

IN THE HIGH COURT FOR ZAMBIA
AT THE CRIMINAL REGISTRY
HOLDEN AT LUSAKA
BETWEEN

HP/27/23

THE PEOPLE

VS

NALUKWI AKAFEKWA

Before the Honourable Mr. Justice M.D. Bowa on 31st of January, 2025 in open court.

For the State: Mrs. C. Sikanyika & Mrs. S Banda State Advocates National Prosecutions Authority.

For the Accused: Mr. C Simukonda, Mr. K Aongola of Kangombe and Associates with Mrs. K Mulubwa Legal Aid Counsel, Legal Aid Board.

JUDGMENT

Cases referred to:

1. *David Zulu vs. The people* (1977) ZR 151 (SC)
2. *Saidi Banda v The People* SCZ Appeal No. 114 of 2015)
3. *Maurice Mweene vs the People* CAZ Appeal no 112/ 2019
4. *George Musupi vs the People* (1978) ZR 271
5. *Simon Malambo Choka vs The people* (1978) ZR 443
6. *Esia Mupasha and 2 others vs the People* SCZ No. 12, 13 & 14 at 202
7. *Li sha Ling v the Queen (Hong Kong)* (1988) UKPC 18
8. *Borniface Chanda Chola & Others vs the People* 1988-89 ZLR

Legislation referred to:

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

1. Background

- 1.1 On the 21st March 2023, the Country was greeted with the sad news of the discovery of the dead body of a school going child that had been widely reported missing a few days earlier not having returned to his home from school. His body was recovered from a maize field in Lusaka's Emmasdale area, was in semi decomposed state and had its head covered in a plastic bag.
- 1.2 The Accused Nalukwi Akafekwa, was named as the primary suspect in the alleged murder. He was subsequently charged for the subject offence of Murder contrary to section 200 of the penal code Cap 87 of the Laws of Zambia and appeared before the Lusaka High Court for plea on the 2nd October 2023. He denied the charge.

2. The Prosecution's case

The State called a total of 19 witnesses in aid of its case.

PW1 Silvia Mwanza

- 2.1 A teacher at Naluma Academy a school along Manchinchi road opposite Chilubi shop in Lusaka. She testified that on 16th March 2023 , she went for work at 07:20 hours. Among the pupils in class on the day was a girl she named Lisa, Chikondi Banda,

Samuel and Aisha. These were all grade 5 pupils and she was their class teacher.

- 2.2 She testified that the day progressed like any other normal one. The children had their mid-morning and lunch breaks. She recalled that Chikonde was as fine as the rest of the children. She did notice anything amiss about him.
- 2.3 The pupils knocked off at 1530 and as per usual standard procedure, the teachers helped them to cross the busy Manchinchi road and then the children left for their homes. She knocked off around 16:00 hours . Later, at around 20:00 hours she received a phone call from the school director Mr. Munalula Magunga. The Director was calling to inquire about Chikondi Banda and if he had come to school on that day. PW1 confirmed that the child was in class. She learnt that the parents had come to inquire about his whereabouts as he had apparently not returned home from school.
- 2.4 The following day, PW1 went for work at 07:30. The pupils turned up for school. Chikondi was not among them. She proceeded with the class hoping that some information about Chikondi would surface. There was no news that came through. After a few days, the school learnt that there was a dead body that had been

discovered in Emmasdale area. They were later to receive the shocking confirmation that it was Chikondi's body that had been found.

- 2.5 She recalled that on the day he went missing, he was wearing his school uniform being a charcoal grey trousers, sky blue shirt, and a grey sweater. He also had a bush green back pack bag. He was 10 years old. She identified the bag when shown to her in court.
- 2.6 When cross examined, the witness confirmed she had not produced the class register to confirm who was present in class on the day. She maintained that Chikondi was one of the boys she helped cross the road on the day. She agreed that she did not see the Accused take Chikondi Banda after he had crossed the road. Further, that she had neither seen the Accused near the school on the 16th of March nor had she ever seen him at the school before then.
- 2.7 She did not personally visit the place where the body was discovered. It was therefore correct that she just heard about the discovery of the body.

PW2 Kabasinga Mutumba

- 2.8 A student at Zambia Institute of Management. He testified that the Accused person Nalukwi Akafekwa is his cousin. He recalled

that on the 25th March 2023 he was in school when police officers came and picked him up from the student hostels in Chilanga district. The police explained that they were looking for his cousin.

- 2.9 They took him to Emmasdale police station around 19-20 hours. He was put on a police vehicle and they started looking for his cousin. He was asked which places the Accused could be found. The first place that came to mind was his friend Jackson's house. Only a day before he was speaking to his uncle William Akafekwa who happened to be the Accused father. His uncle informed him that Nalukwi was not at home and had mentioned he was going to help his friend to mount a tent.
- 2.10 He testified that Nalukwi lived with his father in Chilulu Garden area. PW2 therefore thought about Jackson as being that friend and led the police to his house. The police found the Accused in the house, picked up both Nalukwi and Jackson and drove straight to Emmasdale police station.
- 2.11 At the police station, they were separated. PW2 was taken to a separate room so did not know what happened to the Accused after that. He was then taken to a different police station where

he was informed that his cousin was suspected to be involved in the murder of Chikondi Banda.

2.12 He testified that Chikondi Banda was a neighbour in Chilulu Garden. He used to live with his uncle in Garden so he knew Chikondi's family that lived just a house away from theirs. He identified the Accused from the Accused dock.

2.13 When cross examined, PW2 confirmed that he was not with the Accused on 25th March 2023. The police had gone to see him believing he knew Nalukwi's whereabouts being his cousin. He confirmed that there is an unused pit latrine at the uncle's house in Chilulu. He did not see his cousin with Chikondi Banda on the 16th March 2023. He further did not see him murder the deceased or dumping bags in the pit latrine.

2.14 Questioned further, the witness testified that he was taken to Chipata police and released from custody on 28th March 2023. Further that he was not told why he was detained for that long. He was not charged with any criminal offence.

2.15 He confirmed that there was as many as 8 people that lived in the Chilulu house at the time. 5 were above 18 and had mobile phones. He added that the pit latrine was an old one and not in

use. He confirmed that any person living in the yard had access to the pit latrine.

PW3 Kalaba Manvas

- 2.16 A Sergeant in the Zambia Police based at radio workshop Zambia Police and attached to the National Command Center a government outfit that has installed surveillance cameras on the streets of Lusaka, Copperbelt and Livingstone.
- 2.17 He testified that he is an IT. Technician by profession and has worked in this capacity for 2 years as at date of his testimony. He holds a diploma which he obtained from the Copperbelt University. He has also undertaken in house training and his duties include monitoring computer systems and networks. He recalled that it was on the 28th March 2023 when he received a request for a video footage review and extraction from one inspector Sikalubya of Emmasdale police under the criminal investigations department.
- 2.18 The request was in relation to a murder case that allegedly occurred on 16th March 2023. According to the report given to him by the officer, male Chikondi Banda was murdered and his body was dumped in maize field behind Emmasdale police camp.

Acting on this request, PW3 logged into the system at the National Command Center to check for footage.

2.19 Detective Inspector Sikalubya and PW3 checked on a number of cameras in the area until they found the footage on camera number VSS365 video surveillance system 365. He explained that this camera is along Great North Road near Emmasdale Police camp. Whilst they were reviewing the footage, the dealing officer identified 2 male persons. One a juvenile wearing a school uniform being grey trousers and jersey with a sky blue T-shirt whom he named as Chikondi Banda. The other person a male adult wearing a brown trousers, a black and white T-shirt and a black head sock was identified by the dealing officer to be Nalukwi Akafekwa.

2.20 PW3 thereafter extracted the footage from the system and put it on a flash disc. He explained that he extracted the footage from the computers kept in the National Command Center. He testified that the computers used were in perfect working condition and the staff regularly update the anti-virus on the system. Further, that the system is password protected and only a few people with log in credentials have access to it.

- 2.21 He added that the flash on which the footage was put belongs to the Zambia police. He identified the flash by make, colour and size. He testified further that the flash has the footage that he extracted that shows the Accused and Chikondi Banda coming from the southern direction heading towards Emmasdale police camp. This was on the 16th of March 2023 around 2023.
- 2.22 He testified that the T-shirt worn by the Accused was visible in the footage. He produced the flash disc that he asserted has the footage into evidence.
- 2.23 Once tendered in evidence and played back in court, the witness explained that there is footage depicting the movement of vehicles along Great North Road and shows the Accused with the deceased. The date indicated as Thursday 16th March 2023 is also visible and the time was 2026. He testified that it can also be seen in the video that the adult male was carrying a bag.
- 2.24 He testified that the street cameras are the property of the Zambian Government and are being managed by the Ministry of Home Affairs and Internal Security. That the cameras were in perfect working condition.
- 2.25 When cross examined, PW3 testified that any request for footage from the Command Center has to be in writing. He intimated that

he was not the one that personally received the request from Emmasdale police. To that extent he accepted that his earlier testimony in this regard was not an accurate position. He agreed that the camera has footage of everything recorded on 16th March 2023. It was from this that he was able to extract the footage that he produced in evidence.

2.26 He agreed that he had not made any mention about the video being authenticated. He agreed that he had not mentioned what anti-virus is used for the system or who services the system. Without any document confirming this, he agreed that the court would not be able to tell if the system is indeed serviced and that it has an antivirus.

2.27 He insisted he could see the colour of the T-shirt worn by the adult in the footage and maintained that it is black and white. He also maintained that he could see the face of the adult. He did not agree that the court would not be able to make out from the video, that it is in fact the Accused. He insisted that in spite of the darkness in the footage, he could still see the face of the man and child.

2.28 Cross examined further, it was his testimony that he was only seeing the Accused for the 1st time in court. He testified that the

head sock is visible at 20:26 and 14 seconds in the footage whilst the face is also visible at 20:26 and 14 seconds.

2.29 When re-examined, the witness testified that the footage does not give a very clear depiction of the exact features of the T-shirt in issue.

PW4 William Akafekwa

2.30 A self-employed 45 year old man of Chilulu house No. 20/46. He testified that his son and first born of his family had been accused of murdering Chikondi Banda. He recalled that on 16th March 2023 he came back from work at Sandy's Creation. He found his 11 year old 3rd born son Lukondo alone at home. PW4 had earlier left Nalukwi Akafekwa, the Accused at home. When he inquired after him, he was told that Nalukwi had escorted a friend. PW4 then called his son and asked where he was on his number 0972083620.

2.31 He told the father that he had gone to see his daughter Genesis who was not well. He returned between 20-21 hours. Asked why it had taken him 2 hours to get home, the Accused told his father that his phone had been snatched. Further that he had been engaged in a flight and was taken to Garden police.

- 2.32 PW4 did not believe his son's story and asked him to apologize for coming late. PW4 was cooking supper at the time as his wife was away. The family had their dinner and went to bed.
- 2.33 The next morning PW4 left the Accused preparing his brother for school. He returned back home at 18:00 hours and arrived at the same time with the Accused. the Accused told him that his friend Jackson had lost an aunt and he would be going to help him mount a tent. He also told his father not to look for him as he was going to be at the funeral.
- 2.34 The following morning on a Saturday, PW4 called his son at 05:00 hours to remind him that he was leaving for work early on that date so wanted him to return home early. His son did not show up. PW4 therefore left with Lukondo and locked the house.
- 2.35 He returned home at 15:00 hours. His son was not back and his phone was off. later, PW4's wife returned home and asked about their son. He told her that he was not picking up his calls and the phone was subsequently not reachable. Sunday and Monday passed with no sign or word from him. On Tuesday, PW4 dropped off at Sheki Sheki bus stop and found people had gathered talking about the discovery of a dead body. He learnt it was the body of a boy.

2.36 It turned to be the body of Chikondi Banda, the boy that was missing from his neighborhood. That he had gone missing on the 16th March 2023 and was actually their neighbour. He testified that Chikonde would come to his house and play with their third born son Lukonde. He disclosed that he therefore knew the family very well and there was only a road in between PW4's family home and the Banda's. PW4 proceeded to attend the funeral and the burial.

2.37 On Saturday the 25th March, when PW4 was returning home from church, he received a call from Kelvin Banda a church mate. He was told that his nephew Kabasiya (PW2) had been picked up by the police from school. He established that he was being held at Emmasdale police and found him there. The officer who attended to PW4 told him his nephew was innocent and the person they were actually looking for was Nalukwi Akafekwa in connection with the murder of Chikondi Banda.

2.38 PW4 was shocked to hear this. He disclosed to the police that this was his first born son. Further that he did not know where he was as it had been a week since he left home and there had been no communication from him. That all he said was he was going to be with his friend Jackson. That his nephew might know where the

house was. The police then turned the tables on PW4 and said they would keep him in cells as well until his son was found. He was therefore put in the same cell with his nephew Kabasiya.

2.39 At around 23:00 hours, the police returned and announced they had found Nalukwi at his friend Jackson's house. Nalukwi was brought to same cell he was in the next day. PW4 asked him if he did what he had been accused of. His only response to the father's inquiry was that he was sorry. PW4 did not know what he meant or if he said this because the father was in cells.

2.40 It was PW4's further evidence in chief that the Accused had been living with him in his home since he was a toddler. He added that his yard is not covered in a wall fence. Further that there is an old disused toilet that has an opening on the top as the iron sheets were stolen. He testified further that he is familiar with some of his son's clothing, though he could not remember what he was wearing on the 16th March 2023. He confirmed he can identify his son in any video footage and was also able to do the same for Chikonde Banda as he is a child he had known for some years and was age mates with one of his own sons that he used play with. He explained that Chikonde was fondly referred to as the "last born" by his son and his friends.

2.41 When shown the video footage contained in exhibit P4 played back at 20:26 hours, the witness identified the small boy he saw in the video as Chikonde and the older one as his son, the Accused. He testified that he could identify his son by his T-shirt that he was wearing and his walk. That he knew the T-shirt and could also see his body outline. He confirmed the T. shirt shown to him in court to be his son's and the one he was wearing in the video. He further identified his son Nalukwi as the person in the Accused dock.

2.42 He testified further that at the time of his apprehension his son was using a black Itel phone with a cream white line in the middle. The cover of the phone he stated, had a crack as he had dropped it. He identified the phone when shown to him in court as the one he had been referring to.

2.43 When cross examined, PW4 confirmed that he lives in a rented property. That there are 4 other tenants in his yard. He disclosed that the old toilet he had referred to is a pit latrine. Further that all the tenants are able to access the toilets. He agreed that because these were communal toilets they were not being locked.

2.44 He agreed that his younger son did tell him that Chikondi's bag was found in the toilet. He did not see the Accused dump it in the

disused toilet. He further agreed that no-one saw him do so and that as such it was possible any other person could have done so.

- 2.45 He agreed that he was also detained at Emmasdale police station. He agreed that at the time, the police were treating him as a suspect. He agreed that his son was sorry to see him detained by the police. He further agreed that the Accused did not confess to him that he was the one that had murdered Chikondi Banda.
- 2.46 When referred to the T-shirt he agreed that it had more visible markings than what appears in the video footage. Pressed further on this he stated he did not agree that the T-shirt in the video and the T-shirt presented to him were different.
- 2.47 Questioned further, it was PW4's evidence that he could not confirm that the Accused is married. He testified that he was living with a woman at some point in Kabanana with whom he had a child. They were just cohabiting with each other but were not married as far as he was concerned.
- 2.48 He did not agree that his son physique was the same as that of several Zambians. He agreed that he had not told the court any unique features that would enable him identify his son. He agreed that he had not specifically told the court that he had seen the T-shirt previously. He further agreed that he had not told the court

that his son was wearing that T-shirt when he saw him after he had been apprehended.

2.49 He did not agree that between the 16th and 17th March 2023, the Accused phone had a problem and was taken to be fixed. He was not aware if it was taken to be fixed. He was apprehended on the 25th of March and told he was put in custody as a surety to be released upon the apprehension of the Accused.

PW5 Jackson Phiri

2.50 Resident of Chilulu compound. He testified that on the 24th of March 2023 his friend Nalukwi Akafekwa went to visit him at his house. He explained that they had been classmates and friends from their 6th grade. He arrived around mid-morning and found PW5 with his girlfriend. He excused himself and returned later after his girlfriend had left.

2.51 The Accused told PW5 that he had some challenges with his father and would spend the night at his house. He did not specify what challenges he had. As far as PW5 was aware, the Accused lived with his father Mr. Akafekwa (PW4) in Chilulu.

2.52 The following day, PW5 left home early in the morning for prayers. He left the Accused at home. After the prayers at about 12 hours,

he went straight to his mother's house within Chilulu. He returned home after 19:00 hours and found the Accused cooking.

2.53 After he started having his meal there was a knock on the door. PW5 opened the door and found a gentleman who introduced himself to be a police officer who asked if he was Jackson. After PW5 confirmed that he was, he asked if anyone had left a phone to be charged at his house. He told the officer he had been away all day but could inquire from his colleague who was in the house. The officer asked if he could come into the house and PW5 invited him in. The officer made a call and told the person he spoke with to come through.

2.54 Shortly after other officers arrived with firearms. They came inside the house and asked the Accused if he was Nalukwi Akafekwa and he confirmed that he was. Both PW5 and his friend were then handcuffed to each other and the police confiscated his phones. They were then driven to Emmasdale Police Station.

2.55 The Accused was asked where his phone was whilst at the station and he said he had left it at PW5's house. They drove back to the house and one of the officers produced a phone and asked if that was the phone. The Accused confirmed that it was. PW5 explained that the officer stated it was in the car that had been used when

they were going to Emmasdale Police. This officer was not among the 2 officers that had earlier entered the house when apprehending them.

2.56 PW5 testified further that the Accused was using a small black ITEL phone before his apprehension with a cream white line. He confirmed the phone shown to him in court to be the phone he was referring to. He added that this is the same phone that the police officer had brandished and asked who the owner was. He recalled seeing the phone with the Accused from Friday the day he arrived and was the phone he had been using. He identified Nalukwi Akafekwa as the person in the Accused dock.

2.57 It was PW5's further evidence that they were separated after that. He was taken to Muzaleka police post where he spent the night. On Sunday morning, he was taken back to Emmasdale Police Station and questioned on how he knew Nalukwi. It was after he explained the relationship that he was informed there was a murder investigation. He spent another night in cells, gave a statement and was released. He was not charged with any offence.

2.58 When cross examined the witness testified that he was not in the company of the Accused on the 16th and 17th March 2023 and he did not say anything to him about abducting Chikonde Banda. He

did not make any confession to him about murdering Chikonde Banda. Further that he did not look apprehensive when he visited PW5's house. He further did not see the Accused sending a message to anyone demanding to be paid a ransom of K12,000.

2.59 Questioned further, he testified that the Accused did not fight with the police during his apprehension. He agreed that the Accused appeared surprised when they were being apprehended and handcuffed together. Further that the police had not at that point explained the reason for the apprehension. He stated that he did note that when reunited at Emmasdale police station, the Accused had a wound on his head.

PW6 Peter Banda

2.60 Resident of Chilulu compound. His evidence was that Chikonde Banda was his son. On 16th March 2023, his son left home around 08:00 for school. He was in his usual uniform a grey trousers, sky blue shirt and grey jersey. He had a backpack school bag and said his goodbyes as always before he set out for school. After he had left, PW6 also went for his work. He testified that Chikonde attended Naluma Academy along Machinchi road and was in Grade 5.

- 2.61 While at work at around 18:00 hours, he received a phone call from Chikonde's mother Precious Kafula informing him that their son had not returned home from school. He told his wife to call the school to find out what might have happened. The school was called and the report received was that Chikonde had knocked off and helped to cross the road.
- 2.62 PW6 left work and went home around 18:30 hours. The family searched around for Chikonde. A neighbour's child that would go with Chikonde to school revealed that there was a man who had taken him after calling him. That this was after they had crossed the road from the school. She said she did not know this man. She further disclosed that he was wearing a head sock. Acting on this information, family members went to Emmasdale police station to report the matter. They returned home waiting for news.
- 2.63 Around 24:20 hours, his sister in law Chishimba semeke who lives in the same yard as he, received a message on her phone. The person who sent the message was asking for K12,000 as ransom to release Chikonde. Further that the police must not be involved. The family rang the same number but it was off and hence not going through.. They went back to the police around 01:00 hours and were asked to report later that day. They

returned later to give statements. The officers also requested for the phone that received the message and it was given to them.

2.64 The following day on 18th March 2023, PW6 continued his search for his son. He returned home at 17:00 hours. His mother Alice Banda informed him there was a bag for a child that had been seen in the neighbour's disused toilet. This was at PW4 Mr. Akafekwa's house. She later stated that it was actually Chikonde's bag that had been found.

2.65 The police came through and picked up the bag. 3 days later, his mother Alice Banda informed him that a dead body had been found behind Emmasdale police. As he was quite far from there, she said she was going to go to the scene and check.

2.66 She was to later to confirm his worst fears. It was Chikonde's body that had been found.

2.67 The family proceeded to hold a funeral and buried their son. After 3 days, the police called to say they had apprehended a suspect connected to his son's murder. They further informed him that the person apprehended was a neighbour and that it was at his residence where the bag was found. He testified that he used to see this person and knew him to be a neighbor although he did

not know his name. He identified him to be the Accused in the dock.

2.68 He was referred to the video footage and identified his son in the video. He added that the clothes he appeared in is what he was dressed in when he left home. He stated that although he was not shown the bag that was recovered from the neighbours toilet, he was in a position to identify it as he knew it. He proceeded to give a description of the bag and confirmed it to be the one that belonged to his son when shown to him.

2.69 When cross examined, he testified that there was no mention by the school that it was the Accused that picked up Chikonde. That information came from the child that lives in the community. All she said was the men who picked up Chikonde had a bag and wore a head sock.

2.70 He confirmed that the ransom text was not sent to him. He was not in a position to tell if it came from the Accused phone or his sim card. He further did not see the Accused throw the bag in the toilet. He agreed that the face for the adult in the video footage was not clear. He could not identify the adult in the video at 20:26 and 07 seconds. He was however able to see that he had a bag and a head sock as described by the child.

2.71 He testified that he gave a statement to the police on the 17th March 2023 and agreed that his mind was fresh on the sequence of events. He however acknowledged that he did not in his statement, mention what the young girl said and attributed this to his state of confusion at the time.

There was no re-examination.

PW7 was Willian Kilembe

2.72 A clinical researcher and medical doctor. He testified that he works for the Center for Family Health Research in Zambia and has been in employment there for 18 years at date of his testimony. His evidence was that he was aware that the matter before court related to a death in which one of the participants at their institution was named as a suspect. He explained that the Center for Family Health Research in Zambia conducts research studies, one of which is TB observational study. The aim of this study is to find how common latent Tuberculosis is. He testified that the participants on the study are given a participant identify or appointment card.

2.73 He recalled that a participant card was presented to him in March 2023 by 2 police officers. The officers informed him the card was found together with clothing and some bags. He testified that the

card was brought to him as the officers identified the organization from it and wanted to get more information about the card and who it belonged to.

2.74 PW7 requested the police for a warrant or letter that would authorize them to get the information they were asking for. A warrant was presented accordingly. He explained that a research participant signs a consent in which they are assured of confidentiality.

2.75 After due internal consultations and authorization sought, he retrieved the reception file generated manually with particulars of the participants, their address, phone number, date completed and date of birth. He was able to establish that the participant appointment card presented to him belonged to an individual named Akafekwa Nalukwi. The officers went on to record the information of interest to them that included a phone number and they left the site.

2.76 He clarified that he did not personally know the participant. He proceeded to identify the card when shown to him. He confirmed it was issued by his institution. He also identified and produced the reception file with the information confirming the participation card was for Nalukwi Akafekwa. Also produced in

evidence was the letter presented by Zambia Police and forming the basis for authority to waive the confidential information that was availed to the police.

2.77 When cross examined, the witness maintained that the procedure for enrolling the Accused as a participant was followed. He agreed that the Accused did not sign the requests form and that there is no NRC number for the Accused. He was not present when the finger prints were endorsed so he was not in a position to confirm whether or not the accused affixed his prints. He however refused to say that because of this, the court cannot conclude the card belonged to the Accused.

There was no re examination

PW8 was Dickson Ngoma.

2.78 A Lusaka resident and car washer based behind Emmasdale police station. His evidence was that on the 21st March 2023, he was working at his usual post. He reported for work at about 09:00 hours and found a lady he knew as Amake Vanessa who called and asked him to pluck some fresh maize cobs from the field behind Emmasadle police. He testified that he had known her for over 18 years.

2.79 He started picking the fresh maize. As he was moving deeper in the field, he saw a lot of flies and detected a foul smell. He initially thought this might be a dead dog. He took a closer look to establish where the smell was coming from and saw a leg of a human being in a folded position. He then noted that the person was dead and was wearing a grey trousers and black shoes. He went and informed passerby's along the road that he had discovered a dead body in the field. They accompanied him to the site and saw the body.

2.80 He testified that on closer observation, he noted that the body appeared swollen and had decomposed. He noted that this was a body of a young boy aged about 10 years old. Further, that the boy was in a school uniform. He further observed that the stomach area in particular had a lot of flies and maggots.

2.81 He then went and reported his discovery at Emmasdale Police Station which was just meters away. The police came to the scene. A lady unknown to him also arrived at the scene whom he eventually learnt was the grandmother to the deceased boy. She confirmed the child to be her grandchild and broke down in tears.

2.82 A lot of people then gathered at the scene. The body was finally picked up at around 13:00 hours and taken to the mortuary. He had discovered it at about 09:00 hours.

2.83 The court was moved to the scene and the witness pointed out the exact point where he found the body. He added that the deceased's head was covered in a white plastic bag. The legs were facing a drainage and head towards the road. He added that the maize stems were tall and maize cobs fresh at the time.

2.84 When cross examined, he reiterated that he was engaged by Amake Vanessa to pluck the maize. He agreed there was a public road near the point he found the body with people passing by in the road around 09:00 hours. He did not see the Accused dump the body at the scene.

PW9 Lisa Faith Mukwaakwa

2.85 The next witness was a child witness. I brought to the notice of the parties that I had been appointed Judge of the Children's Court Division for purposes of the Criminal session that included on the cause list the present matter by memo from the Chief Justice dated 20th October 2023.

2.86 I thus proceeded to receive the sworn evidence of the child in camera pursuant to section 78 (4)(g) of the Children's Code Act

no 12 of 2022 after having conducted a voire dire in the presence of a social welfare officer and being duly satisfied that she was possessed of sufficient intelligence and understood the duty to tell the truth as she gave her evidence.

2.87 Her evidence was that she was a 9 year old school going child of Chilulu Garden area. She testified that she attends Naluma Academy and was in grade 5 at the date of her testimony. She told the Court that on 16th March 2023, she was in school. She went into school at 07:30 hours to 15:30 hours.

2.88 She testified that Chikondi Banda was her classmate. On the date in issue, she was with Chikondi at School. After they knocked off, her class teacher Silvia (PW1) escorted them and helped them to cross Manchinchi Road. Whilst she and her friends Leah and Chikondi were walking home to Chilulu Garden, a man called out Chikondi. She told Chikondi that they should head home as they did not know who that man was. Chikondi said he could not say no to an elder person.

2.89 PW9 and her friend then told him that he would find them at Charity's place another mutual friend of theirs. They went to Charity's place and waited for him. He did not show up so the girls decided to go home.

2.90 Later that evening, Chikondi's aunt came to her house at around 20:30 asking after him. PW9 explained to her that he had remained talking to a man and narrated how they agreed he was to find them at Charity's home but did not turn up. She explained that they waited there for about an hour. She recounted that the encounter with the man was near the school and that he was on the phone when they met him. She further described him as being of medium height, and wore a black head sock and white T shirt and maroon bomber with inner black lining. That he also had a school bag which he carried on his back.

2.91 She was able to identify the Maroon bomber when shown to her in Court. She also identified the head sock she had referred to when shown to her in Court. She was however not in a position to identify the man that she saw in Court as he had on a head sock at the time. She knew that Chikondi Banda is dead.

2.92 When cross-examined, she testified that the man had called all of them but it was because they did not know him that she told Chikondi not to go there. Further that she was unable to describe his face because she did not know him. Questioned further, the witness testified that they did not see the man manhandle or beat

Chikondi. She saw the maroon bomber when they met the man whilst in the company of Chikondi.

She was no re-examined.

PW10 was Elizabeth Chishimba

2.93 A housewife residing in Chilulu Garden. She testified that on the 16th March 2023 at around 18:30 hours, she met Chikondi Banda's mother Precious Kafula her sister in marriage. Precious asked PW10 to help cook nshima at her house as she wanted to check on Chikondi who had not returned home from school. She explained that they there were both married to brothers and reside in the same yard in semi-detached houses.

2.94 After she cooked the nshima, she went back to her house. A few minutes later, she heard Chikondi's mother crying. When approached, she told PW10 that Chikondi was not at school and all his friends had returned home. Together they started searching for him.

2.95 They went to Lisa Faith Mukwakwa's house (PW9). She explained that Lisa was Chikondi's classmate and also lives in Chilulu Garden compound. When asked, Lisa explained how after they knocked off from school they had encountered a man and parted company with Chikondi. Further that she did not give a

description of the man. She was only able to describe what he was wearing being a head sock and carrying a bag on his back. She testified further that they continued with the search and retired for the night with no success.

2.96 The following day at about midnight on the 17th March 2023, she received a message on her phone which stated something to the effect that *"you only have a few hours to send K12,000 in exchange for the child"*. She testified that the message did not define which child was being referred to. She showed her husband this message sent to her techno phone on her Cell no. 0974 985108 and sent by cell phone number 076 7585556.

2.97 She went to see Chikondi's mother and showed her the message. They then went to report this to Emmasdale Police Station. The Police got her phone, the message and the number for the person that sent it. They returned home and continued with the search. On the same day, children in the neighborhood called them and disclosed that bags had been spotted in the disused old toilet at the Akafekwa's. Further that one of the bags looked like Chikondi's.

2.98 Family members went to the toilet and found the bag. The Police were called and came and opened the toilet door and recovered 2

bags. She testified that there was a grey laptop bag and the other a green school bag that belonged to Chikondi. The Police took the bags to the Police Station.

2.99 On the 21st of March 2023 news filtered through that there was a dead body that had been found in a maize field in Emmasdale area.

2.100 Her mother in law Alice Tembo went there to check on the body. She returned later and informed the family that it was Chikondi's body that had been found. A funeral was then held. A few days later the Police called to say they had apprehended a suspect in connection with Chikondi's murder. The person apprehended was Nalukwi Akafekwa.

2.101 He was a known person to the family as he lived in the same compound and area in Garden Chilulu Compound. Further that there is just a house in between theirs and the Akafekwa's. She had known Nalukwi for close to 4-5 years. She identified him from the Accused dock.

2.102 She testified further that the phone that received the ransom message was damaged 3 months prior to her testimony and her husband bought her a different phone. The damaged phone which she gave to her brother to fix was therefore sold after it was

fixed. She however explained that the number she disclosed on which she received the message was in her name. It was PW10's further evidence that the toilet that the bags were found is behind Nalukwi's house and within their yard. Further, that it was a pit latrine that they had stopped using and was locked.

2.103 It was her further testimony that Chikondi lived in the same house as she did and she would see his school bag every day. She was as such able to identify it which she proceeded to do when shown to her in Court. She also described the other bag that was retrieved from the pit latrine. She did not know the other bag nor who its owner might be. She added that the family had tried to call the number of the person who sent the ransom message but the phone was off.

2.104 When cross-examined, the witness testified that she did not see the Accused with Chikondi on the 16th March 2023. Lisa(pw9) did not disclose who called Chikondi on the day. She did not give the man's description. Questioned further, pw10 stated that they did not go to look for Chikondi at the Accused house during the search. She agreed that she had not brought the phone that the ransom message was sent to. As such she agreed it may be difficult for the Court to accept there was such a message sent.

- 2.105 It was her number that she still uses that received that message. She agreed that she had not produced before the Court, the message that she had received. She agreed in that regard, that the Court may not know the content of the message.
- 2.106 She further agreed that she did not have any document to show that the message came from she Accused's phone or number. She confirmed that the phone that she received the message on has since been sold.
- 2.107 Cross examined further, she agreed that the house that Accused lives in has other houses and several tenants. She further agreed that there is a pit latrine inside the yard that can accessed by other tenants. The boy that informed the family about the discovery of the bags did not say he saw the Accused placing the bags in the pit latrine.
- 2.108 Questioned further on the message, the witness acknowledged that the message did not show who had sent it or make specific mention of Chikondi Banda's names. She confirmed that Chikondi was not her son and the message did not make reference to her child. Further that none of her children had gone missing.

PW11 Alice Tembo

2.109 An actor and television presenter. She testified that she is Chikondi Banda's grandmother. She testified that on the 16th of March 2023, she received a phone call between 20:00 hours and 21:00 hours from her son and Chikondi's father (PW4). He told her that Chikondi had not returned home from school and briefed her on what steps he had taken to search for him and that he had reported the matter to the Police. She kept calling her son the whole night thereafter to find out if her grandson had surfaced. He was only 10 years old and this heightened her state of worry.

2.110 She also received a call from her daughter in law Elizabeth Chishimba Banda (PW10), informing her about a message she had received. Elizabeth forwarded the message and number of the person that sent it being 0767585556.

2.111 PW11 tried to call that number the whole night. She didn't get through. She testified that the message was demanding for a ransom of K12,000.00 and that time should not be wasted going to the Police. Further that the money should be paid by 15:00 hours. She could not remember the exact words but it was a message to that effect.

2.112 On the 17th of March 2023, she left her home and went to Chilulu to her son's home. She found Chikondi's mother crying and joined in the search effort. She repeated the evidence of PW10 about the children from the neighbourhood reporting having seen Chikondi's bag in an unused toilet at a neighbor's house 3 houses away from her son's house.

2.113 She added that in that yard were a lot of tenants one of whom was Mr. Akafekwa whom she knew having lived together in the same neighbourhood for a long time. The children led them to where they saw the bags being the disused toilet and they noticed that the door was tied with a wire. However that there was a small space that permitted one to peep in. When she did so, PW11 saw a charcoal grey laptop bag and underneath it was another green bag that she recognized to be her grandson's bag. She knew the bag as she was the one that had bought it for him. It was a bush green bag with pockets on the sides.

2.114 She testified that they made no attempts to open or retrieve the bags. She called the Police instead and they came through. 2 officers from Emmasdale Police untied the toilet door and retrieved the bags. The green bag was opened and removed from there was Chikondi's blue shirt. Also removed from the bag were

school books all in Chikondi's name. There was also a small Fanta bottle and a light blue lunch box.

2.115 In the other bag that the officers also checked was a maroon bomber coat, a belt and a knife with a brown handle. Also found in the bag was a brown envelope which when opened disclosed a white card. She was not privy to the detail on that card. The items were placed back in the bag, pictures were taken and the Police left with the bags. The family then continued with their search and attended prayers.

2.116 On Monday the 21st March 2023, at around 09:00 hours, the family heard people talking about the discovery of a dead body behind Emmasdale Police. PW11 decided to go there and check. She went on her own as Chikondi's mother was not in any condition to do so emotionally and had been continually weeping from the day the child went missing.

2.117 When she reached the site where the body was found, she found a lot of people had gathered. She went straight to the spot in a maize field where the body was found. She looked at the body and initially did not recognize Chikondi as the face looked like it had been burnt from the sun. The whole body was swollen. She then examined the body and clothes being the only way could

identify that this was her grandson. He had on a charcoal grey jersey and inside a light blue T-shirt. He was wearing a charcoal grey trousers from Nalumo Academy school and black shoes. She checked the pant he was wearing after cutting the trousers with a razor blade and saw a light blue pant. She knew the pant to be one of the pants she had bought for him.

2.118 This confirmed to her that the body found was that of her grandson Chikondi Banda. She started crying and the people around joined in. On her way back home she met her son and told him that it was Chikondi's body that had been found. They went back home and held the funeral.

2.119 After the burial, she waited on the Police to advise on the status of their inquiry. On the 28th of March 2023, the Police advised they had apprehended a suspect they named as Nalukwi Akafekwa whom they linked to the murder of the child. The family was surprised to hear this as the person named as a suspect was one that the family knew, a neighbour that lived 3 houses away from theirs. He was a child that PW11 also knew when she lived in Chilulu and only left a year before to her present address.

2.120 That at the time, Nalukwi lived with his father Mr. Akafekwa and Chikondi used to play with Mr. Akafekwa's last born son.

She often found Nalukwi there when she would go to pick up her grandson. She identified him from the dock.

2.121 She further identified the bags and books that she had referred to and other items retrieved from the bags by the Police shown to her in Court.

2.122 When cross-examined the witness agreed that she had not shown the Court the message that was forwarded to her. She agreed that there were several tenants residing in the premises that the bags were retrieved though she did not know whether all the tenants had access to the toilet the bags were found.

2.123 The children did not say anything about seeing the Accused dump the bags in the toilet. She agreed she was only able to identify Chikondi from his clothing. She could not do so from the face as it was damaged.

PW12 Detective woman Inspector Katanga Angela

2.124 She testified that she is based at scenes of crime Lusaka division. Prior to this, she operated from Emmasdale Police as officer in charge scenes of crime. She possessed a certificated in forensic evidence collection and crimes scene management and has been working as scenes of crime officer for ten years.

2.125 She recalled that on Tuesday the 21st March 2023 she was assigned to visit a crime scene of suspected murder in Emmasdale area behind Emmasdale police camp in the maize fields near a drainage. She got onto great north and at the corner of Sheki Sheki road turned right where there are street surveillance cameras and onto a gravel road leading to Chilulu Garden Compound.

2.126 She testified that the distance from the street surveillance camera to the crime scene was about 20-25 meters. She reached the crime scene and found the body of a male juvenile dressed in a grey school uniform. He had on a grey trousers, blue shirt, grey jersey and black school shoes. The head was wrapped in a colourless plastic bag.

2.127 She testified further that there were a lot of flies around the crime scene and that the body was facing upwards. It was later identified as that of male juvenile Chikonde Banda aged 10 of Chilulu Garden compound by the Grandmother one Alice Banda (PW11).

2.128 After the body was identified, she sprayed doom insecticide at the scene to clear the flies and enable her to inspect the body thoroughly. Upon inspection of the body she noticed that the

deceased had some injuries on the head. The rest of the body parts were intact. Further that the body was swollen due to its decomposed state. Maggots were coming out of his ears.

2.129 She took photographs of the maize field and the position the body was found. To capture the crime scene, she used a cannon police camera with a 64GB memory card. She testified that the camera was in good working condition and well serviced once a month.

2.130 After she was done with the photographs, she wrapped up the body in a black plastic and took it to UTH mortuary for a postmortem to ascertain the cause of death. She later on the 24th March 2023 went to police headquarters forensic department to have the photograph that she took at the scene processed.

2.131 She testified that she worked hand in hand with the officer in charge forensic department who gave her access to the computers. She inserted the 64 GB Memory card in one of the computers and printed out the photos of the crime scene. She used an HP computer to have the photos printed which was in good working condition and well serviced. Afterward she compiled 4 photographic albums of 4 photos each and produced a report. She testified further that the maize field was just behind

Emmasdale police camp and was at the stage of harvest of fresh maize. A lot of grass had grown around it.

2.132 She explained that the field was along Zungula gravel road leading to Garden compound. Further that the body was found near the drainage she described earlier. She proceeded to identify the photo album which she produced in evidence and led the court through the photographs that she took. The photos depicts the scene and maize field, the body of the deceased with the plastic covering the head and another of the body of the deceased in the school uniform and shoes that the grandmother used to identify the deceased.

2.133 She testified further that the flies she described are seen in the photos. Another photograph shows the body after she had cleared the flies with the spray. She further referred the court to the photo that captures the swollen state of the stomach, the injuries to the head and maggots she had described coming out of the deceased ears. She testified further that the photo album contains an index explaining each photograph.

2.134 When cross examined she testified that she did not collect any evidence that showed that the body was left at the scene by the Accused person. She further did not have any evidence to show

the deceased was murdered by the Accused from the crime scene. There were people near the scene when she got there but not where the body lay as police had secured the area.

2.135 Questioned further PW12 agreed that Zungule road is a public road.

PW13 Shabangamba Modify Chompo

2.136 A Detective Chief inspector and officer in charge of Lusaka division scenes of crime. He testified that on the 28th March 2023 at about 09:35 he took charge of a scene reconstruction in a case of murder involving a deceased juvenile Chikonde Banda aged 10. He picked up the suspect in the matter one male Nalukwi Akafekwa that was being investigated by detective Inspector Sikayubyi the Deputy Criminal investigations officer for Emmasdale police.

2.137 He informed the suspect that the process of going to be audio and video recorded using a Panasonic video camera with a sun disc 32913 memory card. He asked the suspect if he was ready to be audio and video recorded and he accepted that he was.

2.138 PW13 further informed the suspect of his right of representation of either a lawyer , relative or friend. His response was that he had a grandmother whom he named as Mwaka Stumbeko Tembo

aged 69 who could be his witness. PW13 went on to introduce detective inspector Shamapongo Victor a crime scene technician as the officer to operate the camera during the process. Afterward, he warned and cautioned the suspect and asked him if he understood the caution.

2.139 He said that he did and agreed to demonstrate and explain what he knew of the matter. The Accused proceeded to sign in PW13's note book to signal his understanding and willingness to demonstrate. Present was officer Shampongo, the Accused grandmother, and Mr. Mulungusha the Assistant Superintendent homicide Lusaka division.

2.140 he testified that the first point they went to was Naluma school in Northmead area where area where the suspect started to explain how he committed the offence.

2.141 At that point the defence objected to the flow of evidence and contended that the demonstrating amounting to confession proposed by the State was not voluntarily obtained. I proceeded to conduct a trial within a trial at the end of which I delivered a ruling wherein I held I was satisfied that the Accused did voluntarily lead the police in the scene reconstruction.

2.142 In his continued testimony, it was PW13's testimony that the first point the Accused led him to was Naluma Academy in Northmead. The whole procession was covered using a Zambia Police motor vehicle in which both the Accused and his witness Mwaka Tembo were given proper seats and the cabin was well ventilated. The vehicle further had a clear windscreen to enable clear visibility to the Accused from his seat directing the driver to the points to go.

2.143 Upon reaching Naluma Academy, he directed that the vehicle be parked. PW13 testified that the school is situated in Northmead area along Machinchi road. According to the witness, the Accused gave a brief account and demonstrated how he came across the deceased. He stated that he found him when he knocked off from the same school that he enticed the child by telling him he was going to buy him some food and asked him to walk with him.

2.144 They went back into the vehicle and the Accused directed the route the driver was to take apparently being the same one he took when walking with the deceased. They went through a road in Northmead that connects to Manda Hill near the bridge and then further in the eastern direction up to the entrance of Manda

Hill shopping Mall at which point he said Chikonde complained about being hungry. He bought a banana for the child and continued walking up to East Park Shopping Mall.

2.145 The driver was directed to turn into the mall car park. They then went to hungry Lion where the Accused said he bought chicken and chips for the boy. They continued their walk through to Katima Mulilo road right up to great North road.

2.146 Upon reaching the traffic lights of Katima Mulilo and Great North Road, the Accused stated that they turned to the southern direction and onto a gravel road opposite Emmasdale police camp. PW13 testified further that the Accused stated that the time was about 20:00 hours and he walked up to the maize field where he hit the child with a stone in the back of his head. He explained that the maize field is situated at Emmasdale police camp besides the gravel road on the Northern end of the camp. That he stated further that when he realized that the deceased was unconscious, he took the boys school bag and then walked back to his house.

2.147 He added that all the points visited and what the Accused disclosed and demonstrated were video recorded. The witness proceeded to explain that the first part of the video covers the

administration of the warn and caution and embarking on the vehicle whilst at Lusaka Central Police, the point at Naluma school as well as once at the Emmasdale maize field.

2.148 Inspector Shampongo transferred the information from a disc onto a flash that was handed over to him. He tendered the flash in evidence as exhibit P15.

2.149 The footage was played back in court and showed how the Accused led the police through all the described points. It was PW13's evidence that the Accused also revealed that he sent a text to a number that Chikonde has used.

2.150 He added that they did not get to reach the toilet at his house where he had stated he had put the bags, because of security concerns. He asked the Accused and his witness if they had any complaint about the manner the scene reconstruction was done. Both said they had none. He recorded their responses in its notebook. He proceeded to identify his note book which he produced in court as part of his evidence as exhibit P16. The question and response from the Accused and his witness in this regard was on page 42 of the note book.

2.151 When cross examined the witness testified that about 8 stops were made during the leading. He was not in a position to confirm

if there are security cameras at Manda Hill traffic lights. He did not verify if the camera's captured the Accused with the deceased as it was the arresting officer that dealt with the camera footage. He was also the one to verify if there was any footage of the deceased with the Accused at Hungry Lion at East Park Mall.

2.152 He could not confirm that no one saw the deceased with the Accused at the scene where the body was discovered. He did not interview anyone who said they witnessed the Accused murdering the child.

2.153 Questioned further, it was PW13's evidence that the Accused did admit sending a message to the deceased relative after 19:00 hours. He could not react to the suggestion that a relative said she received a text demanding ransom at midnight as he had no interaction with her.

2.154 He disputed the suggestion that the Accused was placed in the vehicle and taken to the places described in the footage by officer Katongo. It was further not true that the Accused was taken to the place the body was found a day before the reconstruction as suggested to him.

PW14 Shelly Kaonga

2.155 A detective woman constable based at Emmasdale police station under scenes of crime office. Her evidence was that on the 20th March, 2023 she reported for duty at 05:45 hours. Constable Katongo a criminal investigations officer at Emmasdale police handed over to her an ITEL 515 mobile phone with an 8913 memory card containing some photos that he wanted her to process. The phone belonged to constable Katongo and was in good working order with no virus.

2.156 She went with Constable Katongo to the service headquarters forensic department. She used one of the computers to insert the memory card given by officer Katongo and viewed the photos on the card that were 5 in number. The photos depicted a pit latrine and 2 bags in there. Officer Katongo confirmed these to be the pictures he wanted to process which he had taken from Garden Chilulu.

2.157 She proceeded to print the photos and handed them back to him and later compiled a photographic album with the photos. She added that the computer that was used is serviced on a monthly basis and is in good working order. She explained that scenes of crime officers have access to the computers and passwords. She identified the album and photos.

2.158 When cross examined she agreed that Mr. Katongo should have got in touch with Scenes of crime unit and used a Zambia Police camera to take the photos in issue. She confirmed that the photos were not taken using a Zambia police camera. She however did not agree that because of this, the integrity of the photos was questionable. That there was no scenes of crime officer available at the time Mr. Katongo found the bags in the latrine. That the officer therefore rushed to the scene and used his camera to capture the photos before the scene was disturbed.

2.159 She testified that the officer did the right thing of taking his phone to scenes of crime department after he had taken the photos. She did not personally visit the crime scene.

There was no re-examination

PW15 Caleb Mazau Katongo

2.160 A police officer based at Emmasdale police under General CID office. His evidence was that on the 17th of March 2023 he reported for duty at about 17:45 hours. Whilst on duty, he received a call from the CIO who informed him that there were some relatives of male Chikonde Banda that had reported a matter of abduction that had come in with fresh information. PW14 met with the relatives and interviewed them.

2.161 They informed him there were some bags that had been seen in a pit latrine in Chilulu Garden. PW14 in the company of the relatives and Constable Mutale went to Chilulu Garden where he was shown a pit latrine which was close to the house where Chikonde Banda used to stay. He testified that the pit latrine was found in the yard of the Accused person.

2.162 He testified that there was no scenes of crime officer present at the scene and he did not have a police camera. He therefore before he opened the door to the latrine that was partially closed, used his phone that was working ok to take a photo of the pit latrine. He checked the door which was closed with a wire tied to a nail. He untied the wire and opened the door.

2.163 He saw a bag and took a photograph of it. He lifted the bag which was grey and black in colour and noted that there was another bag that was beneath it. He took another photo of the 2 bags whilst in the pit latrine. He removed both bags and took them outside.

2.164 He opened the first bag to check its contents. He found a maroon bomber coat with black inner linen, a black belt, a wooden traditional knife with a wooden handle and silver blade with visible rust on it. He also found a khaki envelope. Inside it was a

white card written "Center For Family Research." He put the items back in the bag.

2.165 He got the other bag and opened it to check its contents. He found in the bag that he described as green in colour, a blue lunch box with a white lid. There was also a sky blue school uniform shirt, an Oxford mathematical set, 7 books, 5 hard cover and 2 soft to be precise. He testified that on the hard cover books were the names Chikonde Banda.

2.166 He then put everything back in the bags and carried the bags with him to the police station. He handed over the bags to Detective Inspector Sikalubya.

2.167 He stated that at the house in Chilulu where the bags were found were Chikonde's grandmother and an uncle who were able to identify the green bag and the books that were inside the bag as belonging to the missing child.

2.168 On the 20th of March 2023, he handed over his phone to woman Inspector Kaonga (PW14) a scenes of crime officer. He testified that this was an Itel phone with an 8GB memory card. He updated the anti-virus on the phone on a monthly basis and he was the only one that had access to the phone as it was password protected.

- 2.169 He accompanied her to service headquarters where the photos on the phone were processed which he confirmed were the ones he took from the scene in Chilulu Garden. Once the photos were given to him, he proceeded to compile a photo album. He testified further that the pit latrine was unused.
- 2.170 He later learnt that the Accused used to live in the yard where the latrine is located. He identified the album that he compiled and a copy of this report. He proceeded to produce the album and report into evidence and identified the bags and all their contents.
- 2.171 When cross examined PW15 confirmed he had not produced the phone he had used to take the photographs into evidence. He stated that he is no longer using that phone. He confirmed that he did not receive any report from anyone suggesting they saw the Accused dumping the bags. He agreed that there were 4 doors in the yard where the toilet was found. He was not aware there were people who were renting units at the premises. He confirmed that the pit latrine was out of use. He confirmed that the pit latrine was never locked with a padlock. He therefore agreed that it was as such accessible. He however did not agree that because of this, any other person could have dumped the

bags. That is was because one of bags was for the Accused so it could only be him that dumped the bag as far as he was concerned.

2.172 Chikonde Banda's grandmother was at the scene and she did not tell him that she saw the Accused leave the bags in the latrine. He did not know the time they were left there. He did not agree that by opening the bags, he had tempered with evidence. He did not agree with the suggestion that the bags were left there at 2 separate intervals.

2.173 Questioned further, the Accused confirmed that the maroon coat was found in the grey bag. He confirmed that he did not find anything that belonged to the Accused in the green bag. He confirmed that the maroon coat was not submitted to forensic examination neither was the black belt, knife or lunch box.

PW16 Mwila Sianogowa

2.174 A data protection and compliance manager at Airtel networks Zambia PLC. He testified that he has held this position for 5 years and his duties include ensuring that the company data bases are complaint with regulations. He also works with law enforcement agencies to ensure that all warrants served on the company are executed.

2.175 It was his evidence that on the 21st of March 2023, he received a warrant from Detective Constable Katongo of Emmasdale police to provide call records, KYC detail reports as well as a serial search on some numbers. He proceeded to log on to their system. On the warrant was indicated the following numbers 0972083620, 0974985108 as well as serial number whose 1st 4 digits were 3597 and last 4 being 6770. He identified the warrant presented to him as the one that was served on him which he produced in evidence.

2.176 The system then generated the information sought that was sitting on its data base. He testified that the systems were in good and regular working order and he had no problems pulling out the requested information. He added that all their data bases were protected by firewalls to prevent any unauthorized access. Further that the systems are serviced on a monthly basis by the information and technology department.

2.177 He explained that access to the system was via a unique user name and password. Further that in the case of call records, only people in the legal and regulatory department had access. For the KYC and serial search, the front office staff had access to the data

bases. He logged on to the system and queried the information. He had access to all the system and produced 3 different reports.

2.178 The first call records for number 0972083620, KYC report for the number 0972083620 and 0974985108. He also produced a serial search report for the serial number 3597 as first 4 digits and 6770 as last 4. He explained that after logging out the system, there is an option to input the number being queried. This would be the same for the KYC and serial search query. The query then produces results if there is any activity and these are the reports that are printed and given to law enforcement agencies.

2.179 He testified further that a call record report would show the number queried, the dated time of each activity and the call originating and or terminating number for each call activity. It would also show the call type in particular whether voice or SMS. The report would also show the location details or tower which the subscriber is connected for each call activity.

2.180 He testified further that for the KYC report, it will show the number queried, the customer details being first and last name. In this case that the number 0972083620 was registered in one Nalukwi Akafekwa's name. He testified that the reports are printed out on airtel headed paper, bear an airtel date stamp as

confirmation of authentication. He confirmed the reports he was referred to as the ones he had generated which he produced as part of his evidence.

2.181 He added that the serial report based on the number given, is for a phone or handset. He explained that the technical name for it is International mobile equipment identifier or (IMEI). That the report shows what mobile numbers had been inserted into the device and used on the network. It would however only show airtel numbers. That this was the report he generated that bears an airtel date stamp. He identified the report shown to him and confirmed it to be the one that he generated. He tendered it in evidence.

2.182 He confirmed that the cell phone number ending 20 appears in the column as one used on the device with serial number 3597181601 036770. It was used on 11th February 2023 at 20:55 hours. The end date is on 12th February 2023 at 19:14 hours.

2.183 He also produced a KYC document for number 0974985708 which shows that the number belonged to one Elizabeth Chishima. It also bears other details such as the gender, date of birth and residential address and facial image of the subscriber.

He identified and produced the said document in evidence marked p23.

2.184 When cross examined, the witnesses testified that he could tell from the reports that the subscriber was changing devices. He testified that he did not analyze the report but just provided the information. He testified that according to the call records report on the 17th March 2023 the number ending 20 did not send any SMS to 0974985108.

2.185 He further confirmed that there was no voice call to that number from number ending 20 on the 17th March 2023. That the call record report was from 1st January 2023 to 25th March 2023. He testified that he expected the investigating officer to confirm if there was any communication between the numbers during that period as he had not gone through the report.

2.186 He testified further that there is no report he had produced to show that the device belonged to the Accused. He did not check the call records for Elizabeth Chishimba. He clarified that his testimony about the number ending 20 not communicating with the other number was in relation to the 17th March 2023. He could not speak to the rest of the dates

PW17 Rodger Mwaimba

2.187 An applications support engineer at MTN Zambia. He testified that his duties are to be custodian of data. He also manages, collects and secures MTN data. He as such has access to KYC records and call records. He added that he is also responsible for providing requested data to law enforcement agencies. He testified that on 20th March 2023, MTN received an affidavit and warrant to provide information for the number 0767585556. He did not have the warrant served on MTN but the affidavit that accompanied it which he identified and produced in evidence.

2.188 Upon receipt of these documents he logged onto the system and retrieved the requested information. The data base had no malfunction whatsoever and operating as expected. He logged on using his password that only he accesses. His manager and senior manager also have access. He clarified that the systems managed weekly and at times daily if the need arises.

2.189 He was asked for call records and KYC data. He managed to find the information sought. The KYC details that included facial capture and NRC attached to the number queried for the period under review being the 17th March 2023. The information was verified and presented to officer Katongo.

2.190 The printout was a mirror reflection on what was in the data base. The call records had an MTN logo and the phone number for the individual searched, the call ID, location and tower name and phone or person being interacted with.

2.191 He added that an MTN stamp to confirm authenticity is on the document. He testified the NRC captured is under the name John Silwenga for the number 0767585556. He identified the KYC document and produced it in evidence.

2.192 He explained that according to the report, on the 17th March the number interacted with the number 454454 by text possibly for airtime purchase. The other number interacted with was 260974985108. The number ending 56 sent out on SMS to the number ending 08 from Yotam Mulenga Tower on 17th March 2023 at 09:26 am.

2.193 He testified that it was possible the recipient may have only turned on the phone at night if she said she received the message at midnight or that there could have been a delay in receiving the message due to network issues. Further, that the other reason is the person could have seen the message at night.

- 2.194 He explained that the IMEI for MTN changes the last digit to zero. That the IMEI number remains uniquely for the same gadget in spite of this.
- 2.195 When cross examined, the witness testified that the registered owner of the queried number was John Silwenga. He testified further that the report does show what is incoming and outgoing by text. In this case the call records report shows the message was sent at 09:26 and not midnight. That if it was evening it would have shown 21:26 so it was sent in the morning.
- 2.196 He testified that it is possible a person may receive a message sent earlier, later. It is therefore not correct that the message will get to the receiver immediately. He clarified that the text is instantly received if the other phone is on. He explained further that it is not instant if there is a backlog or when the phone is off. That the message will go through once the backlog clears and the phone is on.
- 2.197 When cross examined further he testified that there was no indication that number 0767585556 had communication with airtel line ending 20. Further that according to MTN, the serial number is "359718150203660." That the MTN system was able

to check the type of phone used as the 14 digits are always unique to a particular phone.

PW18 Bagra Chanda Sindowe

2.198 A Detective Sergeant based at Zambia police service headquarters under digital forensic unit. He had served in that unit for over 2 years at date of his testimony. Some of his duties include the extraction of digital data from digital gadgets, preservation and analysis of the data. He testified that he holds a bachelor of science in computing, an advanced diploma in computer science and information processing. He had also done computer networking and digital forensic essentials.

2.199 He testified that on 6th October 2023, he received a request to extract messages from an MTN number 0767585556. The sim card was sitting on an Itel phone black in colour with model number 2160. He testified that the phone had 2 IMEI numbers 3597-3661 and 3597-3679. That the Itel phone was a dual sim card phone.

2.200 He testified that he received a request from the investigating officer for the extraction to be done from the phone in issue. He explained that at the time the phone was bought to him, it had 3 sim cards. 2 were slotted in the sim slots while the third was

under the battery of the phone. 2 were airtel sim cards and one an MTN sim card. One airtel sim card was sitting in the slot whilst the MTN card occupied the 2nd slot.

2.201 The phone was subjected to the system which he described to be a Cellebrite Ufed Touch computing system. He explained that it is a stand-alone system, is password protected and has an anti-virus software that is up to date. Further that he is the only one that has access to the system.

2.202 He testified that upon connecting the gadget he was given to the network; the system could not support the type of phone which was old. Thereafter the sim card was imaged using the system. It showed the serial number for the sim. The system generated a report about the information on the sim card. It was able to produce the text messages. The system also showed which network the sim card belongs to, which in this case was MTN. He then compiled a forensic report and the system report was attached to the report he compiled.

2.203 He identified the ITEL phone handed over to him and the sim cards that were in the phone. He also identified the report which he generated and the report he completed which he tendered in evidence.

- 2.204 He testified that the second report shows the messages that were on the phone. That there were a total of 4 messages extracted from the sim. The third message sent was to an airtel number 0974985108. He explained that according to the celebrite report, the system only recognizes the serial number for the sim card.
- 2.205 In this case that what was examined was the sim card and not the phone. Hence the information that ought to have been reflected in the report remained in the phone. That this further meant that the numbers that sent this message, remains on the phone including the time it was sent. He was however able to confirm that the sim serial number was linked to the MTN sim card. On page 2 of the celebrite report.
- 2.206 His conclusion was thus that the sim card sent the text messages 3 times to the airtel number that the airtel number received 3 messages from the MTN sim card. That the phone was not supported by the system and that is where information of what time the messages was sent was siting. The system was further not able to tell him if the messages were delivered.
- 2.207 When cross examined the witness confirmed that he did state that the system could not read the phone. Further that the serial

number in the MTN report was different from what was in their report suggesting there were 2 different devices used.

2.208 He testified that he did not mention any number as being the one that sent the text. He stated that the message came from the MTN sim card but the system could not give the number. However, that the number can be established once the sim is placed on the phone.

2.209 He clarified that the report was generated according to the request made and no mention was made of an airtel line. He stated that the report he generated was conclusive irrespective of the fact that an alternative method was used to extract the information. He stated that the results produced in the system cannot be manipulated.

He was not re-examined.

PW19 Frizel Sikalubya

2.210 A police officer based at Ngwerere police station and Inspector by rank. He testified that on 17th March 2023 he reported for duty at Emmasdale police CID section his station at the time. In the course of his duties he was allocated a docket of abduction. Details of the complaint were that one Mr. Peter Banda of Garden compound reported that his son male Chikonde Banda aged 10

of the same address and pupil at Naluma Academy in Northmead was abducted by unknown persons.

2.211 He further alleged that his sister in law female Elizabeth Chishimba of Garden Chilulu Compound received a text message on her mobile number 0974985108 from 0767585556 demanding for a ransom of K12,000 in exchange for the child. The money was to be paid before 1500 hours of the 17th March 2023. This occurred between 16th March 2023 at 16:00 hours and 17th March 2023.

2.212 Acting on the report, PW18 interviewed the complainant and recorded statements from other witnesses. He submitted the reported number used to demand the ransom and the recipient airtel line to the service providers to obtain call records and KYC records.

2.213 On the 18th March 2023, Detective Constable Katongo also of Emmasdale police station handed over to him 2 bags. One in military green color the other grey. The bags were reportedly recovered in Garden Chilulu compound at Mr. William Akafekwa's residence.

2.214 The green bag was identified as belonging to male Chikonde Banda. The grandmother to the deceased identified the retrieved

bag. He visited the scene where the bags were retrieved from and found it was a disused pit latrine.

2.215 He checked the contents of the green bag and found hard cover and ordinary soft books, a school uniform shirt, a hand box, mathematical set and small Fanta plastic bottle. These items were confirmed to belong to Chikonde Banda. He checked the other bag and found a maroon bomber Jacket, a homemade knife and blackbelt. There was also a card in a brown envelope endorsed "Center For Family Health Research in Zambia." In ink was the number "074."

2.216 The card raised curiosity in him to find the owner of the bag. He wrote a letter to have an interview with the directors of the organization cited in the card. Investigations at the center established that the card belonged to one of the participants identified as Akafekwa Nalukwi.

2.217 He was given a green folder that confirmed that the card belonged to Nalukwi. The folder had his names and mobile number 0972083620. He submitted the airtel number to Airtel to obtain call records serial number and KYC documents. The serial number he had in mind was for the gadget that was used to send the ransom message.

2.218 On 4th of March 2023, at around 10:00 hours one Dickson Nkoma PW8 a resident of Lilanda compound, reported at Emmasdale police station that he had discovered a dead body of an unknown juvenile. When the report was received, he was among the officers who visited the scene with the scene crime officers detective inspector Katongo. The body was found in a maize field behind Emmasdale police station near a drainage. The deceased juvenile was wearing a grey jersey, sky blue uniform T-shirt, grey trousers and black shoes. He added that the body was decomposed with a swollen head.

2.219 The family of the missing Chikonde Banda was engaged to come through and identify the deceased. The body was identified by the grandmother one Alice Tembo, as that of the missing child Chikonde Banda. The body was picked up and taken to UTH mortuary in preparation for a postmortem examination. The postmortem was conducted by doctor Muchelenganga. According to the doctors findings, the cause of death was reported to be blunt impact trauma to the head due to the assault. He identified the report and produced it in evidence.

2.220 A docket of what was to then to become a murder investigation was opened. Thereafter, he followed up his inquiry at the Airtel

officers to obtain the KYC records and call records for the number 0972083620 that was given to him by the Center For Family Health Research in Zambia. Airtel availed him KYC documents that confirmed the number belonged to Nalukwi Akafekwa. He was also availed KYC documents for number 0974985108 that belonged to Elizabeth Chishimba. Investigations established this was the aunty to the deceased and the recipient of the ransom text demanding K12,000.

2.221 He testified that the suspect used an MTN line 0767585556 to send that text. PW19 therefore also went to MTN to probe this number. KYC documents revealed the number was in the name of one John Silwenga.

2.222 He added that he obtained serial numbers from airtel and MTN. That his interest in doing so was to establish the gadget used to send the text . According to the witness, the serial number revealed that it was the same gadget that was used by the suspect for both the airtel and MTN sim card. That the serial numbers appear on both the airtel and MTN call records. The only difference in the serial numbers was the last 2 digits.

- 2.223 He testified that the explanation rendered by Airtel was that their respective systems change the last 2 digits. He did not inquire from MTN why that might be so.
- 2.224 He identified the call records and KYC records when shown to him in Court. He also identified the green file in Nalukwi Akafekwa's names from the Center for Health Research in Zambia and the white participant card retrieved from the grey bag he had earlier described.
- 2.225 He stated that the serial number for the Airtel call record was 35971816022036770. The serial for the MTN call records was 3597181602036660. He noted that there was similarity in the number except for the last 2-3 digits.
- 2.226 He testified that after receiving all these documents and noting the similarity in the serial numbers, he checked the contact of the phone number for Akafekwa Nalukwi and picked one contact to follow up. He could not recall which one it was as he was working with a team of CID officers from Emmasdale police. He was at the time acting as a criminal investigations officer.
- 2.227 He testified that a team of 3 officers went to Chilanga and picked one suspect named Kabasinga Mutumba. He testified that this person was more frequently communicating with the suspect

going by the call record. Investigations revealed that this contact was the cousin to the suspect Nalukwi Akafekwa.

2.228 He was interviewed in relation to the number associated with Nalukwi. He identified the number and was able to lead the police to the suspect's residence. The police did not find him at what was established to be his parent's house. He further led the officers to another location within Chilulu compound at one Jackson Phiri's house who was called as a witness in this matter. It was at that location where the suspect was found and apprehended.

2.229 He added that both men were picked by the police and the phone that was used by the suspect was also recovered. He testified that it was an Itel 2160. The report he received from the officers who did the apprehension was that the suspect had tried to discard it but it was recovered from the vehicle and his friend Jackson confirmed it belonged to the suspect.

2.230 It was PW98's further evidence that investigations established that the serial numbers obtained from the call records of airtel and MTN were similar to the recovered phone. In identifying the phone he explained that it is a dual sim phone. That there were 3 sim cards on it at the time of recovery, 2 airtel and one an MTN

sim card. He testified that the MTN card was the one that was used to demand for the ransom with number 0767585556 a position they confirmed by switching on the phone and dialing a number using the same sim card.

2.231 There was also a second airtel sim with number 0972083620 which was the same one given to him by the director of family health that was on the phone. The team did not have any interest in the third sim card and their investigations centered on the 2.

2.232 He confirmed the Itel phone in court to be the one he had been referring to and produced it in evidence. He testified that the phone had 2 serial numbers which were linked to the 2 sim cards. He repeated his evidence that the airtel serial number according to the call records was 35971816022036770 on the phone appearing as 359718160203679 the difference being only the last 2 digits. Further that on the call records for MTN was the serial number 359718160203660 whilst on the phone it is 359718160203661. He clarified that evidently the difference was only with the last digit.

2.233 It was PW19's further evidence that when the phone was recovered, he submitted it to the forensic department for further examination and to detective sergeant Sindowe.(pw18) in

particular. The purpose was to extract the message which was sent to number 0974985708 to confirm if the message was sent from that phone to the airtel number on the 28th of March 2023.

2.234 The suspect was warned and cautioned by detective Chief Inspector Chompo the officer in charge of scenes of crime. That the suspect voluntarily accepted to lead the scenes of crime team for a scene reconstruction. He was present when it was done. PW19 proceeded to more or less repeat the evidence given by officer Chompo on the conduct and outcome of the scene reconstruction.

2.235 He added that during the scene reconstruction, he noted that there were some street cameras. In particular that there was a camera near Sheki Sheki road about 20-30 meters from the scene where the body was picked. PW19 then decided to write to the Director Zambia Police Technical Services to request for a review of the camera footage in aid of his investigations. The footage was availed by Detective Sergeant Kaluba from that office.

2.236 He testified further that at the scene of the crime during the scene reconstruction, the Accused revealed that he had hit the child with a stone on his head. Further that the boy was intelligent enough to remember and give him his aunt's number

0974985108. That the Accused informed the team that he sent a demand text to that number and his phone went off as it had a low battery. He told the team that it went off immediately after he had sent the message and recharged the phone when he got home.

2.237 It was PW19's further evidence that the forensic department gave him the results of the message sent that was retrieved. He was also given a report that he identified in court. He reviewed the message which he noted was a demand for the payment of K12,000 by the 17th March 2023 and that the recipient dare not involve the police. He testified that exhibit P26 shows that message.

2.238 It was his further evidence that Elizabeth indicated she received the text after midnight on the 17th March. He believed that only the technical people could explain the discrepancy between the time Elizabeth said she received the message and what the MTN call records indicates. He suspected it had to do with what the Accused said about the phone shutting down.

2.239 He added that the cellebrite report exhibit P26 does show that the receiving number of the message was 0974985108 confirmed to be Elizabeth Chishimba's the deceased aunt. He testified

further that the video footage of the scene reconstruction does confirm that the Accused did make reference to the phone going off because his battery was low.

2.240 He added that the other footage from the street cameras revealed the deceased dressed in uniform in the company of the Accused. That they were seen walking along great north road. When played back into court, the officer confirmed that the Great North Road was visible as well as the gravel road. The date and time indicated was 16th March 2023 at 2026 hours.

2.241 It was his further evidence that the the head sock and T-shirt that the suspect is seen wearing in the video footage was recovered . He identified the items when shown to him in court which he produced in evidence. He also tendered in evidence the recovered school bag and laptop bag, the exercise books, lunch box, black belt, traditional knife, mathematical set, and sim cards.

2.242 He testified further that having collected all these pieces of evidence he made up his mind to charge and arrest Akafekwa Nalukwi for the offence of Murder contrary to section 200 of the Penal Code Cap 87 of the Laws of Zambia.

2.243 Under warn and caution statement in English, he gave a free and voluntarily reply denying the charge. He later detained the Accused whom he positively identified from the dock pending trial.

2.244 When cross examined he agreed that the indictment indicated that the deceased was murdered on the 17th March 2023. He was not present when the Accused was being apprehended and was being updated by his team as he was acting CIO. None of the officers stated they found the Accused wearing the clothes described by PW9 .

2.245 He did not subject the recovered clothes to DNA analysis to confirm they belonged to the Accused. The witness testimony was sufficient to confirm this as far as he was concerned. PW 9 the child witness, did not give the police a description of the suspect. She only described his clothes.

2.246 When referred to the video footage, he agreed that there was no maroon bomber coat visible although the suspect was wearing a head sock. He insisted that he did see the T-shirt with the spots which are the same as the recovered T. shirt.

2.247 He agreed that according to the airtel call records for 0972083620 belonging to the Accused, there is an entry with

serial No 358052082817072. He however did not agree that this was the device the Accused was found with when apprehended. He explained that what is indicated on the search warrant exhibit P20 are serial numbers for the sim cards submitted whereas the serial number for the device is 358788156620270. He repeated that according to the experts depending on the system used there would be difference in last 2 digits.

2.248 When invited to open the ITEL phone and read out the 2 serial numbers, he agreed that there was a difference in the numbers which are explainable by the experts. Questioned further he agreed that the MTN line 07675855556 that sent the text message in issue was registered in the names of John Silwenga and not the Accused. He insisted however, that the sim was found with the Accused person.

2.249 He testified that the police did not find John Silwenga and the Accused was not able to tell them who he is. PW19 thus insisted the Accused is aware of the sim card in spite of his protest. It was found on him and his colleague Jackson Phiri confirmed that the Accused arrived at his house with the phone and 3 sim cards.

2.250 He testified that according to exhibit P25, the message was sent on 17th March 2023 at 08:00 hours as per MTN system. He agreed

that according to this report, the message was not sent at midnight. He testified further, that Elizabeth Chishimba pw10 did say she received the message at midnight on 17th March 2023. He testified that he did see the message on the ITEL phone when officers switched it on.

2.251 When referred to the extracted message in the forensic examination report exhibit P26, he maintained that the message was discussing Chikonde although his name was not specifically mentioned in the message.

2.252 Questioned further, he testified that Mrs. Elizabeth Chishimba went with her phone after she reported the matter to the police. He insisted that the forensic department confirmed the message was sent to her. He agreed that only the Accused phone was tendered in evidence. He did not produce Elizabeth's phone.

2.253 He insisted that the Accused did lead the police to the scene of crime and admitted that he hit the deceased with a big stone on the head. The police did not recover the stone. He testified that the pathologist did establish some injury to the head. He did not extract any footage along Great East Road although the Accused did lead them to Manda Hill. He agreed that such footage would have helped confirm he passed through Manda Hill.

2.254 He agreed that East Park Mall has cameras. He did not make any effort to get any footage from there. As a consequence he did not have any footage of the East Park stop before court . He agreed that such footage would have confirmed the Accused was with the boy as did the one along Great North road.

2.255 He dismissed as untrue the suggestion that the Accused was in Garden with his wife on the material day at his father in laws house. That the footage shows that he was the last person seen with the deceased at 21:00 hours. He agreed that the police did not summon his wife or father in law to establish if the Accused was at his house.

2.256 Questioned further, he testified that it was not possible to lift prints from the bags found. As far as he was concerned, the recovered card sufficiently tied the Accused to the bags. Questioned further, on the clarity or picture quality of the video footage, the witness testified that the Accused father was also able to confirm it was his son in the video from his movement and posture. He maintained that the facial image was also clear in the footage.

There was no re-examination.

3. Ruling at case to answer

3.1 At the close of the prosecution's case, I was satisfied that a prima facie case had been established against the Accused on the charge laid out. I therefore put him on his defence. The Accused elected to give sworn testimony and called one (1) witness in aid of his defence.

4. Defence

4.1 DW1 was Nalukwi Akafekwa a businessman and Accused in this matter. He testified that he did not murder anybody. On the material day the offence is alleged to have occurred, he was with his wife at her mother's house. This was between the 16th and 17th March 2023. He testified that his in laws reside in Garden along Katima Mulilo road. His wife's name is Hildah Keta Akafekwa.

4.2 On 16th March 2023 he was at his father's house in Chilulu compound. He left to visit his daughter at his in laws house in Garden. He stayed there for a while as the child had a flu. He left Garden at about 21 hours and went straight back home.

4.3 When he arrived, he found his father who asked where he had been. He told him he had gone to visit his daughter who was unwell. His father scolded him for being at his in laws for what he considered to be too long a period and up to the hour he returned home. His father went on to say the Accused could not come at

that late hour and disturb everybody in the house. This talk degenerated into issues touching on the separation between his father and his biological mother. His step mum was present at the time.

4.4 The Accused decided to leave home and went to his friend Jackson Phiri's house in Garden compound. This was a friend he had grown up with and was well known by the family. He decided to go there as there was no peace in their home at the time.

4.5 He did not tell his friend the detail of what happened. All he said was that he had differed with his father. He spent a night at his house. On the 17th March 2023, he went back home to his parents' house.

4.6 When he reached home, his father sent him to take a traditional outfit for Kabasiya Mutumba his cousin, at his school in the industrial area. He took the outfit and on his way back it started showering. He arrived home soaked. He got the bag he had used to carry his cousin's clothes and put it out in the sun to dry. This was a school bag that belonged to his young brother Inaka Akafekwa.

4.7 He entered the house, took off the clothes he was wearing and proceeded to do some house chores. He had on a pair of black

shorts, grey vest and black jersey. He then went to his in laws to check on his wife and daughter. He did not stay long and left around 17:00 hours. He returned home and cooked some food.

4.8 His father then asked him why he was cooking the relish he was cooking as that was not what he wanted to eat. This triggered another misunderstanding between him and his father. His father uttered the same words he had the previous day. The Accused therefore decided to go back to his friend Jackson Phiri's house. He went there around 19:00 hours and remained there until both he and Jackson were apprehended by the Police on the 25th March, 2023 at around 20:00 hours.

4.9 They were taken to Emmasdale police station not knowing the reason for their apprehension. Once at the police station, he was separated from Jackson. An officer he later came to know as Mr. Katongo hit him on the head with an iron bar in the room that he was lefts in. He told the Accused to disclose who the mastermind was.

4.10 The officer did not disclose who or what he was referring to. Other officers then joined in the beating. The Accused bled following this beating. He bled at the back of his head and his friend

Jackson and father saw the injuries he sustained. The officers told him to cooperate with them.

4.11 He was taken outside and threatened with a certain death at their hands, the power to inflict which they professed to have. He noted that the officers were armed with firearms. They put him in a vehicle. He was told he was to be taken to Chingwele cemetery. He was made to lie down in the vehicle and had no idea where he was being taken. They eventually got to Mandevu Police where the police continued to tell him to co-operate with them.

4.12 The following day, the officers picked him up and took him back to Emmasdale where he was subjected to further beatings and put in cells. He told the officers when asked, that his young brother attended Naluma School. PW19 and other officers took him to the school and to a spot where they said he should state he had picked up the late Chikonde Banda.

4.13 He explained that he knew Chikonde as he lived near their home. They went back to the car, left the school and he did not know where they were going. They stopped at Manda Hill and the police told him to say he had stopped there to buy some food with Chikonde.

- 4.14 They then proceeded to East Park Mall and this was during the day. They went into Hungry lion and he was told that he had bought some food from there by officer Katongo. The police then took him to Katima Mulilo road and straight to Garden and to a place where it is alleged he had stopped to buy maize. At the traffic lights of Katima Mulilo and Great North Roads, the vehicle turned left heading towards Emmasdale police station. There was a gravel road on the left that they turned into and stopped.
- 4.15 The police took him out of the vehicle and to a hill. He was told that Chikonde's body was found at the place they showed him. He did not know anything about Chikonde being killed. He maintained that he was not with Chikonde and could not know what was happening at the time. He therefore protested his innocence.
- 4.16 They then went back to Emmasdale police and he was later transferred to Central Police about the 26th March 2023. He did not know why the police took him to all these places. The responses he gave in the scene reconstruction is what he had been told to say.
- 4.17 The next day he was picked up by C5 officers from Central Police and shown several pictures of people who had been killed. He was

told he would suffer the same fate if he did not co-operate. They started beating him and he agreed to do as they pleased.

4.18 He was taken to another office and told to admit everything the officers he was to meet would put to him. He entered the room and found his grandmother Mwaka Simasiku and an aunt. The officers then started questioning him and asked him to sign a document that was read back to him.

4.19 He was then told he would be taken back to all the places they had visited as there was no camera during the first visit. He therefore now knew where he was going as he had been taken to all the places earlier. He testified that he was accordingly taken to all the spots they had been only this time with a camera doing the recording. He was then later taken back to Central Police where he was kept until he was brought to court.

4.20 He confirmed that exhibit P9 the maroon jacket, was his. He however stated that it was not him that PW9 the child witness, described and claimed she and other children had met and walked off with Chikonde.

4.21 He testified that exhibit P10 the laptop bag, belongs to his young brother Inaka Akafekwa. He did not know who put the bag in the pit latrine. He testified that the maroon coat ended up with the

police at they came to his house and picked it up. He agreed that exhibit P2 is his T. shirt. That this was one of the things that that the police officers came to pick up from his house. He however contended that this is not the T. shirt that he wore on the 16th March 2023.

4.22 He did not know anything about the head sock that was presented in court. According to the Accused, he did not wear head socks and only saw the one in issue in court (P3). He did not know where the police got it from. He further did not know anything about the black belt and knife exhibit P17 and P18. It was not true that these things were found in the grey bag as testified by the officer. According to the Accused, the bag was found in the bedroom.

4.23 He confirmed that the white identity card that was shown to him was his. He could not confirm the suggestion that the bag was found in the pit latrine. He was not present at the time it was retrieved. The latrine was however an old and disused one and all 4 tenants in the yard had access to it.

4.24 He emphasized that he was told what to say during the scene reconstruction including the explanation he gave of the alleged text to Elizabeth. He insisted that he did not send any message to

Elizabeth. Everything he said in the video he was told to say before they left for the crime scene and the recording started.

- 4.25 He disputed that it was him seen in the video footage shown with Chikonde Banda. He insisted that he was at his mother in law's house at the time. He stated that he has 2 airtel sim cards 0972083620 and the second is new but ends with 50. He could not recall the number. He disputed that his sim card was used to send the ransom demand. He maintained that the sim card is not his. He did not know where the MTN sim card the police linked him to came from or who it belongs to.
- 4.26 He was present when it was announced in the neighbourhood that Chikonde had gone missing. He stated that if he was guilty he would have run away. He further would not have taken Chikonde's bag to his house together with his bag.
- 4.27 When cross examined he disputed that he lived with his father from birth. He accepted that he was using the ITEL phone exhibit P5 at his apprehension. He confirmed that there were 2 airtel sim cards and that one of them ends with numbers 20. He disputed telling his father he had left home on the 17th March 2023 because his friend Jackson had a funeral. He confirmed that at the time of his apprehension he was a member of the Center For

Family Health Research . He agreed that he had a participant card because of this.

- 4.28 He confirmed that the marron bomber was his. He maintained that the grey laptop bag belonged to his young brother. He did not agree that the police only discovered a street camera during the scene reconstruction in spite of PW19's submission on that point. He disputed as untrue that the MTN sim card with number ending 56 was found in his phone. He did not agree that the defence and alibi he is raising was an aforethought.
- 4.29 Cross examined further he acknowledged that his father PW4 testified that he was the person seen with Chikonde Banda in the footage apparently because of his walk, and structure. He nonetheless stated it was possible his father was mistaken as he was not the person in the video.
- 4.30 He accepted that he did not challenge the evidence given by his father about the reasons he had stated for being at Jackson's house. He agreed that he did testify that he was at his father's house from 17th March 2023 up to the point of his apprehension in spite of his father's testimony that he left home on the 17th and only resurfaced on the 24th March.

- 4.31 He clarified that he was at Jackson's house from 17th March 2023 until his apprehension on the 24th of March. When he told his father he was sorry, he was expressing his sympathy seeing his dad beaten up and taken to the police whilst the police were looking for him and not confessing to any crime.
- 4.32 DW2 was Hildah Keta a businesswoman resident in Garden compound. Her evidence was that on the 16th March 2023, she called her husband Nalukwi Akafekwa at around 06:00 hours to inform him that their daughter was unwell. She called him on his number 0972083620. After she called him her husband turned up at around 14:00hours to see the child. He spent some time at home and they had lunch together. He left her mother's house around 21 hours and went to his home in Chilulu.
- 4.33 She explained that she lived with her mother Miss Julian Musonda. That she had gone to her mother's house to give birth and at the time she and her husband were in the process of planning to settle when the matter before court unfolded.
- 4.34 She testified further that on 17th March 2023, her husband went to her mother's home to see the child in the afternoon. He was wearing a golf brown T-shirt. He left around 17 hours as he was

rushing home to go and cook. She testified that her husband was living with his parents and siblings.

4.35 When shown exhibit P2, she testified that this was not the T-shirt that he was wearing on the 2 days that he had visited. She further did not see him wearing the maroon bomber (exhibit P9) on the 17th March 2023.

4.36 On the 25th of March 2023, she was in church and received a phone call from his grandmother asking whether what she had heard was true. She told DW2 that her husband had been arrested for an alleged murder case. She told her that she was not aware of such a development.

4.37 She stepped out from church and went to Chilulu to his residence and found the grill door closed. There was no one at home. People from the neighbourhood were standing around looking shocked. She tried to ask from people what they knew. No-one could tell her anything. Her mother in law subsequently confirmed the arrest of her husband.

4.38 On the 26th of March her mother in law called to tell her there was a mob that wanted to break their house and would be heading to her home to kill her baby. Dw2 therefore left for Makeni to seek refuge. She testified that the number her husband was using was

0972083620 and the other was 0771751350. That he was never in possession of an MTN sim card.

4.39 When cross examined, she testified that the Accused was with her at her mother's house on the 16th March 2023 between 14-21 hours. It was therefore not possible he was captured in a video on the 16th at the time stated as she was with him in Garden. She could not comment on what he said in the other video footage. She maintained he had been with her. She further maintained he was wearing a golf T shirt on the 16th of March 2023 in spite of the suggestion that he had on the T shirt exhibit P2.

4.40 Questioned further, she testified that she is a member of the Akafekwa family. That she got married to the Accused in March 2022 and it was a traditional marriage. She agreed that there was no way her in laws would not be aware of the traditional marriage. She expected the court to accept her testimony in this regard in spite the testimony from PW4 her father in law, that they were not married. She maintained that her husband did not send the message demanding for money.

5. Court's Consideration

5.1 I have carefully considered the evidence before me and the parties positions as set out in their respective submissions. I am grateful to counsel for their industry in this regard.

5.2 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.

- 5.3 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.
- 5.4 I find as a fact that on the 16th of March, 2023 Chikonde Banda aged 10 of Chilulu Garden compound left his home for school at Naluma Academy where he was attending his 5th grade. He knocked off from school at 1530 hours and he and other pupils were helped to cross the busy Manchinch road by the school staff, to make their way to their homes He did not arrive at his home that day.
- 5.5 I am satisfied that the family then embarked on a frantic search for their missing child and alerted the police of his failed arrival. 6 days later, on the 21st of March 2023, the dead body of a young boy was discovered in a maize field in Lusaka's Emmasdale area behind Emmasdale Police Station I find as a fact that that body was none other than Chikonde Banda's, the missing child.

- 5.6 His body was positively identified by PW 11, Alice Tembo the deceased grandmother, from the clothes he was wearing and underwear that she had personally bought. This was because the body was in a semi decomposed state and the face was deformed making facial recognition a challenging prospect.
- 5.7 I find as beyond dispute that Chikonde Banda was murdered and dumped in the maize field. The scenes of crime officer, pw12 observed visible injuries to the head that was covered in a plastic bag and the post mortem report availed by the State Pathologist that concluded the cause of death was blunt injury to the head on account of assault, is conclusive evidence of such murder. That the author of the crime intended to kill as such, is beyond question. The covering of the injured head with a plastic bag and manner of concealment of the body further point to such intent.
- 5.8 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 authored the crime.
- 5.9 The State's case is that the Accused, a known neighbour to the deceased waited for and met the boy as he knocked off from school. The young lad being comfortable with a person that he

knew accepted to go with him and parted company with the children he would ordinarily go home with. One of those children Lisa Faith Mukwakwa(PW 9),was able to describe the man that went off with their friend by the maroon bomber jacket, T shirt and head sock that he was clad in. She was further able to describe the bag that he was carrying on his back.

5.10 The State's further evidence is that Chikonde did not return home that night and the family alerted the police. The family also later informed the police about a message received by a family member on her phone from an unknown person using an MTN number demanding for K12,000 ransom for the release of their missing child and further cautioning that the police were not to be involved if they hoped to see their loved one again.

5.11 The police probed both the numbers that sent the text message and the receiving number from the service providers being MTN and Airtel respectively that confirmed firstly the identity of the recipient of the text as being the deceased aunt; and secondly that the MTN Sim had been used on an Itel phone.

5.12 The State's evidence is further that the said phone was recovered from the Accused at his apprehension. The phone was subjected to further probe by the police for extraction of the message and

through the recovered MTN Sim that was on the phone, were able to extract the message that was sent to the deceased's aunt.

5.13 Days before the recovery of the body, curious children stumbled across 2 bags in the Accused parent's yard concealed in a disused pit latrine. A check by the police who retrieved the bags, found one as belonging to the Accused and positively identified by pw9 the Child witness, as the one she had seen the man that left with the deceased had strapped on his back. Also recovered from the bag was the maroon bomber coat that she had described.

5.14 A membership card for the Center for Family Health Research in Zambia also found in the bag was confirmed by the organization upon inquiry, to belong to the Accused who also at registration as participant with them, gave his cell phone number as 0972083620. A follow up with Airtel confirmed that this number was indeed registered in his name. This was the second sim that was found in the recovered Itel phone.

5.15 The State further contend that the second bag was positively identified by the deceased family and class teacher as belonging to the late Chikonde Banda. The contents of the bag included exercise books with the boy's names, a lunch box and school shirt all identified by the family members as belonging to their child.

- 5.16 Other evidence proposed by the State was video footage taken along Great North Road near Emmasdale Police and at the turn leading to the gravel road and maize field where the body was found. The State's contention is that both the Accused and the deceased are seen walking together in that footage. Crucially, that the Accused is seen wearing the T. shirt and carrying the bag that the child witness pw9 described.
- 5.17 The State also rely on the evidence of the Accused's father PW4, who identifies his son in the footage and confirms that the T. shirt and head sock seen in the video belonged to his son. He also confirms that the ITEL phone was his son's property. He further gives evidence of his son's disappearance from home in the period that the deceased was reported missing until his apprehension from a friend's house.
- 5.18 Finally, the State also rely on evidence of leading and demonstration that is presented to be a confession of the killing of the child. That the Accused was able to walk the police through the route that he used with the child and to the precise point the body was recovered hence proving his culpability for the proffered charge of Murder.

5.19 On his part, the Accused raises an alibi as his defence. He was visiting his sick child and wife at his in laws residence in Garden compound on the date and time it was alleged that the deceased was killed. He explains his absence from home in the period leading to his apprehension to have been solely due to differences he had with his father firstly, on account of his coming home late from his visit to see his wife and child on the day; and secondly, because of the food that he had been preparing the following day that the father did not appreciate which resulted in a quarrel. He therefore left home for his friend Jackson Phiri's house(PW5)to get some air due to what he considered a toxic environment that was obtaining at their home.

5.20 He denies having murdered the child. According to the Accused, the police beat him up and led him to the scene of the crime. That they first took him through the entire route up to the crime scene without any cameras or doing any recording. What is observed and tendered in evidence in the video footage was therefore the second time they had embarked on the purported demonstration in which he was told what to say.

5.21 The resolution of the matter then rests on which version I accept and why?

5.22 It is common cause that there was no eye witness to the murder of the child. No one saw the Accused inflict the fatal blow to the deceased or disposing the body in the maize field. The evidence against the Accused is therefore to a large extent circumstantial.

5.23 **David Zulu vs the People**¹ settles the principle that a Court can convict on circumstantial evidence. The Supreme court in that case held the following:

“(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”.

5.24 The Supreme Court decision of **Saidi Banda v The People**² 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:

- 5.25 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.
- 5.26 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.
- 5.27 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.
- 5.28 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.

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

5.30 I accept as a fact that it was the Accused that met with the deceased outside the school on the afternoon of the 16th of March 2023. I accept the evidence of the child witness Lisa Faith Mukwakwa whose evidence I received after duly conducting a voire dire and having been satisfied as to her intelligence and appreciation of her duty to speak the truth.

5.31 She gave unshaken testimony about having been with the deceased who was also her classmate on the day he went missing and about knocking off from school to make their way home together. They met a man unknown to her and was able to describe the clothes he was wearing that included a spotted T shirt, maroon Bomber jacket with black inner lining and a head sock. She also described the laptop bag he had on his back. This was the same bag later retrieved from the pit latrine within the Accused parent's yard and in which the bomber coat she identified was also recovered from.

5.32 It is also common cause that in his defence and evidence in chief, the Accused actually confirmed the maroon coat and T shirt to be his. I accept and find as a fact that it was the Accused seen

walking with the deceased in the video footage captured by the cameras along great North Road. Sufficient evidentiary background was given to justify the reception of the evidence.

5.33 Although the Accused disputes being the person in the footage, his own father Mr. William Akafekwa PW4 confirmed that it was his son whom he knew from stature and by his walk in the footage. PW4 also recognized the clothing that Accused had on in the footage that included the spotted T. shirt and head sock that I accept were also recovered from the Accused home by the police.

5.34 PW4 further confirmed that the child in the video was Chikonde Banda known to him as a neighbour's offspring that would play at his home with his youngest son. Peter Banda (PW6) also confirmed the child seen in the footage to be his son Chikonde Banda.

5.35 Telling is the fact that the footage showing the Accused walking with the deceased was captured on 16th of March 2023 at 20:25hrs.56 seconds to 20:26:20 seconds. It was taken at the junction of the Great North Road leading to the gravel road and scene were the body was recovered.

5.36 I accept the evidence of PW11, Alice Tembo Banda the deceased's grandmother and PW 15 officer Caleb Mazau Katongo on the

manner of discovery and recovery of the 2 bags from the pit latrine in close proximity to the Accused residence. I find irrefutable that one bag contained the maroon coat that the child witness pw9 identified earlier as having been worn by the person that went off with Chikonde.

5.37 I also accept that in the bag was the membership card that was traced to the Center for Family Health Research, the organization that confirmed the Accused identity as their participant and owner of the card. The organization also provided his airtel mobile number that he gave to them at registration being 0972083620. This evidence further confirms the Accused to be the owner of the bag in which the card was found.

5.38 I accept that the second bag belonged to the deceased a fact confirmed by the family members pw6, pw10, pw11 and by his class teacher pw1 who were able to identify the bag. There were also his identified exercised books, a lunch box and the school shirt that he had worn on the day he left for school that were recovered from the bag.

5.39 I accept the evidence of the arresting officer pw19, on the apprehension of the Accused from his friend Jackson Phiri's house where he had sought refuge and on the recovery of an Itel

phone. Jackson Phiri (pw5) himself confirms the apprehension and fact that the Accused had been using the ITEL phone throughout the period he had camped at his house.

5.40 Discovered in the phone were 3 SIM cards. 2 were sitting in the double SIM slots and the third placed under the battery. I accept that the inquiry led to the finding that one of the SIM cards was number 0972083620 earlier confirmed by the Center for Family Health Research as belonging to the Accused. This number was also subsequently confirmed to be registered in his names by Airtel the service provider.

5.41 The second card was an MTN SIM bearing number 0767585556 that was confirmed to have sent a text to Elizabeth Chishimba (PW10) the deceased aunt, demanding for a ransom. The evidence of Rodgers Mwiaba (PW17) from MTN confirms that the stated number although not registered in the Accused name, sent a message to PW10's Airtel number.

5.42 Although there was seeming disparity on the time that PW10 stated she received the message from what the service provider records indicates, I find plausible the explanation that this could be on account of the backlog in the messages or the possibility of the sending or recipient phone having been off. What I do accept

as fact is that the message was sent from MTN No 0767585556 to airtel number 0974985108, the number registered in PW 10's name.

5.43 I accept the evidence of PW18 Bagari Chanda a forensic expert from Zambia police who enlightened the court on the police service ability to extract messages from handsets. He told the court that he attempted to subject the Itel phone to the software and operating system but failed due to the incompatibility of the old model phone with the system. He therefore resorted instead to probe the MTN Sim card and was able to extract the message and confirm the fact that it was sent to the number the inquiry established is registered in the deceased aunt's name.

5.44 I find acceptable the explanation he gave for the systems inability to show the number of the Sim card probed. I find as a fact that the message sent was a demand for K12,000 for the release of Chikonde Banda. Although his name or that of the Elizabeth Chishimba were not specifically mentioned in the message, I find that it would be too odd a coincidence that a message of that nature could be sent to a relative whose entire family were looking for a missing child in that period.

- 5.45 It is common cause that PW10's phone was not produced in evidence or subjected to the same forensic analysis. The defence in their submissions suggests this was done deliberately in order for the State to secure a conviction. I disagree. A reasonable explanation was availed by pw10 that the phone was handed back to her by the police and was damaged at some point. She gave it to her brother to repair and it was later sold after it had been repaired. It was therefore not available to be produced.
- 5.46 Taken cumulatively therefore, I am prepared to infer as I now do that it was the Accused and no-one else that killed the deceased. The circumstantial evidence has taken the case outside the realm of conjecture permitting no other inference or conclusion other than the fact that it was the Accused that killed the deceased.
- 5.47 It was the Accused that met with the deceased when he knocked off from school on the 16th of March 2023. I am prepared to infer that he left home that day and planned to intercept the child on his way home the whole time planning to stage an abduction of sorts and to demand for a ransom.
- 5.48 However, there are several factors that the Accused did not anticipate-first the presence as potential witness, an alert and intelligent child witness in PW9 Lisa Faith Mukakwa, who was

able to meticulously describe what he was wearing and carrying on his back when he met with the children and left with Chikonde. He did not anticipate the curious children in the neighbourhood that would stumble across the 2 bags that he had hid in haste in the disused toilet within his yard one of which his earlier spotted maroon coat and an ID linked to him were recovered from and the other confirmed to be Chikonde's bag;

5.49 He did not foresee that there would be a vibrant police unit that would work as a team in this case, following up on every lead that extended to obtaining KYC, call and serial search records; and that the police would have the ability or technical knowhow to extract messages from a Sim card that was found in his possession which revealed the same ransom message that was sent to Chikonde's aunt.

5.50 The Accused further did not contemplate that there would be functional street surveillance cameras on the highway that would capture damning footage showing him and the deceased walking together and turning into the gravel road on the night of the 16th of March 2023, literally meters before the maize field where Chikonde's body was found.

5.51 Finally, the Accused did not count on having a father who would chose to tell the truth than align himself to the tales that the Accused would have the court accept as truth.

5.52 I am satisfied that the Accused met the child and took him with him on the day. I am satisfied that he is the one that sent the ransom demand using his Itel phone to the deceased's aunt. I am satisfied that he is the one seen with the deceased in the video footage and prepared to hold that it was taken within a few minutes of his inflicting the fatal blow to the child's head and dumping his lifeless body in the maize field.

5.53 I am inclined to find that perhaps more out of panic than anything else, he got both his bag and the deceased's and hid them in the disused toilet. I rule out the possibility of anyone else in the yard as tenants dumping the bags in the toilet. All evidence points at his having had the laptop bag and being with the deceased whilst he had his bag. Therefore, only he could have dumped the bags in the toilet and had the reason to do so.

5.54 I accept William Akafekwa's evidence of an apparent confession the Accused made when he said sorry to his father whilst they were in police custody together. That apology was in reference to what he knew he had done and nothing else. I also find that the

Accused left home before his apprehension not on account of his desire to assist a friend who had a funeral as he told his father, but to seek refuge knowing he had killed the deceased. It is therefore unsurprising that Jackson Phiri(pw5) the friend he was with when apprehended made no mention of having had a funeral when he testified, or that that was the reason the Accused was at his house.

5.55 I further do not accept the Accused alibi. He raised it for the first time in his defence. He did not do so whilst being interviewed by the police. He certainly did not present the suggestion that he was visiting his sick child on the day and hour it was alleged the offence occurred to any of the prosecution witnesses.

5.56 The State in its submissions aptly referred to the case of **Maurice Mweene vs the People**³ wherein the court held.

“the law is settled that an alibi must be properly raised by an accused person at the earliest opportunity and that such an allegation can only be investigated if the accused provides details as to who could vouch for him...”

5.57 I would in the circumstances dismiss this alibi as an afterthought having not raised it at the earliest opportunity.

5.58 In any event, PW 4 the Accused father, refuted the assertion that the Accused is married. When this fact was put to the Accused sole witness and professed wife DW2 Hildah Keta in cross examination, the witness who initially appeared firm and resolved in her support of the alibi, became unsettled. Her demenour shifted as she clearly became uneasy, and guarded in her responses. I therefore did not find her evidence credible.

5.59 I am mindful that PW2, pw4 and PW5 were apprehended and detained by the police during the course of the investigations and as such treated as suspects at some point. The cases of **George Musupi vs the People⁴** and **Simon Malambo Choka vs The people⁵** call for caution when considering such evidence as suspects called as witnesses fall in a category of witnesses that may have an interest of their own to serve and hence give false testimony.

5.60 I rule out the possibility of any false implication or that these witnesses had any interest to serve. They were taken in simply on account of their blood ties and close association to the Accused and primarily to help trace him with a view of his arrest being the primary suspect. I find that they were truthful witnesses with no possible reason to falsely implicate the Accused and I accepted

their evidence as such. There is also I find sufficient corroboration of the fact and circumstances of the Accused apprehension on record that the witnesses spoke to.

5.61 I therefore find on the totality of what I consider is the credible evidence on record, that on the day and night leading to the disappearance of deceased, the Accused was in fact with Chikonde and I am prepared to find that he was the last to be with him alive and caught on camera barely meters away from the scene of crime.

5.62 The nature of assault exacted to the victims head confirmed by the postmortem report and presence of a plastic bag over the deceased head leaves no doubt that causing death was the intention of the Accused as perpetrator of the offence.

5.63 There is of course also the other implicating evidence of leading amounting to a confession which I quite intentionally chose to consider as a separate head. Confession evidence is always treated with caution by the courts. As our own celebrated and renowned scholar Professor Ndulo puts it:

“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.”

5.64 The voluntariness of the confession becomes of crucial importance before a court can safely admit it in evidence. In **Esia Mupasha and 2 others vs the People**⁶ the Supreme Court adopted with approval the passage in **Li sha Ling v the Queen**⁷ 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,”

5.65 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.”

5.66 With the above guidance and after undergoing a trial within a trial, I readily accepted the video recording of the proposed demonstration as part of the State’s evidence. I was satisfied that the State was able to demonstrate through its witnesses the circumstances in which the recording was done. The footing clearly showed how the Accused was welcomed in the room that the caution was administered, the reading of the caution itself and his expressing understanding of the caution and willingness to lead in the scene reconstruction. The ruling on admission of the recording after the trial within the trial is on record.

5.67 I therefore do not accept the Accused defence that he was beaten and or told what to do during the scene reconstruction or let alone that the footage shown is actually a second undertaking after the police had been through the process a first time at which he was threatened and told what to say.

5.68 The video quite clearly shows a willing participant in the presence of his chosen witness being in this instant, his grandmother, leading the police through the route he had walked through on

the day with the deceased. This started from the school, moved to Great East Road, through East Park Mall, branched off into Katima Mulilo Road and onto Great North Road; and finally off Great North Road and onto the gravel road leading up to the point the body was recovered.

5.69 The Accused is heard talking about how he lured the child into going with him for a walk to Manda Hill after he had knocked off from school. He is also heard talking about getting pw10's number from the deceased after the deceased had used his handset to try and dial his aunt; and about his sending the ransom message using his Itel phone that went off due to a low battery soon after he had sent the message.

5.70 Importantly, he is also heard talking about the sense of panic that consumed him, not knowing what he would say to the family if he turned up with the deceased late in the night with the ransom message having been sent and the fear he harboured that the child would reveal the threats he had earlier issued to beat or kill him as they were walking together. He talks about his resolve to kill the child, pushing him and the fall and resulting head injury on a big stone; and about his leaving the body in the maize field.

- 5.71 I am inclined to find that he used the stone to hit the child on the head than the suggestion that he merely pushed the deceased that had a bad fall leading to the injury to the head resulting in death. If that were the case and he did not intend to kill, it is reasonably expected that he would have tried to resuscitate the child or at best, call for help.
- 5.72 The court's scene visit revealed that the crime scene is in a built up area with residential flats and a police camp bordering the field separated only by a wire fence. He did not call for help which would have certainly come. Instead he placed a plastic bag over his victim's head and dumped his lifeless body in the maize field thereby completing the act of an intended murder.
- 5.73 In my estimation, the discharging of the Itel phone that the Accused himself discloses, could account in part for why there was a delay in the transmission of the message that he sent to the deceased aunt. That there was an admissible confession in this case is therefore beyond question. There was no threat or inducement whatsoever in the footage.
- 5.74 I am of course mindful to the holding of the Supreme Court in the case of **Borniface Chanda Chola & Others vs the People**⁷ 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.”

5.75 However in this case 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 acknowledged had in this case already been visited by the police that had days earlier retrieved the body. It is not proposed that any item of real evidence was recovered at the scene from the scene reconstruction.

5.76 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 Nalukwi Akafekwa, guilty of one count of Murder contrary to section 200 of the Penal Code and I convict him accordingly.

Dated the ^{31st} day of ^{January} 2025



JUDGE