

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

HP/96/2024

BETWEEN:

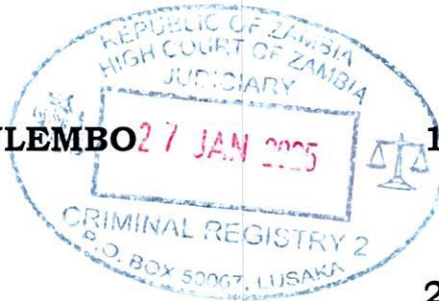
THE PEOPLE

VS

CHANDA MAJORY LULEMBO 1ST ACCUSED

AND

SMART MUMBA 2ND ACCUSED



**BEFORE THE HONOURABLE MR. JUSTICE S. V. SILOKA IN
OPEN COURT ON THE 27TH DAY OF JANUARY, 2025**

For the State: Mr. Voster Munsaka – National Prosecution
Authority

For the Accused: Ms. Mushipe – Mesdamas Mushipe &
Associates;
Mr. C Katwishi – Mesdames Mushipe &
Associates

R U L I N G

CASES REFERRED TO:

1. *David Zulu Vs The People* (1977) ZMSC;
2. *Chimbini Vs The People* (1973) Z. R. 191;
3. *Machipisha Kombe Vs The People* (2009) Z. R. 292; and
4. *Njapau Vs The People* (1967) Z. R., Page 123.

LEGISLATION REFERRED TO:

1. Section 200 of the Penal Code, Chapter 87 of the Laws of
Zambia.

1.0 INTRODUCTION

- 1.1 In this case, Chanda Majory Lulembo and Smart Mumba stand charged with the offence of Murder Contrary to **Section 200** of the **Penal Code, Chapter 87** of the **Laws of Zambia**.
- 1.2 The particulars of the offence are that Chanda Majory Lulembo and Smart Mumba, on unknown date but between the 28th day of August, 2023 and 30th day of August, 2023 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia did murder Janet Chola Mpundu.

2.0 BURDEN OF PROOF

- 2.1 I warn myself at the outset, that the onus is upon the prosecution, to prove its case beyond all reasonable doubt and there is no onus on the Accuseds to prove their innocence. The Accuseds are entitled to give and call evidence or say nothing at all and if they elect to say nothing, this does not affect the burden on the prosecution. If, after considering all of the evidence in this case, there is any doubt in my mind as to the guilt of the Accuseds, then the Accuseds must be given the benefit of that doubt.
- 2.2 In order to establish the guilt of the Accuseds, the prosecution must satisfy me upon each and every ingredient of the offence charged.

2.3 To sustain a conviction, the State must establish the following elements:

(a) The now Accuseds

(b) With malice aforethought

(c) Did murder Janet Chola Mpundu

2.4 I will now consider the evidence in this case.

3.0 THE PROSECUTION'S CASE

3.1 The First Prosecution Witness was Constance Mwelwa aged 35 years hereinafter called **PW1**. **PW1**'s evidence briefly was to the effect that she was the mother to Janet Chola Mpundu aged 14 years now deceased.

3.2 **PW1** further informed the Court that on the 7th of July, 2023 she received a request through **PW2** for her daughter to be a living in maid in Lusaka with **A1** and **A2**'s family though she did not know them.

3.3 According to **PW1**, following the discussions with **PW2**, **A1** then sent the sum of K500.00 as transport for Janet Chola to travel to Lusaka. Janet travelled to Lusaka and her arrival was confirmed by **A1** via phone.

3.4 It was **PW1**'s further testimony that two months after Janet's departure, she received reports that Janet was problematic

- and that she would be sent back to Mansa upon her recovery since she was unwell.
- 3.5 It was **PW1**'s further testimony that Janet was however not sent back as she was reported to have died. Upon receipt of the report, **PW1** informed the Court that she came to Lusaka to pick the body of Janet after which it was repatriated back to Mansa for burial.
- 3.6 The Second Prosecution Witness was Ronald Kapalaula, hereinafter called **PW2**. **PW2**'s evidence was to simply confirm that it was him who facilitated **A1**'s request for a girl to travel and live with her in Lusaka.
- 3.7 It was the further testimony of **PW2** that two months after Janet's departure, he received information from **A1** that Janet had died. **PW2** identified **A1** as the lady who was keeping Janet Chola Mpundu
- 3.8 The Third Prosecution Witness was Joshua Marimo, herein after called **PW3**. **PW3**'s evidence was to confirm that he was a neighbor to **A1** and **A2**.
- 3.9 It was the further confirmation of **PW3** that he used to see a girl living with **A1** and **A2** who was doing house chores. Further, **PW3** confirmed that on the 28th of August, 2023, he

heard the girl screaming loudly for quite some time but later on stopped.

3.10 It was **PW3**'s further testimony that from the date he heard the girl screaming, he never saw her until when he was informed by the Police that the girl in question was no more.

3.11 The Fourth Prosecution Witness was Cordilia Maria Himwaze, employed as a State Pathologist by Ministry of Home Affairs, herein after called **PW4**.

3.12 The gist of **PW4** was to confirm that she carried out a Post Mortem Examination on Janet Chola Mpundu, now Deceased.

3.14 According to **PW4**, after conducting her examination, she then prepared and tendered into Court **P1** and **P2**.

3.15 According to **PW4**, the Deceased's death was caused by multiple blunt impact injuries to the head, torso and extremities due to assault. The mechanism of death was hemorrhage.

3.16 The last Prosecution Witness was Zicheleke Lukele, aged 41 years, herein after called **PW5**, the Arresting Officer in this matter.

3.17 The gist of **PW5**'s evidence was to the effect that he opened a docket, carried out investigations and arrested the now Accuseds for the current offence.

3.18 At the close of the Prosecution's case, I adjourned the matter for a Ruling of no case to answer.

3.19 Counsel on behalf of the two Accuseds submitted that the two Accuseds should be acquitted in compliance with Section 206 of the Criminal Procedure Code because the State has failed to discharge its burden beyond any reasonable doubt that it is the two Accuseds who murdered Janet Chola Mpundu in that the State relied on circumstantial evidence to support their case. The Court was referred to the case of **David Zulu Vs The People**⁽¹⁾ and that of **Chimbini Vs The People**⁽²⁾. Further that the two Accuseds should be acquitted because there was no corroboration that there was derelict of duty by the Arresting Officer. Counsel referred the Court to the case of **Machipisha Kombe Vs The People**⁽³⁾ and a plethora of the authorities.

3.20 On the other hand, the State did not file any submissions. This failure is not fatal because the Court has placed reliance on the evidence which is on the Record.

3.21 I have considered the submissions of Defence Counsel and the evidence which is on Record.

3.22 The Test to apply in a Ruling of no case to answer is if the Accused elected to remain silent, could but not necessarily would a reasonable tribunal properly directing itself, convict the Accused on the evidence so far placed on record? If the answer is in the affirmative, then there is a *prima facie* case, on the other hand, if the answer is in the negative, then there is no case to answer.

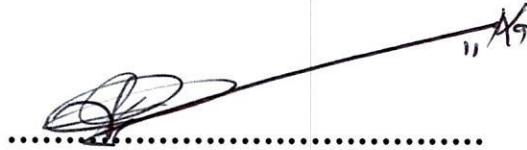
3.23 The above Test was explained in the case of *Njapau Vs The People*⁽⁴⁾ which embodies **Lord Parker's CJ famous Practice Notice in (1962) 1 All ER P.478**. The Test was explained as follows:

- a. If an essential element of the offence has not been proved; or***
- b. When the prosecution's evidence has been discredited or manifestly unreliable that no reasonable tribunal could convict on it, then there is no case to answer.***

3.24 Looking at the facts in the light of the law, it is my considered opinion that the State has adduced sufficient evidence to warrant the two Accuseds to be put on their defence. The two

Accuseds are accordingly found with a case to answer and are put on their defence.

**DELIVERED AT LUSAKA IN OPEN COURT THIS 27th DAY OF
JANUARY, 2025.**

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right. The signature is written over a dotted line.

**S. V. SILOKA
HIGH COURT JUDGE**