was not going away, and that Nigel was stressing her. Then later that day, Tasila Tembo forwarded Beatrice a message which message read that she should look for somewhere to sleep and take the girls and park the car where he would not find it.
- 4.112 Tasila Tembo then asked why should she had to start hiding because she had broken up with someone, and that Merv had told her to leave Kasama for Lusaka.
- 4.113 Then on 20th October, 2020, Tasila Tembo sent a message to Beatrice telling her that there was a problem with the vehicle, and that she had spoken with Nigel's boss who was a Colonel, as Nigel did not understand that they had broken off.
- 4.114 Another message was sent by Tasila Tembo to Beatrice saying that she had told him that she wanted them to go on break but he was non-responsive.
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- 4.115 Then in 'P17' the significant messages that Tasila Tembo sent to the person with the profile I Am on 19th July, 2020 asked if he had always been that jealous, and that he had changed, and she was worried for her children who had already been through so much, and they were now being exposed to abusive language and arguments which was affecting them.
- 4.116 Then on 10th September 2020, Tasila Tembo sent a message to I Am, asking whether they had had a word with Nigel on the issue of Dolo, and his spending habits in general. The response was that he had paid something. Tasila Tembo in reply, said that she doubted as the guy had sent a message saying that Nigel had blocked him.
- 4.117 Then Tasila Tembo sent a message saying that her interest was that he had taken and used her money without her approval.
- 4.118 Then on 13th October, 2020, Tasila Tembo sent a message to I Am, stating that Nigel had asked her to block Dolo and that Nigel had a lot of debts including with OK Furniture who called her looking for her, as he had put her as his next of kin. Further that he got a phone in 2018, and he only paid one instalment.
- 4.119 On 15th October, 2020, Tasila Tembo sent a message saying that she was fed up Winston, and that he had been calling her and sending her very bad messages.
- 4.120 The response was that she should block him on the calls and WhatsApp. Then Tasila Tembo sent a message that she had blocked him. She later sent another message, that she had

concern with the materials which were on Nigel's phone and his laptop, and that she had a throbbing headache since the previous day, which was not responding to ordinary pain killers.

- 4.121 On 16th October, 2020 Tasila Tembo forwarded a message from Dolo, which said Winston had paid K5, 000.00 and that he would send another when he had. Another message was sent by Tasila Tembo, stating that thanx Marv for stepping in.
- 4.122 On 17th October, 2020, Tasila Tembo sent a message that she was in Lusaka with Nigel but she was planning on going to see Colonel Mwape.
- 4.123 In 'P18' the WhatsApp converastions which were exchanged between Carol and Tasila Tembo. On 10th July, 2020 Tasila Tembo sent a message to Carol, saying that she had just told them to deal with the person who got the phone, and the lady had said that they would stop calling her, and would instead be calling him, and that it was the fourth time that they had called her.
- 4.124 She also sent a message that he needed help, as she thought that he was in serious financial crisis. Another message was sent by Tasila Tembo, that he had become cold as she had refused to give him money, and he knew that she had money. Tasila Tembo sent another message to Carol on that day saying that his loan was too big.
- 4.125 She sent a further message, that she helped him to pay K7800.00, and he said that he would pay back. However, when she asked, he would get angry.

- 4.126 Then on 10th September, 2020, Tasila Tembo sent Carol a message saying that she was getting scared and she forwarded her messages from Dolo, which said she should tell Nigel to call him urgently, as he was struggling to find him. Then Tasila Tembo had responded saying that Nigel was in Lusaka, and she was in Kasama. Dolo had said that Nigel was in possession of company money which was paid to him.
- 4.127 Tasila Tembo sent another message saying she had a chat with Winston, and it was revealed that Nigel owed USD10,000.00. The messages between Tasila Tembo and Dolo continued to be sent to Carol.
- 4.128 On 16th October, 2020 Tasila Tembo sent a message to Carol saying that she was glad that Winston had stepped in to sort out Dolo. Later that day, Tasila Tembo sent another message to Carol, stating that Winston had said that Nigel was nowhere to be seen, and that maybe he had headed to Kasama, and Winston had said that Tasila Tembo should not go home.
- 4.129 Then she sent another message saying that he was calling her using 0955 number, and that she did not block that number.
- 4.130 After that, Tasila Tembo sent a message to Carol saying that she was heading to Kasama, and that Carol should call him and try to locate where he was. Further, that Merv had asked her not to go to him, as he was not sure about his state of mind.
- 4.131 Then Carol responded saying that Tasila Tembo should look for somewhere to sleep and take the girls and park the car

where he would not find it. Tasila Tembo said she had no money for fuel, and Carol sent her K3, 000.00 and Tasila Tembo received a notification of the same.

4.132 On 20th October, 2020, Tasila Tembo sent Carol a message saying that Nigel was acting like all was well, and that she was making arrangements to go and see Colonel Mwape, so that he could intervene. In response, Carol had advised her to involve her family. Tasila Tembo informed Carol that Nigel bashed the vehicle, after hitting a pole at a Filling Station, and that it had gone for panel beating.

4.133 Tasila Tembo also sent the message from Dolo which said Winston would no longer make payments on Nigel's behalf.

4.134 Then on 22nd October, 2020, Tasila Tembo told Carol that she had called aunt Pheddy, and she asked if Carol would be available that evening.

4.135 On 'P19' were WhatsApp chats between Carol and Nigel in which Nigel told Carol on 14th October, 2020, that Tasila did not deserve to live and that she was an animal.

4.136 What the messages I have referred to and those that Carol Phiri referred to, establish that the relationship between Nigel Musonda Mwaba and Tasila Tembo had broken down and that in fact Tasila Tembo had ended their relationship but Nigel Musonda Mwaba had continued pursuing her, and sending her messages. This made her to block his Airtel and MTN lines, but not his ZAMTEL line.

- 4.137 The messages also establish that Nigel Musonda Mwaba was in debt, and Tasila Tembo was being called so that he could pay the same.
- 4.138 This is contrary to Nigel Musonda Mwaba's assertion in his defence, that the issue of the debt had been settled in September, and that all was well between himself and Tasila Tembo.
- 4.139 Nigel Musonda Mwaba citing the case of ***Simon Malambo Chooka v The People*** ⁽⁷⁾ contended that Carol Phiri was a witness with an interest to serve. Indeed, the holding in that case was that:

“A witness with a possible interest of his own to serve should be treated as if he were an accomplice to the extent that his evidence requires corroboration or something more than a belief in the truth thereof based simply on his demeanour and the plausibility of his evidence. That “something more” must satisfy the court that the danger that the accused is being falsely implicated has been excluded and that it is safe to rely on the evidence of the suspect witness.”

- 4.140 Nigel Musonda Mwaba submitted that Carol Phiri was witness with an interest to serve as she was administering their father's estate in which Nigel Musonda Mwaba is a beneficiary, and she had deprived him of his share of the estate.

- 4.141 Carol Phiri in cross examination, denied that she is the Administrator of her late father's estate, stating that her sister is. Therefore, Nigel Musonda Mwaba did not establish that Carol Phiri had motive to give false evidence against him being a witness with an interest to serve.
- 4.142 What the evidence through the WhatsApp and sms messages that were produced shows, is the actual conversations that were had between Carol Phiri and Tasila Tembo, as well as between Carol Phiri and Nigel Musonda Mwaba, Tasila Tembo and Beatrice, and Tasila Tembo and a person with a profile name I Am, which establish that the relationship between Tasila Tembo and Nigel Musonda Mwaba had broken down, and he was in fact threatening her.
- 4.143 That evidence also established that Nigel Musonda Mwaba did not travel to Mbala to work, and he spent time with Tasila Tembo. Rather, when he travelled to Kasama, Winston and Carol and others such as Merv were worried, and Tasila Tembo was advised to go and lodge somewhere away from home with the children, and park the vehicle where Nigel Musonda Mwaba would not find it.
- 4.144 Carol Phiri's evidence that Nigel Musonda Mwaba sent her a WhatsApp message saying that Tasila Tembo did not deserve to live and that she was animal was actually confirmed by the WhatsApp messages in 'P19', which was the actual message that said so.

- 4.145 Therefore, Carol Phiri's evidence was corroborated by 'P19', and she had no motive to falsely implicate Nigel Musonda Mwaba.
- 4.146 It was submitted in the alternative, that due to the Borderline Personality Disorder that Nigel Musonda Mwaba has, he did not know what he was doing and he cannot be said to have had mens rea to Tasila Tembo.
- 4.147 Dr Patrick Msoni testified as Nigel Musonda Mwaba's witness in his evidence, and he told the Court, that he interviewed Nigel Musonda Mwaba and his mother. He stated that Nigel Musonda Mwaba had a turbulent childhood with his step father after his mother remarried after his father died in 2000.
- 4.148 It was also testified that Nigel Musonda Mwaba's step father was distant to the step children and was not interested in their affairs.
- 4.149 On the condition itself, Dr Patrick Msoni testified that it is characterized by unstable interpersonal relationships, variable moods and impassivity. That once it is established, it is always there, and it continues throughout the lifetime of a person, and it has no treatment. However, it can be alleviated by the use of cognitive behavioural therapy and psychotherapy which treatment takes long, which may be within the community or in an institution with strict observation being undertaken.
- 4.150 He was of the view that Nigel Musonda Mwaba could be treated in society. He further testified that Nigel Musonda Mwaba on being interviewed showed no remorse.

4.151 In his submissions, Nigel Musonda Mwaba relied on the case of ***The People v Peter Banda*** ⁽¹³⁾ stating that in that matter, the Court of Appeal held that the provisions of **Section 12 and 12A of the Penal Code** were available to the accused to show that he had diminished responsibility when he killed his wife and daughter.

4.152 A reading of that case shows that the Court of Appeal in that matter held as follows:

“There was uncontested evidence from the psychiatrist that the appellant suffered from an 'atypical seizure disorder' which was not a mental illness. His conclusion was that the disorder must have influenced his extreme behaviour when he was committing the offence....

To that effect, it is our view that the trial judge should have considered whether the defence of diminished responsibility was available to the appellant. There was evidence before her pointing at the possible availability of the defence.

Section 12A of the Penal Code, provides for the defence of diminished responsibility. It reads as follows:

“(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a

condition of arrested or retarded development of mind or any inherent causes or is induced by disease or injury) which has substantially impaired his mental responsibility for his acts or omissions in doing or being party to the killing.

(2) The provisions of subsection (2) of section thirteen shall apply with necessary modifications to the defence of diminished responsibility under this section:

Provided that the transient effect of intoxication as described in that subsection shall be deemed not to amount to disease or injury for purposes of this section.

(3) On a charge of murder, it shall be for the defence to prove the defence of diminished responsibility and the burden of proof shall be on a balance of probabilities.

(4) Where the defence of diminished responsibility is proved in accordance with this section, a person charged with murder shall be liable to be convicted of manslaughter or any other offence which is less than murder."

4.153 The Court of Appeal in that matter further stated as follows:

"In the case of R v Byrne, the term "abnormality of the mind, as is set out in the defence of

diminished responsibility in section 2 of The Homicide Act of 1957 was considered. That provision is nearly word for word, the same with the defence of diminished responsibility, under section 12A of The Penal Code. The term 'abnormality of the mind' was defined as follows:...

From the foregoing, it is clear that even if epilepsy is not a mental illness, an epileptic patient whose perception of matters and ability to rationally judge whether an act is right or wrong is affected by the disease, can be said to suffer from an abnormality of the mind. Section 12A (3) of The Penal Code provides that the burden of raising the defence of diminished responsibility rests on the offender and the standard of proof is a balance of probability. It is our view that the appellant met the threshold.

The uncontested report shows that the time he attacked his wife and daughter, he behaved in the manner he did, because of his predisposition to that condition."

4.154 In this matter, Dr Msoni stated that Borderline Personality Disorder is characterised by unstable personal relationships, variable moods and impassivity, as evidenced by the medical report 'D1'. In cross examination, his testimony was that the

environment is the major factor in the disorder, and that a person with the disorder will appreciate the consequences of their actions.

4.155 In light of this evidence, and the provisions of **Section 12A of the Penal Code**, which have been seen above, in order to succeed on the defence of diminished responsibility, the accused person must be suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or is induced by disease or injury) which has substantially impaired his mental responsibility for his acts or omissions in doing or being party to the killing.

4.156 As a person who has Borderline Personality Disorder appreciates the consequences of their actions, as testified by Dr Patrick Msoni. Thus, they cannot be said to have diminished responsibility when it comes to culpability for any criminal actions.

4.157 The defence is not available to Nigel Musonda Mwaba on the basis that the testimony by Dr Patrick Msoni shows that his acts were not as a result of the Borderline Personality Disorder that he has, as he appreciated what he was doing. This is more so, as even though Nigel Musonda Mwaba has the disorder, the circumstances of the case show that he denied having committed the offence, stating that she fell off a motor vehicle, which defence has failed. Therefore, he did not demonstrate that the disorder was at play when he committed the offence.

4.158 Further, Nigel Musonda Mwaba had told Carol Phiri that Tasila Tembo did not deserve to live and that she was an animal. That is evidence of a manifest intention.

5. CONCLUSION

- 5.1 Having found that Nigel Musonda Mwaba had actually said that Tasila Tembo did not deserve to live, and that she was animal, and also coupled with the fact that when he travelled to Kasama to see Tasila Tembo, and Carol Phiri and others were worried as he had previously been violent, and they advised Tasila Tembo to go and spent the night somewhere else with the children, is evidence that they feared for Tasila Tembo's life.
- 5.2 This is because they feared that Nigel Musonda may do something to her. That act of doing something was manifested when he sent Lonjezo Tembo back into the quick shop at Total Filling Station at Ibex Hill, and he drove off with Tasila Tembo. He killed Tasila Tembo with a blunt object as testified by Luchenga Adam Muchelenganga the Forensic Pathologist which produced significant trauma and left her in Mikango area.
- 5.3 That in itself is evidence of malice aforethought, which is 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, as well as the 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.

5.4 **Section 4 of the Penal Code** defines grievous harm as:

“grievous harm” means any harm which endangers life or which amounts to a maim or which seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;”

5.5 The inflicting of blunt impact trauma to Tasila Tembo which saw her jaw being broken in Three (3) places, was intention to cause greivous harm.

5.6 Therefore, this is not a case where more than one inference can be drawn. The circumstantial evidence in this matter has actually attained a degree of cogency that has taken it out of the realm of conjecture, such that the only inference that can be drawn is one of guilt. The case of **Dorothy Mutale and Richard Phiri v The People** ⁽⁹⁾ is accordingly not applicable.

5.7 In the case of **Director of Public Prosecutions v Lukwosha** ⁽²⁾ it was held that;

“It is for the prosecution to prove that there existed in the accused the intention or knowledge which constitute malice aforethought. Intention and knowledge are not susceptible of direct proof. It is not possible to look into a man's mind and see the intention and knowledge therein. Sometimes a man

may declare his intentions or state his knowledge. That is about as near as one can get to direct evidence of intention and knowledge. More usually intention and knowledge are matters of inference to be drawn from proved conduct and actions. There is a presumption that a man intends the natural and probable consequences of his acts.”

- 5.8 The inflicting of the blunt impact trauma is evidence of intention to kill, and the State has proved the case beyond all reasonable doubt. I find Nigel Musonda Mwaba **GUILTY** of the offence of murder and I **CONVICT** him accordingly.
- 5.9 Nigel Musonda Mwaba made submission that in the case of ***Tshiabu Quibila Benos v The People*** ⁽¹⁴⁾ the Court of Appeal in sentencing, took into consideration that the deceased may have behaved unreasonably to the accused. The submission was that in this case, Nigel Musonda Mwaba discovered that Tasila Tembo was having an affair and that he found evidence in the form of nude pictures and videos that Tasila Tembo sent to another man, similar to those which she had sent to him, and that Tasila Tembo attacked him with a sharp object in the process of grabbing her phone from him.
- 5.10 The Supreme Court in that case of ***Kazembe Zulu v The People*** ⁽¹⁰⁾ stated that:

“As we held in the Jack Chanda case and indeed on many occasions when we have been called upon to consider the issue of extenuating circumstances;

A failed defence of provocation, evidence of witchcraft and evidence of drinking can amount to extenuating circumstances. What we consider paramount to none is that the question of extenuating circumstances is a question of fact to be decided on the merits of each case.

The finding of extenuating circumstances must be evidence-based and not based on speculation and cursory statements and claims. In our view, the test of evidence-based reasonableness should never be ignored in deciding the presence or otherwise, of extenuating circumstances in the behavior of a convict as against the standard behavior of an ordinary person of the community to which he belonged.”

- 5.11 In this matter, the evidence on record shows that Nigel Musonda Mwaba killed Tasila Tembo in circumstances that were calculated, as he intended to cause her grievous harm by hitting her on the jaw with a blunt object which caused significant trauma, which cracked her jaw in three places and caused her brain to shake, which resulted in her death.
- 5.12 While he alleged that Tasila Tembo was cheating on him with Pastor Jimmy, and he suddenly discovered whilst in the vehicle, that allegation was unsubstantiated.
- 5.13 I am alive to the fact, that in ‘P16’ in the WhatsApp messages that Tasila Tembo sent to Beatrice, on 10th September, 2020, at pages 28 and 29, she had told Beatrice that being with

Jimmy was totally wrong, and that as it had started affecting his marriage and she was glad that they had called it quits because she did not want to have another woman hurting because of her.

- 5.14 When Bernard Fundi testified and he said that he had extracted videos and pictures from Nigel Musonda Mwaba's Vivo phone but he was not cross examined on whether it was possible for him to have extracted videos and pictures from Tasila Tembo's phone using the software that he used to extract from the phones which were physically given to him, without him having her phone.
- 5.15 It is on record that Nigel Musonda Mwaba was with Tasila Tembo's phone on 25th October, 2020 in Mazabuka and he knew where the phone was. It could therefore not be established that during the period of his relationship with Tasila Tembo, any videos or nude pictures were sent by Tasila Tembo to Pastor Jimmy.
- 5.16 Moreover, in the message that Tasila Tembo sent to Beatrice in which she admitted having been with Jimmy, there was no indication of whether this was before or after she had started her relationship with Nigel Musonda Mwaba. That message was clear, that she had ended the relationship with Jimmy.
- 5.17 Luchenga Adam Muchelenganga ruled out the defence that Tasila Tembo jumped off the moving vehicle, so there was no argument over infidelity.
- 5.18 Thus, on the totality of the evidence, it cannot be said that Nigel Musonda Mwaba behaved in a such a manner that any

ordinary member of the community would, when they discovered nude pictures that their partner sent to the opposite sex, as the evidence does not establish that this was the position in this matter.

5.19 What the evidence shows is that Nigel Musonda Mwaba sent messages to Tasila Tembo when she ended the relationship which unsettled her, and she had reached out to Carol Phiri to speak with him, and she was advised to end the relationship involving her relatives.

5.20 There is therefore, nothing in extenuation, and I accordingly sentence Nigel Musonda Mwaba to life imprisonment.

Delivered in Open Court at Lusaka the 15th Day of January 2025.

S. Kaunda

S. KAUNDA NEWA

HIGH COURT JUDGE

