

**BETWEEN:**

**THE PEOPLE  
VS.  
BLACKFORD PHIRI**



**Before the Honourable Mr. Justice M.D. Bowa in Open Court on 14<sup>TH</sup>  
February 2025**

*For the State: Mr. V Choongo State Advocate NPA*

*For the Accused: Mr. J. Matende Legal Aid Counsel, Legal Aid Board.*

---

## **JUDGMENT**

---

**Cases referred to:**

1. *R vs Baldry (1852) 2 Den 430*
2. *Nalukwi vs the People HP/27/23(unreported)*
3. *Ibrahim vs R (1914) AC 599*
4. *Esia Mupasha and 2 others vs the People SCZ No. 12, 13 & 14 at 202*
5. *Li sha Ling v the Queen (Hong Kong) (1988) UKPC 18*
6. *Borniface Chanda Chola & Others vs the People 1988-89 ZLR*
7. *David Zulu vs. The people (1977) ZR 151 (SC)*
8. *Saidi Banda v The People SCZ Appeal No. 114 of 2015)*
9. *Haonga & others vs the people (1976) ZR 200 SC*

**Legislation referred to:**

1. *The Penal Code Chapter, 87 of the laws of Zambia*

**Other materials referred to:**

1. <https://journals.co.zm>

## **1. Background**

1.1 The Accused Blackford Phiri appeared before the Lusaka High Court charged with one count of murder Contrary to section 200 of the Penal Code Cap 87 of the Laws of Zambia. The particulars of the offence being that the Accused on the 10<sup>th</sup> September 2019 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia did murder one Justine Mvula junior. He took, plea on 2<sup>nd</sup> of December 2019 and denied the charge.

## **2. The State's case**

2.1 PW1 was Memory Chilala a business woman residing in Lusaka's Obama residential area . She testified that on the 10<sup>th</sup> of September 2019, her son Justine Mvula Jnr went missing. He was 5 years old. His fathers' name is Justine Mvula Snr. Her son was living with her in Chainda Compound, her place of residence at the time. She told the Court that she had separated from his father from about the year 2015.

- 2.2 On the material day, she woke up in the morning and started preparing to go out for her usual business of selling samosas. She took her son to her friend's house where she would leave him as she went about her business. Her friend Amaike Joseph, lived across the road from her house. She would spend about 2 hours doing her selling. Her typical day was therefore that she would leave her home about 08:00, leave her boy by the neighbours and then return by 10:00 hours.
- 2.3 On the day, she left at her usual time in the morning and went to sell her Samosas at Chainda Basic School. When she returned, she did not find her son at home. She went to inquire for his whereabouts from Amaike Joseph and was told he was playing with his friends. One of the children, she named as Bernard, told her she saw him at the Accused house.
- 2.4 She explained that the Accused had been her landlord and later turned boyfriend. They became intimate in March 2017 and she had lived at his plot in Chainda before she moved to a different address.

- 2.5 She went to the Accused house to ask after her son. He denied that the boy had been to his house on that day. She testified that the relationship her son had with the Accused was a very warm one. The boy referred to him as Daddy and sometimes Uncle. She herself had a cordial relationship with the Accused but at some point he started using abusive language in his conversations with her. He threatened that he would do something bad to her. He would bewitch her so that she had a continuous menstrual cycle and would make the child suffer were some of the threats he issued.
- 2.6 Unsettled by these words, she decided to move out from his property. The differences between them lasted for about 3 months. In spite of this, the Accused got along just fine with the child during that period. She recalled that the misunderstandings started when she refused to move in with him into his house from her 1 roomed house that she had been renting from him on the same plot. She then shifted and went to Chainda in an area near the clinic.

2.7 The Accused started going after her at her new home. He continued pursuing her and asking her to move to his house. She declined to accept his advances and told him she did not want him anymore. This did not stop his visits. He continued to turn up unannounced at any time at her house.

2.8 Picking up on her evidence on the events of the 10<sup>th</sup> of September 2019, It was PW1's further testimony that after the Accused was asked and denied that the child had been to his home on the day, she embarked on a search with her neighbour Amaike Joseph. This was around 11:00 hours. She looked everywhere and did not find her son. Around 15:00 hours, she went back to the Accused house and asked if Justine had pitched up. He said he had not. She continued searching for her son in Chainda until she got to Chainda Open School where Justine attended school in reception class.

2.9 The teacher said he had not been to the school. She explained that he had not gone to school on the day as she had not paid his fees and was trying to raise money for that

purpose. She continued with her search until 19:00 hours with no luck. She went back to the Accused house and again asked if the boy had surfaced there. The Accused maintained he had not.

2.10 She then decided to report the matter to Chainda Police and continued with her search thereafter until midnight. At 01:00 hours, she called the Accused to find out if anyone had brought her child to him. He told her that no one had done so. She remained awake until dawn.

2.11 At 06:00 hours she went to the Accused house and found his shop closed. She explained that she kept going there because that was the place where lost children would be taken. The Accused was the Chairman for Chainda area and people would go to him with various issues or problems faced in the community. Her gut instinct also kept her going to inquire her son's whereabouts from him.

2.12 She went back to the police to give further information about her son. She told the police what he was last wearing. She recounted that he had on a black short, red long sleeved T-shirt and purple slippers. She was asked to go

back home whilst the police also carried out a search for him.

2.13 She later went back to the police only this time with Bernard, her neighbour's child. She informed the police what the child had earlier told her about having seen her son with the Accused at his house. She further informed the police what the Accused's consistent position was when she inquired about her son from him.

2.14 The Accused was then summoned to the police station. He confirmed being acquainted to PW1 but denied knowing Bernard. He maintained his position that Justine had not been to his house on the 10<sup>th</sup> September 2019. Later the police asked PW1 to accompany them to a destination she did not know. They got onto a police vehicle and drove to the University Teaching Hospital's Mortuary. One of the officers asked her to be strong and help identify a body of child that had been found to confirm if it was her son.

2.15 She entered the mortuary with the officers, her sister and mother. The child was brought and put on a table. He was in a white mealie meal sack up to his neck and the head

was covered in a black and white plastic. The police removed the sack and plastic. Her worst fears were confirmed. The body that was shown to her was that of her missing child Justine Mvula Jnr.

2.16 It was PW1's further evidence that the deceased was wearing the same clothes he had on the day he went missing. She identified and confirmed the clothing shown to her in court. She went back home and held his funeral.

2.17 She testified that she then recalled all the things that the Accused would say to her. He had spent a lot of money on her and would do something bad to her were some of the words that kept echoing in her mind. This was the reason she had kept going back to his house when her son went missing.

2.18 She testified that after she moved out of the deceased plot, she settled in a house about 60 meters away from her old house. Her son continued to visit the Accused house a lot after she had moved. That he would go and play at the plot they were staying and straight to the Accused house. She tried to stop him from continuing to go there but he did not

yield. She had moved out in January 2018. She identified the Accused from the dock.

2.19 When cross examined, PW1 reiterated that the deceased got along very well with the Accused. She had not quarreled with the Accused on the 10<sup>th</sup> September 2019. She confirmed that she first went to check on her son at Mr. Phiri's house around 11:00 hours.

2.20 PW2 was Bernard Silumba a child witness. After conducting a voire dire, I was satisfied that the child was possessed of sufficient intelligence and appreciated the duty to tell the truth to warrant the reception of his evidence in terms of section 122 of the Juveniles (Amendment) Act No 3 of 2011, the applicable law at the time.

2.21 He testified that he was 11 years old at date of his testimony. He told the court that on the 10<sup>th</sup> of September 2019, his mother asked him to go and sell vegetables. He was with a friend he named as Ben at the time.

2.22 As he was going to execute his assignment, he saw Justine seated with the Accused. He called out to Justine and asked him to escort him to go and sell vegetables. Justine

refused to tag along and said he was going to remain with his Daddy in reference to the Accused. He testified that he knew Justine as he was a neighbor and aged about 5. He had known him for some years.

2.23 It was his further evidence that he saw Justine at the Accused house and was seated with him on a bench at the time. There was no one else seated on the bench. This was around 11:00 hours from his recollection. He testified that Justine was wearing a black short and red sweater.

2.24 The Child witness testified further that he knew the Accused. He used to see him enter Justine's home. Further that The Accused owned a grocery shop that he sold his merchandise from. PW2 later returned to his home around 12-13hours.

2.25 Justine's mother later came and asked him where Justine was. He told her that he had seen Justine at the Accused's house whilst he was on his way to sell the vegetables. She then asked him to accompany her to the Accused house to confront him with this information.

2.26 However when asked by PW1, the Accused said he had only seen Justine the previous day. PW2 was taken to the Police station and informed the police officers that attended to him that he did see Justine at the Accused house in the company of the Accused.

2.27 The Accused came to the police station and was asked if he had seen Justine. He said he had not. PW2 reacted to this and said that the Accused was not being truthful and that the Accused knew where he had hidden his friend.

2.28 The police then asked PW2 to move from where he had sat. He insisted he had seen the Accused with the deceased. He testified that Justine was his friend and used to play with him. He identified the Accused from the dock. He also described the clothes that Justine was wearing and identified the clothing when shown to him in court.

2.29 When cross examined, PW2 stated that PW1 first embarked on the search for Justine around 11:00 hours. He asserted that he told her he had seen Justine watching TV in the Accused shop. That he had earlier been outside the shop but when the Accused saw Justine's mother approaching

he got Justine and locked him in the shop. He testified that he did tell PW1 this.

There was no re-examination

2.30 PW3 was Justine Mvula Snr. He recalled that on the 11<sup>th</sup> September 2019, he was at work and received a call from Memory Chilala (PW1) around 9-10 hrs. He explained that Memory was the mother of his son Justine Mvula Jnr and was the one living with him. She called to tell him that their son had gone missing. He asked her to check with the Accused. He knew of the Accused and that he was the one who was taking care of his son whilst seeing PW1.

2.31 He asked for permission to be excused from work and went to Simon Mwansa Kapwepwe police station to report the matter. He learnt that the mother had already filed a report and was advised to join in the search. He later received a call and was informed that his missing son had been found dead. He went to the funeral house which was within Chainda area and near where PW1 and the Accused had lived.

2.32 On the 13<sup>th</sup> September 2019 he attended a postmortem examination. He identified his son's body that was lying on a table with a black and white plastic bag over his head. The plastic was removed from the head by the police and it was then that he confirmed it was his son Justine aged 5. The deceased also had a string around his neck.

2.33 He testified further that he knew the Accused before he had started cohabiting with PW1. He had known him for almost 15 years as they lived in the same street. He identified the Accused from the dock.

The witness was not cross examined.

2.34 PW4 was Dr. Adam Mchenga Muchelenganga a forensic pathologist employed by the Zambia police. He holds a Fellowship in forensic pathology, a Master of medicine in anatomical pathology. He also holds a Bachelor of medicine and surgery and a Bachelor of human biology. He informed the court about his his experience and duties as a pathologist in the Zambia Police.

2.35 He recalled that on 13<sup>th</sup> September 2019, a body of a boy who had been found dead was brought for his examination

by police officers from Simon Mwansa Kapwepwe police station. The body was reportedly found in an area around Silverest in a sack. He went ahead to examine the body and took photographs. The deceased was clothed and had a black plastic covering his head that was tied with a string.

2.36 He undressed the body and removed the plastic bag from the head. He took pictures of his clothes. An external examination revealed the deceased had a small wound on his upper lip. The other finding of note was that there were small hemorrhages or bleeding observed in the eyes and the face appeared congested. This suggested there was no blood flowing to the head so it looked darker than expected.

2.37 He proceeded to do a layered neck dissection and looked for injuries around the neck in light of the string that was found that held the plastic around the neck. There was no injury detected on the layered dissection of the neck. He examined all the other organs and did not find any evidence of a natural disease.

2.38 After a consideration of the case and history, the finding of a plastic bag tied around the neck and autopsy finding of a

small wound on the upper lip, the hemorrhage in the eyes and congestion on the face, PW4 came to the conclusion that the child had died due to manual strangulation.

2.39 He explained that manual strangulation occurs when another person either uses their hands or forearm or any part of their body to occlude or put pressure on the neck. This will lead to blood going to the head but does not drain. The face will in such circumstances appear congested precisely because the blood goes to the head and is not drained. He added that one needs very little pressure to occlude the veins that drain the blood from the head. That when that happens, there is a lack of blood supply to the brain. This causes a damming effect and loss of consciousness in 10 to 20 seconds. He added that continuous pressure would then lead to death.

2.40 He testified further that when the person strangled is an adult, marks are generally observed on the neck as there would be a struggle. However, that in children, marks are generally not seen and this is why on dissection of the neck no injuries were visible. He concluded that the cause of

death was manual strangulation based on the history of the case and manner the body was found ruling out death from natural causes. This was also a conclusion reached after examining all the organs.

2.41 He added that a Zambia Police cannon camera was used to take the photographs. The camera has been used for 4 years, had no defects and was in proper working condition. The photos were processed using Zambia Police computers that are in good working condition and password protected. A power point presentation was also produced for court purposes. The presentation was on a laptop that is regularly serviced by technician's from the Zambia police Forensic sciences laboratory and is password protected. The presentation was put on a flash disc which was tendered in evidence.

2.42 The witness proceeded to present the photographs depicting the body as he received it, the sacks the body was in, the black string used to tie the plastic bag and the bag itself. He also presented photographs of the clothing the child had

on. Other photos were of the child's naked body and congested face.

2.43 He ruled out the possibility that the polythene string was used to do the strangulation due to the absence of any visible injuries on the neck. He thus concluded the black plastic was placed on the child after the death. He testified further that whereas it is possible for a person to die from being covered in a plastic bag, he discounted this possibility in the present case stating that if this was so, there would be no congestion on the face observed.

2.44 He then authored a postmortem report with his conclusions which he tendered in evidence. His ultimate conclusion was that the manner of death was homicide.

2.45 When cross examined, PW4 testified that he did conclude that the deceased died from manual strangulation. Further that the history of the matter as received from the police was that a body had been found in Silverest area and that a man alleged to be the boyfriend of the mother led them to the discovery of the body.

2.46 The fifth Prosecution witness (PW5) was Chutu Rosa a Woman Detective Sergeant No 39887 stationed at Chelstone police station. She testified that she is a Scenes of Crime officer and obtained her training at Lilayi Police college. Her duties include conducting visits of a scenes of crime for all reported cases requiring a scenes of crime officer. Her role is to reconstruct the scene of crime and document any video taken and process a photo album for court purposes.

2.47 She recalled that on 10<sup>th</sup> September 2019 she reported for duty at 15:00 hours and received instructions from her CIO Assistant Superintendent Mwangomba to accompany the CIO Chalimbana Inspector Mwamba to visit a scene of crime in Waterfalls area falling under Chongwe District. She left with the CIO using a Chelstone police vehicle.

2.48 The scene was 6 meters off Great East Road and 5 meters away from Chalimbana main road. At the scene, it was discovered that there was a dumped white Nyimba Milling 25Kg sack. By then it had already been tempered with by the people who reported the matter.

2.49 She testified that they found a human body packed in two 25 kg Nyimba Milling sacks. The first sack was removed by members of the public who reported the matter to the police. The sack in which the body was found was a bit torn by members of the public who were curious to see what was in it.

2.50 PW5 inspected the body and concluded it was a male juvenile aged between 5 and 8 years. By then, the body had not been identified. She also observed that there was a black and white plastic bag wrapped around the neck of the deceased. The sack was tied with a blue string of about 1 meter or so. Beside the sack was an empty black plastic. The body had no physical signs of injury. There was no bleeding observed and the body was still fresh.

2.51 She started taking photos from different angles using a cannon camera and a 35GB memory card. The photographs were processed at police service headquarters forensic department . The body was then taken to UTH which was still unidentified at the time.

2.52 She removed it from the sack with Inspector Mwamba and other mortuary attendants. It was then that she noted the boy was dressed in a black short and red top. Everything was left as it was. She did not remove the plastic from the neck. The only thing she did was to remove the body from the sack.

2.53 The following day, PW5 went to service headquarters to chase up the photographs with the forensic department. She picked the photos needed and compiled a photographic album which she tendered in evidence. 5 photos depicting the scene of crime, where the body was found, the 25kg bags and body of the deceased were captured. The clothing the deceased was wearing was also captured. She was shown and identified all the exhibits referred to in her evidence.

2.54 She later received a call from the dealing officer who informed her the body had been identified.

2.55 When cross examined, she testified that she and Inspector Mwamba found a woman Sergeant present at the scene when they arrived. She had preserved the scene. She

testified that the body remained unidentified until 2100 hours. No-one at the scene knew who the deceased was. Further that the body was found by a passerby and member of the public.

2.56 PW6 was Patrick Kalumba a Detective Inspector based at Simon Mwansa Kapwepwe police station. He recalled that on the 11<sup>th</sup> of September 2019, he reported for duty at the CID office where he is the Detective Criminal Investigations officer. He received a report from the victim support office of a missing child which was made by female Memory Chilala (PW1) of Chainda compound. She reported that her child named Justine Mvula aged 5 went missing on 10<sup>th</sup> September 2019. Further that there was one male suspect in custody named Blackford Phiri.

2.57 He interviewed witnesses in the case and further received a report or wireless message of a missing child sent on 10<sup>th</sup> September 2019. The details in the message were similar to the description given by PW1 in her report to the police. The wireless message also indicated that a body of a child was taken to UTH mortuary picked up from Chalimbana area.

He thus instructed the victim support officers to accompany Memory Chilala to UTH to inspect and possibly identify the body.

2.58 As it turned out, Memory confirmed that the body was that of her son Justine Mvula aged 5. A docket of murder was opened and investigations instituted. He removed the Accused Blackford Phiri from the cells and took him to the CID officers to conduct an interview in connection with the murder. This was done in the presence of Detective Sergeant Chilima (PW5).

2.59 He testified that the Accused led them to his house in Chainda at which 2 empty Nyimba sacks of mealie meal which were similar to the description given by Detective Mwamba of Chalimbana Police, regarding the sacks the body was found in. He also recovered a bicycle that the Accused said he had used to transport the body of deceased.

2.60 At this point, the defence raised objection to the evidence of leading contending it was involuntarily obtained. The State insisted on this evidence. A trial within a trial was therefore

held between the 12<sup>th</sup> January 2021 and 18 March 2021 . After considering the evidence from both sides I allowed the evidence of leading to be led having been satisfied that the voluntariness test had been met.

2.61 In his continued testimony following the ruling of the court, PW6 testified that the suspect led him to Chainda compound and to his house where he recovered 2 empty sacks bearing the Nyimba Milling Mealie Meal brand. These were similar to the description given to him by Detective Inspector Mwamba of Chalimbana police station of the ones the body was allegedly recovered in.

2.62 PW6 also recovered 3 black polythene strings. These too were similar to what Detective Inspector Mwamba discovered on the sack that the dead body was found in. He also recovered the bicycle from the house which the Accused stated he had used to ferry the body. He kept the exhibits at the police station and placed the Accused back in custody.

2.63 He further arranged for a postmortem to be conducted on the deceased. This was done on the 13<sup>th</sup> of September 2019

by doctor Muchelenganga. The doctor concluded that the cause of death was strangulation which was also confirmed by the statement given by the suspect during the interview.

2.64 He also recovered the clothes that the deceased was wearing at the time his body was discovered. These included the red sweat shirt and black T-shirt. He further recovered a polythene string which was tied around the victim's neck holding a black and white striped plastic bag that was covering the head of the deceased.

2.65 He further recovered 2 empty 25kg bags all written Nyimba Milling and similar to the one he collected from the Accused house. He observed that the sack had the same polyethene black strips tied to its edges. He kept all these exhibits in his custody. He explained that these items were recovered from UTH mortuary and the body of the deceased removed from the sacks by Dr. Muchelenganga.

2.66 Thereafter he requested for a scene reconstruction to be done at Lusaka division as the Accused person had expressed willingness to lead the police.

2.67 On the 27<sup>th</sup> of September 2019, Lusaka Division scenes of crime office overseen by Detective Inspector Chompo and Detective Sergeant Kashimoto conducted the scene reconstruction. It was his evidence that he attended the scene reconstruction where the suspect led the team to Chainda compound at the same residence he had taken him earlier. They then proceeded to Great East Road and off the highway to a gravel road and the point he mentioned he had dumped the body. All this was being visually recorded.

2.68 Upon concluding the scene reconstruction, the suspect was taken back to Chelstone police station. PW6 then made up his mind to charge and arrest Blackford Phiri for the subject offence. He proceeded to identify and tender in evidence, the sacks recovered, the black polyethene strings, the clothing, and the black and white stripped plastic bag. Also tendered in evidence was the recovered bicycle.

2.69 He pointed out the similarities in the bags retrieved from the Accused house with the ones found at the scene. He stated further that the clothes helped with the identification

of the deceased as it tallied with the description given by the mother of the deceased. He explained that the sacks recovered from UTH are the ones the body was found in.

2.70 When cross examined, PW6 agreed that Inspector Mwamba had described the sacks in which the body was found and this was way before they went to the Accused house. The polythene strings had also been described to him.

2.71 He agreed that before he went to the Accused house, he did have a conversation with Memory Chilala (PW1). He agreed that the Accused had a house and a shop and that Nyimba mealie meal was sold at his shop. He agreed that Nyimba Mealie meal is a common brand of mealie meal and that there were empty sacks in the shop. He was not in a position to say if the Accused was selling them.

2.72 He disputed that there were black strings for sale in the shop. He testified that the video footage taken at the Accused house was not his first visit to the house. He was aware that the Accused shop was broken into by residents. It was PW6 who secured the premises after he took the Accused back to the cells following the visit to his house.

2.73 He agreed that the premises were later broken into by residents. He agreed that Inspector Mwamba spoke to him over the phone about his findings of the black plastic and string. He agreed that the plastic bag is very common. He qualified that the one in issue was however found on the deceased's head. He did not agree that he charged the Accused substantially based on what the Accused himself had told him. He maintained that he based the arrest on other evidence which he had produced before the court.

2.74 When re-examined, PW6 testified that the premises was broken by irate members of the public following a riot that ensued after he had already recorded the warn and caution statement and visited the Accused house.

2.75 PW7 Patron Kazhimoto a Detective Sergeant by rank. He testified that he is a Scenes of Crime officer for Lusaka Division headquarters and currently operating from Kanyama police station. After presenting a background of his qualifications, the witness testified that on the 27<sup>th</sup> September 2019, he was assigned to attend to a scene

reconstruction in a case of murder that Simon Mwansa Kapwepwe police station were investigating.

2.76 He carried a Panasonic video camera black in colour, full HD 1920 x 1080 and a 32GB Sundisc memory card. He then went to Lusaka Division headquarters and met Mr. Chompo who was the principal investigations officer for Matero police and officer to carry out the interview.

2.77 They went to Chelstone police where he learnt that the Accused was being held. Once there, they were moved to the CID office where the interview was to take place. A male person whom he came to know as Blackford Phiri aged 59 was brought in. Mr. Chompo introduced the panel to the Accused and was asked if he had any representation before the interview could proceed. The Accused stated he did not. He was told the proceedings would be recorded on video and could be used in court. The Accused was willing to proceed with the interview.

2.78 PW7 using the equipment mentioned earlier started doing the recording. The Accused gave a narration of how he allegedly committed the offence and said he had information

that his house was completely demolished as a result of riots that had engulfed Chainda compound following the death of Justine Mvula. He wished to take advantage to visit his house and see the extent of the damage to his property.

2.79 2 motor vehicles were provided. A Toyota Land Cruiser from Simon Mwansa Kapwepwe station and a white Toyota Hilux reg BAF 7347 also a ZP vehicle. The Accused first led the police to Chainda compound but could not proceed to do any narration because of the curiosity of members of the public around his house.

2.80 He then led the police to a place along Great East Road called "Why Not bar". This was the place he stated he had joined Great East road from Chainda compound. He continued to lead the police to a point off Great East Road and onto a gravel road where he said he dumped the body of the deceased in a sack.

2.81 All this was captured on video. Afterward, Mr. Chompo asked the Accused if he had issues in the manner the reconstruction was done. The Accused expressed that he had no complaint at all and said he hoped the process

could be quickened so that the matter is pushed to court. The Accused was then taken back to the police station and put in custody.

2.82 PW7 then removed the memory card from the camera and went to the Police laboratory unit at service headquarters where he placed the memory card onto his laptop. The video recording was transferred from the card to a flash disc and DVD which he kept. He noted that the whole recording lasted for an hour and 55 minutes.

2.83 He testified that a Zambia Police laptop was used. He explained that all devices used are serviced regularly by the technical team. The camera is also serviced and cannot be used by any other but scene of crimes officers that have pin numbers. He also gave evidence about the working condition of the Panasonic camera used and the storage of the disc and flash.

2.84 He testified that the camera was in excellent condition. He identified the DVD and flash disc which he produced in evidence. When the video was played back in court, he testified that the first clip depicts the caution administered

to the Accused and his expressed willingness to lead the police for the scene reconstruction. Further that clip 13 shows the 'Why Not bar' along Great East Road and the point he stated he dumped the body.

2.85 When cross examined, the witness agreed that there was no other evidence found at the scene that confirmed the body was dumped there apart from what the Accused had said. He testified that he was aware that before he went to the scene for the reconstruction, other officers had earlier been there on that day and picked up the body. Among them was woman sergeant Rosa Chutu(PW5) a scenes of crime officer based at Chelstone police.

2.86 He agreed that the 300 meters he asserted the Accused stated he had dumped the body off Great East Road was not the same as the 6 meters that it was suggested PW5 had told the court was the distance earlier.

2.87 He agreed that the Accused did express an interest to see what had transpired at his property. He was not present when the Accused was allegedly told that the only way he could see the house was if he led the police on a scene

reconstruction. He insisted that the Accused himself told the police he was ok to have the recording done in the absence of lawyer or friend. That he was given an opportunity to call a lawyer or a friend.

2.88 Questioned further, he agreed that one of the officers was armed. However that the gun was never pointed at the Accused throughout the leading. He said there were a total of 18 clips in the recording. He did not cut out anything nor edit the footage. He did not know under what circumstances the Accused had agreed to lead.

2.89 In re-examination, the witness testified that the camera automatically reduces the footage into clips and puts together what was reduced. That it is possible to covert the clips into one. That if that's not done, the user will only get clips in the manner presented before the court.

### **3. Ruling at close of prosecution's case.**

3.1 After considering the evidence at the close of the State's case, I was satisfied that a prima facie case had been established and I put the Accused on his defence. He opted to give evidence an oath and called no witnesses.

#### **4. Defence**

- 4.1 DW1 Blackford Phiri the Accused herein testified that on the 10<sup>th</sup> of September 2019 he was summoned to Simon Mwansa Kapwepwe police station. When he reached there, he was asked whether he knew the child of a named woman. He agreed knowing the child but had forgotten the woman's name.
- 4.2 The child's name was Justine Mvula. He was informed that the child had gone missing and they wanted to know if he could assist them locate him. He was asked this question because his mother had been his girlfriend for a period of 4 years.
- 4.3 He confirmed that the woman and the child were staying at his house. Further that he was no longer residing with them and they lived on their own. She had left his home about 2 months earlier. He informed the police that the mother had been to his shop the previous day to ask whether he had seen her son. He told her he had not seen her son at all. She had come through between 10-11 hours and about thrice thereafter asking about the child. He

denied having seen the child. On her third visit she claimed that her son's friends had seen the child coming to his shop. He disputed this assertion.

4.4 The police officers from victim support office went further to ask him what they needed to do for the child to be found since the boy used to frequent his house. He offered to help look for the child in every way possible that the mother would suggest.

4.5 As they were leaving to embark on the search and whilst at the reception, some other police officer stopped him and took him to a room where his shoes were removed and he was locked up in cells. He was not told why he was put in cells.

4.6 After a short while, the police officers came and picked him up and put him onto a vehicle and drove to his house. When they reached his house, he opened the door. One officer had a camera and took photos of the house. To his surprise, he was asked about some strings at his house. He explained that there was a black string that he used to tie the broiler chickens. The police cut the string. There was

also a string that he used to tie pumps to the bicycles. That string was also cut.

4.7 He was asked which bicycle he used. He pointed to the smaller one but the police did not accept this. They pointed at the big mountain bike that had a black rope.

4.8 From there they proceeded to his shop. Photos were taken of the shop whilst officers searched it. There were plastic bags in the shop which he used to pack charcoal. The officers picked up some plastics. There were also empty mealie meal bags. The police just got one, white in colour and labelled Nyimba Milling.

4.9 After the officers had finished searching the shop, they went back to the police station, where he was put in cells. The following day he heard that the shop had been destroyed. He further heard that his houses had been damaged. He requested that the police take him to see what happened. The police said if he wanted to see what happened, he had to admit the charge.

4.10 The alleged offence was in relation to the same child that he learnt had been killed. The police told him they had

discovered the body. That was how he learnt that a murder had taken place. He told the police he had no knowledge about the death. He was confused not knowing what had transpired with his house and shop. He therefore just started following the police wherever they told him to go.

4.11 He was taken into an office at Simon Mwansa Kapwepwe police station and did not say anything in that office. The officers pointed at him and said he had killed the child. He was asked how many people he had killed. He was threatened with a certain death as well. He maintained that he was innocent.

4.12 The police then picked him up and put him onto a vehicle. They did not stop at his house for fear of mob justice from an irate crowd. They proceeded to the scene where they had picked the body of the dead child. He was seated in the seat behind the driver. From that point the police started giving him tabs to place at specific points starting from the tarred road leading to the point of discovery of the body of the child. He was directed to these points.

- 4.13 He became very afraid because of the number of police officers present, the firearms that they were carrying and utterances of his impending death made earlier. He thus started pointing at any spot out of the fear that he had. They then went back to the police station.
- 4.14 He recalled that the court admitted a confession statement allegedly given to the police of his having killed the deceased. His position is that he was just told about the discovery of the body. The admission made was because of the threats of death the police issued to him. It was not true that he killed the child and put him on his bicycle which he used to go and dump the body.
- 4.15 When cross examined, he admitted that he was in a relationship with PW1 and cohabited with her and the deceased. He agreed that the child and he developed a bond. It was further true that even past the termination of the relationship, the child visited him regularly and considered him his father. He did not know if PW1 had other relationships during the subsistence of theirs. He

further did not know if she started dating other men after they broke up.

4.16 He contended that it was he that decided to end the relationship. He disputed that he had made several attempts to reconcile with PW1 after they broke up. He insisted that he gave the confession statement out of fear. He agreed that in that statement he did say that he had killed the child. Further that he went on to explain how the deed was done. He did say the child was killed by strangulation. He agreed that the arresting officer had testified that the Post mortem report indicated the child died from strangulation. He agreed that he had told the police the child died from strangulation even before the Post mortem was done going by the dates.

4.17 He maintained he did not see the deceased on the 9<sup>th</sup> of September. He agreed that he heard the evidence of PW2 who said he saw him with the deceased on the 10<sup>th</sup> September. It was not true that he pulled the deceased into the shop when the mother was approaching.

4.18 He agreed that he told the court there were black polythene strings he used at home. He further agreed that exhibit P10 were the strings he purported he was using to tie pressure pumps to his bicycles. That the strings found on the body were similar in colour and material but not in length. He disagreed that the Nyimba Milling sacks that he had at home were similar to the one in which the body was found.

4.19 He insisted the colour of the sacks was different. He further insisted that it was the police that took him to the scene where the body was found as opposed to him leading them there.

#### **5. Court's consideration**

5.1 I have carefully considered the evidence before me and the parties positions. The offence of murder is proscribed under section 200 of the Penal Code Cap 87 of the laws of Zambia defined as the unlawful killing of a person with malice aforethought. Malice aforethought is defined in section 204 of the Penal Code in the following terms:

**“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.**

5.2 In order to establish that an accused has committed the crime therefore, the State has to prove beyond any reasonable doubt that the accused did with such malice aforethought cause the death of the person claimed to be deceased.

5.3 I find as a fact that on 10<sup>th</sup> September 2019, Justine Mvula Jnr a 5 year old boy of Chainda compound in Lusaka went missing. His mother Memory Chilala had left him at a neighbour's house and upon her return was informed he

was playing with his friends. A search for the boy throughout the neighbourhood and school he attended yielded no result. The mother ended up reporting the matter to the police.

- 5.4 I find as a fact that on the same date, members of the public stumbled across a mealie meal sack dumped off Great East road in Silverest waterfalls area. In that sack was the dead body of a young boy.
- 5.5 Zambia Police Service Scenes of crime officers rushed to the scene when alerted and retrieved the body which was taken to the UTH Mortuary. I find as a fact that the body was identified the following day by Memory Chilala to be that of her son Justine Mvula, the 5 year old boy that she had reported missing.
- 5.6 I am further satisfied and find as a fact that Justine Mvula was murdered. He was found bundled in a sack with a plastic bag tied around his neck and over his head. The postmortem report prepared by Doctor Muchelenganga the State pathologist, further concluded that the cause of death was manual strangulation.

- 5.7 He testified that he had examined all the organs of the body and did not find any evidence of natural disease that might have caused death. The doctor further testified that manual strangulation occurs when another person either uses their hands or forearm or any part of their body to occlude or put pressure on the neck. Ultimately, that the manner of death in this case was homicide.
- 5.8 The fact that the person that carried out this strangulation intended grievous harm or death to result or indeed that it could reasonably be foreseen as a likely consequence of such action is therefore, beyond question. The perpetrator of the crime not only strangled the child to death, he proceeded to bundle the body in 2 sacks, tied a plastic bag around the neck and over the head and dumped the body off Great East Road in Lusaka's Silverest, Waterfalls area.
- 5.9 The only question for my determination as I see it therefore, is whether or not I am satisfied that the State has proved beyond a reasonable doubt that it was the Accused that committed the crime.

5.10 The State's case is that PW1 Memory Chilala and the Accused were in a relationship. She was initially his tenant and the relationship blossomed from landlord and tenant to boyfriend and girlfriend. The deceased as a consequence grew close to the man in his mother's life and comfortably referred to him as his Daddy. Along the way, cracks started developing in that relationship. PW1 subsequently moved out of the Accused premises and terminated the relationship.

5.11 The State contends that this did not please the Accused who started stalking PW1. He would turn up at her house unannounced at any time he pleased and threatened her with misfortune. Consumed by bitterness over her unwelcome termination of the affair, he decided to kill her child in retaliation and dumped his body in a sack along a gravel road off Great East Road in Silverest area.

5.12 The State primarily rely on a confession that the Accused allegedly made of the murder of the deceased and that he led the police for a scene reconstruction and demonstration of how he committed the crime.

5.13 Circumstantial evidence is also relied on. That empty sacks similar to the ones that the boy was found in were retrieved from the Accused house. Further that similar Polyethene string as the one that was used to tie the plastic bag that was covered on the deceased head was also found at the Accused residence.

5.14 Finally that a child witness saw the deceased on the day that he went missing with the Accused at his home about midday in spite of the Accused's protests that the deceased had not been to his house on that date. There was also relied on as evidence the revelation by the child's mother that her son having been very free with the Accused was always at his house and shop. This seemingly supported the child witness's testimony that the deceased was indeed with the Accused on the day he went missing.

5.15 The Accused defence on the other hand, was total denial of culpability. He did not confess or lead the police to a scene reconstruction and demonstration of how he allegedly committed the offence. He was beaten and threatened into confessing. There was further nothing odd about his being

found with the empty 25kg sacks of Nyimba mealie meal. He owned a grocery store and mealie meal was among the merchandise that he stocked. He therefore kept empty sacks.

5.16 Although he acknowledged that the recovered polythene string that was used to fasten the plastic to the deceased's head was similar to what was found in his store, he contended he had used his for purposes of tying his pressure pumps to his bicycle and the other strings for tying his broiler chickens. The police did not accept his explanation. He also denied that he had used his bicycle to go and dump the body after he had allegedly murdered the child.

5.17 The question then is, which version do I accept and why? It is common cause that there was no eye witness to the murder of Justine Mvula. No one saw the Accused strangle the child and dump the body where it was subsequently found. The evidence on record is thus as stated earlier, firstly an alleged confession.

5.18 Lord Eric J in **R vs Baldry**<sup>1</sup> comments of confessions that:

***“When a confession is well proved, it is the best evidence that can be produced”***

5.19 EK Quansch a legal scholar in his article titled **“The admissibility of Confessions in Botswana: an appraisal of the statutory provisions”** published in *Sabinet African Journals* making reference to the Lord Eric J’s observation concludes that:

***“the above statement underscores the importance of confessions in a criminal trial. Law enforcement agencies , notably the police therefore very often place undue weight on the need to secure a confession from an accused person at the expense of a thorough investigation of a crime”***

5.20 Therefore, in spite of its value in criminal matters, confession evidence is always treated with caution by the courts.

5.21 In **Nalukwi vs the People<sup>2</sup>**, a matter I just recently decided, I cited Professor Muna Ndulo’s summation wherein he opines that:

***“Confessions are considered from the point of view that the technique of eliciting confessions inevitably leads to unfairness***

***and abuse of other rights and the rise of confessions encourages the police to carry out shoddy investigations.”***

5.22 Therefore, establishing the voluntariness of the confession becomes of crucial importance before a court can safely admit it in evidence. Lord Sumner in **Ibrahim vs R<sup>3</sup>** aptly sums up the common law position in the following terms.

***“It has long been established...that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntarily statement in the sense that it has not been obtained from him either by fear or prejudice or hope of advantage exercised or held out by a person in authority”***

5.23 That said, the Confession evidence proposed by the State was in the alleged statement that the Accused gave admitting the commission of the crime and of his leading and demonstration of the commission of the offence. In **Esia Mupasha and 2 others vs the People<sup>4</sup>** the Supreme Court adopted with approval the passage in **Li sha Ling v the Queen<sup>5</sup>** in which the Appellant Court stated the following.

***“The truth is that if an Accused has himself voluntarily agreed to demonstrate how he committed a crime, it is very much more***

*difficult for him to escape from the visual record of his confession than it is to challenge on oral confession with the familiar suggestions that he was misunderstood or mis recorded or had words put in his mouth. Provided an Accused is given a proper warning that he need not take part in the video recording and agreed to voluntarily, the video film is in principle admissible in evidence as a confession and will in some cases prove to be more valuable evidence of guilt,”*

5.24 The Supreme Court thus concluded that:

*“What comes out clearly from that case is that the police must give an Accused a proper warning that he need not take part in the enactment or demonstration or video recording. If he agrees to do so voluntarily, the video recording or in our case, the pictures taken of the demonstration is admissible as a confession.”*

5.25 With the above guidance from the Supreme Court and after undergoing a trial within a trial to determine the voluntariness of the confession evidence contested, I readily accepted both the statement the Accused gave at the police station and the video recording of the proposed demonstration as part of the State’s evidence.

5.26 I was satisfied that the State was able to demonstrate through its witnesses the circumstances in which the statement was made and the recording was done. The video footing clearly showed the atmosphere in the room that the caution was administered, the reading of the caution itself and the Accused expressing his understanding of the caution and willingness to lead the Police in the scene reconstruction. The ruling on admission of the warn and caution statement and the recording of the scene reconstruction after the trial within the trial is on record.

5.27 I was satisfied that there was no threat, coercion, inducement or promise that was extended to the Accused during the recording of the statement and the scene reconstruction and demonstration.

5.28 I therefore do not accept the Accused assertion that he was beaten and or told what to do. The statement reveals the bitterness that he harboured based on his belief that PW1 was sleeping with other men after they broke up. He recalled the sacrifices he made and money spent on her and

of his resolve to kill the child whom he strangled to get back at PW1.

5.29 The video shows a willing participant leading the police initially to Chanda compound through to Why Not bar along Great East Road and finally on to a gravel road off the highway and to a point he asserted he dumped the body of child whom he had carried on his bicycle that was tendered in evidence.

5.30 Officer Chompo who was the scenes of crime officer in charge of the scene reconstruction and testified as PW3 in the trial within trial asked the Accused if he had any complaint with the manner the operation was conducted. The Accused stated that he did not have any.

5.31 I am of course mindful of the holding of the Supreme Court in the case of **Borniface Chanda Chola & Others vs the People**<sup>6</sup> in which the Court held that:

***“A leading by an Accused of the police to a place they already know and where no real evidence or fresh evidence is uncovered cannot be regarded as a reliable and solid foundation on which to draw an inference of guilt.”***

5.32 However, as I held in the *Nalukwi* case, which I find holds true in this matter, the value of the leading is more in what he said along the way as opposed to the fact that he eventually led to the scene which it is acknowledged in this case had already been visited by the police when they retrieved the body. It is not proposed that any item of real evidence was recovered at the crime scene during the scene reconstruction in this case. I would therefore accept the State's evidence that what it presented was an admissible confession of the commission of the offence.

5.33 The second limb of evidence proposed by the State is circumstantial evidence. As stated earlier, there was no eye witness account of the murder. In **David Zulu vs the People**<sup>7</sup> the Supreme Court restated the principle that a court can convict on circumstantial evidence. The Supreme Court stated the following in that case.

*“(i) It is a weakness peculiar to circumstantial evidence that by its very nature it is not direct proof of a matter at issue but rather is proof of facts not in issue but relevant to the fact in*

*issue and from which an inference of the fact in issue may be drawn.*

*(ii) It is incumbent on a trial Judge that he should guard against drawing wrong inferences from the circumstantial evidence at his disposal before he can feel safe to convict. The Judge must be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of cogency which can permit only an inference of guilt”.*

5.34 The Supreme Court decision in **Saidi Banda v The People**<sup>8</sup> took the principles governing circumstantial evidence further and provided clear steps that a court must take into consideration when the prosecution’s case depends wholly or in part on such evidence. The Court proposed a three staged test that must be highlighted in the judgment being:

- First the prosecution must establish basic facts. These facts do not have to be proved beyond a reasonable doubt, in that, taken by themselves the facts cannot prove the guilt of the Accused person.
- The court should then infer from a combination of those basic facts, further facts or that a further fact exists. The

circumstances from which the inference of guilt is sought must be cogently and firmly established.

- The court must then be satisfied that those further facts point to nothing else but the guilt of the Accused person. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that, within all human probability, the crime was committed by the Accused and no one else.

5.35 Thus, the question that arises is whether the circumstantial evidence in this matter has taken the case out of the realm of conjecture, such that it has attained a degree of cogency, that can permit only an inference of guilt to be drawn against the Accused person.

5.36 The above settled, what are the findings of fact I make based on the evidence adduced by the State?

5.37 I accept as a fact that on the 10<sup>th</sup> of September 2019, PW2 Bernard Silumba the child witness saw the deceased with the Accused at his house on his way to sell vegetables. He beckoned Justine to tag along with him but Justine refused

stating he wanted to be with his Daddy, the Accused. I accept that this was on the same day that Justine had gone missing.

5.38 I accept that on the same date, PW1 Memory Chilala approached the Accused no less than thrice as she went about looking for her child to establish whether he had seen Justine. I accept that his response was that he had not seen him. This led PW1 to report to the police what Bernard had told her about having seen her son at the Accused house that day and led to the heightened suspicion that she entertained that he might have something to do with the child's disappearance.

5.39 I accept as established in evidence that Justine's dead body was bundled in 2 empty 25 kg Nyimba Milling mealie meal sacks. I find as a fact that a number of empty 25 kg Nyimba Milling mealie meal sacks similar to the ones the body was found in, were also found at the Accused house.

5.40 I also find that polythene string similar to the ones that were used to fasten the plastic bag around the deceased neck and over his head was found at the Accused house.

5.41 I accept PW1's evidence of the nature of the relationship that she had with the Accused, how bitter he was when she left him and the threats that he issued. I further accept that the child developed a bond with the Accused that carried on beyond the split between his mother and the Accused. That the child was comfortable always being at the Accused house whom he considered his Daddy and referred to him as such.

5.42 Taken cumulatively therefore, I am prepared to find as I now do that the circumstantial evidence has taken the case out of the realm of conjecture and has attained such a level of cogency that can permit only an inference that it was the Accused and no one else that committed the offence.

5.43 In taking a closer look at the basis of my findings, I make a number of observations that I would like to delve in a little deeper.

5.44 PW2 the child witness places the deceased at the Accused home and in his company on the day he went missing. He was able to describe the clothes that Justine was wearing on the day which was also confirmed by PW1. These are

the clothes that both witnesses were able to identify in court that the deceased was wearing when his body was found.

5.45 However it must also be said that PW2's evidence which only came out in cross examination was that when he and the deceased's mother went to the Accused home to confront him about the deceased whereabouts, the Accused purportedly hid Justine in the shop to avoid the mother from seeing him.

5.46 PW1 does not state this is what PW2 had said to her. I find that she most certainly would not have left the Accused house if she had the slightest hint that the child was there. I find the witness exaggerated his evidence in that regard and hence less than truthful on this material aspect.

5.47 In **Haonga & others vs the people**<sup>9</sup> the Supreme Court held that

*“Where a witness has been found to be untruthful on a material point the weight to be attached to the remainder of his evidence is reduced; although therefore it does not follow that a lie on a material point destroys the credibility of the witness on other points (if the evidence on the other points can stand alone)*

*nevertheless there must be very good reason for accepting the evidence of such a witness on an issue identical to that on which he has been found to be untruthful in relation to another accused.” (Emphasis added)*

5.48 I am thus consciously aware of the direction given by the Supreme court on the issue of the reduction of the weight to be attached to the rest of the evidence. The Court qualifies that point and states that it does not follow that a lie on the identified material point destroys the credibility of the witness on the other points if the evidence can stand alone. The issue of extension of an identical point to another accused is not applicable to the present case.

5.49 Therefore, I accept that PW2 did see Justine at the Accused house and in his company on the day and find this evidence is able to stand on its own because he ably described and identified the clothes that Justine was wearing on the day that the mother(PW1) also confirmed he had on.

5.50 Support for the theory of Justine’s likely presence at the Accused home was given by PW1 who stated that her son

was often at the Accused home and that she had tried but failed to get him to stop going there. I am inclined to find that it was not unlikely that he was with the Accused at his house on the day.

5.51 I further find as too odd a coincidence that similar 25 KG empty Nyimba Millie meal sacks that the deceased child was found in were also found at the Accused house. Even more compelling is that similar polyethene string that was used to tie the plastic around the boy's neck and head was found in the Accused house. I dismiss the Accused's suggestion that there was nothing peculiar about this or that the strings found in his house were used to tie his broiler chickens and his pumps to his bicycle.

5.52 I am prepared to infer that the Accused was extremely bitter that PW1 had terminated their love affair and that she did not want to have anything to do with him. His bitterness drove him to take out his frustrations on the innocent child whom he had access to. The child readily availed himself to a person he trusted and referred to as his Daddy.

5.53 I am satisfied that the Accused had the opportunity and proceeded to strangle the child when he visited him at his house on the 10<sup>th</sup> of September 2019. Further that he is the one that loaded the body in 2 of the empty mealie meal sacks that he readily had available at his house.

5.54 I find that he then used some of the polythene strings that he had in his shop to tie the plastic around the boys head. I accept that he then put the child on his bicycle and went and dumped the body where it was recovered.

5.55 I am thus satisfied that the circumstances, taken cumulatively form a chain so complete that there is no escape from the conclusion that, within all human probability, the crime was committed by the Accused and no one else.

## **6. Conclusion**

6.1 On the totality of the evidence before me therefore, I find that the State has proved its case beyond a reasonable doubt. I consequently find the Accused Blackford Phiri guilty of one count of

Murder contrary to section 200 of the Penal Code and I convict him accordingly.

Dated the <sup>14<sup>th</sup></sup> ..... day of <sup>February</sup> ..... 2025



**JUDGE**