

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

2025/HP/100

BETWEEN:

THE PEOPLE

VS

DAVY CHIYABA

MODELLING CHIYABA

FRANK CHIYABA



1ST ACCUSED

2ND ACCUSED

3RD ACCUSED

**BEFORE THE HONOURABLE MR. JUSTICE S. V. SILOKA IN
OPEN COURT ON THE 5th DAY OF MAY, 2025**

For the State: Mr. M. Sitali – National Prosecution Authority

For the Defence: Mr. N. Okware – Messrs, Okware Associates

J U D G M E N T

CASES REFERRED TO:

1. *The People Vs Hosia Malumbi (1995) Selected Judgment No. 4;*
2. *Lubandae V The People (1983) Z.R.54;*
3. *Misupi vs the people (1978) Z.R. 271;*
4. *Mwewa Muruno V The People (2004) Z.R. 207.*

LEGISLATION REFERRED TO:

1. Section 200 of the Penal Code, Chapter 87 of the Laws of Zambia.
2. Section 204 of the Penal Code, Chapter 87 of the Laws of Zambia.

1.0 THE CASE FOR THE PROSECUTION

- 1.1 In this case the three Accuseds 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 Davy Chiyaba, Modelling Chiyaba and Frank Chiyaba, on the 4th day of May, 2023, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together with others unknown did murder Thomas Chisi.
- 1.3 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.
- 1.4 In order to establish the guilt of the Accuseds the prosecution must satisfy me upon each and every ingredient of the offence charged.

1.5 The Prosecution must therefore establish:

a) That the now Accused;

b) With malice aforethought or guilty mind or intention;

c) Did kill the Deceased.

2.0 THE PROSECUTION'S CASE

2.1 The first Prosecution Witness was Aron Zambo aged 41 years, hereinafter called **PW1**.

2.2 It was **PW1**'s testimony that on 3rd May, 2023 at about 22:00 hours, he was awakened by the shouts of Mr. Davies Chiyaba who was his neighbor. Mr. Davies Chiyaba was calling on him to go and assist apprehend a thief.

2.3 Following the shouts, **PW1** informed the Court that he then came out. When he came out, **PW1** told the Court that he saw two people running towards the main road.

2.4 Upon seeing two people running towards the main road he decided to follow. On the main road, **PW1** informed the Court that he met Modelling Chiyaba who confirmed to him that the person he saw running was Davies Chiyaba chasing a thief, who happened to be Thomas Chisi her husband.

2.5 According to **PW1** while talking to Modelling Chiyaba, two gentlemen namely Frank Chiyaba and Pethias Mapulanga

came on the scene. Upon arrival, the two inquired where the thief had run to, but that he did not respond.

2.6 According to **PW1**, receiving no response, the two continued running towards Chunga Bridge.

2.7 In response to his question as to what she was doing on the road, Modelling Chiyaba informed him that she was waiting for her mother who had gone to call Mr. Mukuka.

2.8 It was **PW1**'s further evidence that after talking to Modelling Chiyaba, he then proceeded to Chunga Bridge.

2.9 **PW1** further informed the court that as he approached Chunga Bridge, he heard Frank Chiyaba shouting that "*we stopped you from coming to our place because the marriage was over*".

2.10 According to **PW1** when he reached where Frank Chiyaba was, he found three people namely, Davies Chiyaba, Frank Chiyaba and Pethias Mapulanga kicking Thomas Chisi a man who was lying on the ground.

2.11 It was **PW1**'s further testimony that when he arrived on the scene, he attempted to prevent Frank Chiyaba from kicking Thomas Chisi who was lying on the ground, but that he was over powered.

- 2.12 According to **PW1** as Frank Chiyaba and others continued kicking Thomas Chisi on the ground, Aggrey, a friend to Frank also arrived on the scene and attempted to stop the fight but that he also failed.
- 2.13 Further, **PW1** also told the Court that Mr. Mukuka later arrived on the scene but his attempt to stop Frank Chiyaba from kicking Thomas Chisi failed.
- 2.14 According to PW1, Mr. Mukuka reasoned with Frank Chiyaba to avoid taking the law into his hands but report Thomas Chisi to the police if he committed an offence.
- 2.15 **PW1** confirmed that the man who was being kicked was Thomas Chisi, son in law to Mr. Davies Chiyaba and husband to Modelling Chiyaba.
- 2.16 It was **PW1**'s further testimony that following Mr. Mukuka's counsel, Davies Chiyaba agreed that Thomas Chisi be taken to the Police in the morning, but that since it was still dark, he be tied.
- 2.17 Upon being given that directive, Pethias Mapulanga and Aggrey then lifted Thomas Chisi by the shoulders.
- 2.18 According to **PW1**, Thomas Chisi had to be lifted because he was too weak to walk since he was badly beaten.

- 2.19 It was **PW1**'s further testimony that upon reaching the Bridge, the group met Modelling Chiyaba, wife to Thomas Chisi. Upon seeing Thomas Chisi, Modelling Chiyaba started beating Thomas Chisi on the face, while accusing him to be the reason why she was not getting married.
- 2.20 According to **PW1** while Modelling Chiyaba was beating her husband, Mrs. Chiyaba arrived on the scene with her son, Cain Chiyaba. Upon arrival, she persuaded Davies Chiyaba to stop beating Thomas Chisi. Mr. Chiyaba was then dragged away. At that point, **PW1** informed the Court that he left and went home.
- 2.21 It was **PW1**'s further testimony that the following morning, at about 05:00 hours, he received a phone call from his wife, informing him that there was a dead person at Chunga Bridge.
- 2.22 Upon receipt of the Phone call, **PW1** informed the court that he then went to the Bridge, where he found Thomas Chisi dead.
- 2.23 It was **PW1**'s further evidence that the matter was then reported to the Police after which the body of the Deceased was picked up. **PW1** identified **A1**, **A2** and **A3** as the people that beat up the Deceased.

- 2.24 It was the further testimony of **PW1** that upon examining the body of the Deceased, he saw a cut on his face.
- 2.25 In cross-examination, **PW1** told the Court that Thomas Chisi was married to Modelling Chiyaba but that he was not aware that the marriage between the two had come to an end.
- 2.26 In further cross-examination, **PW1** told the Court that he heard Frank Chiyaba telling Thomas Chisi that he was stopped from visiting Modelling Chiyaba.
- 2.27 In further cross-examination, **PW1** informed the Court that Modelling Chiyaba informed him that Thomas Chisi wanted to stab her with a screw driver.
- 2.28 Further in cross-examination, **PW1** informed the Court that he saw **A1**, **A2** and **A3** beating the Deceased.
- 2.29 **PW1** also in cross-examination, told the Court that he did not know the relationship between Pethias Mapulanga and Modelling Chiyaba.
- 2.30 In further cross-examination, **PW1** informed the Court that he would not know what happened to Thomas Chisi when he left.
- 2.31 The second Prosecution Witness was Collins Mukuka aged 30 years, hereinafter called **PW2**.

2.32 It was **PW2**'s evidence that on the 3rd of May, 2023, while asleep, he was awakened by Bana Maimba (Mrs. Chiyaba) a neighbor who requested him while crying to come out and help stop the fight going on between Modelling Chiyaba and the husband.

2.33 Following that request, **PW2** informed the Court that he woke up and went to the Bridge.

2.34 It was **PW2**'s further testimony that as he walked to the Bridge, he met Aggrey, a neighbor and together they walked to the Bridge.

2.35 **PW2** also told the Court that when he reached the Bridge, he found Mr. Davies Chiyaba, Frank Chiyaba and Pethias Mapulanga kicking Thomas Chisi who was laying on the ground. Upon arrival, **PW1** told the Court that he went on to stop the fight.

2.36 It was **PW2**'s further evidence that after stopping the fight he inquired from the three people who were beating Thomas Chisi the reason for the fight but that no one gave him any response. The three just continued shouting that they had stopped Thomas Chisi from coming to their place.

- 2.37 Receiving no response, **PW2** informed the Court that he advised the three to take Thomas Chisi to the Police if he had committed an offence.
- 2.38 It was **PW2**'s further evidence that after advising the three to take Thomas Chisi to the Police, Aggrey and Mapulanga lifted Thomas Chisi and took him home but that on the way, they then met Modelling Chiyaba, who was the wife. Modelling Chiyaba then started beating the husband on the face. As Modelling Chiyaba was beating the husband, the three also joined in and started beating Thomas Chisi again.
- 2.39 It was **PW2**'s evidence that as Modelling Chiyaba was beating the husband, the mother, Bana Maimba came to stop the fight.
- 2.40 It was **PW2**'s further evidence that as Bana Maimba was stopping the fight, he went home to sleep.
- 2.41 It was **PW2**'s further testimony that the following day in the morning he was informed that Thomas Chisi was dead. The matter was then reported to the Headman and the Police after which the body was taken to the mortuary.
- 2.42 In cross-examination, **PW2** told the Court that he did not know the relationship between Modelling and Pethias Mapulanga.

- 2.43 In further cross-examination **PW2** told the Court that as **A2** was beating Thomas Chisi she was shouting that the Deceased was the reason why she was not getting married.
- 2.44 The Third Prosecution Witness was Philimon Kandindima, hereinafter called **PW3** and Village Headman Kandindima Village.
- 2.45 The gist of **PW3**'s evidence was to the effect that on the 4th of May, 2023, he received a telephone call from Modelling Chiyaba(**A2**) to the effect that her husband Thomas Chisi was lying dead at Chunga Bridge.
- 2.46 Following receipt of the said telephone call, **PW3** then went to the Bridge where he confirmed that Thomas Chisi was dead after which the matter was reported to the Police at Marcopolo.
- 2.47 It was also **PW4**'s further evidence after inspecting the Deceased, he noticed that the Deceased had injuries. This led him to inquire from Aaron (**A1**) as to what led to the death of the Deceased.
- 2.48 According to **PW3**, Aaron (**PW1**) informed him that the Deceased was beaten by **A1**, **A2** and **A3**.

- 2.49 In cross-examination, **PW3** informed the Court that Modelling Chiyaba and Thomas Chisi were husband and wife but that he did not know that they were on separation.
- 2.50 The Fourth Prosecution Witness was Moses Phiri, uncle to the Deceased, Thomas Chisi.
- 2.51 **PW4**'s evidence in brief was to the effect that on the 10th of May, 2023, he went to UTH to go and identify the body of his nephew who had died on 4th May, 2023.
- 2.52 Further **PW4** informed the Court that after identifying the body, he also went on to attend a Post Mortem Examination.
- 2.53 According to **PW4** the cause of death was blunt impact trauma. After the Post Mortem Examination, Thomas Chisi was buried.
- 2.54 The last Prosecution Witness was Detective Inspector Simfukwe, Arresting Officer in this matter.
- 2.55 The evidence of **PW5** was to the effect that he carried out investigations, opened a docket and arrested the now Accuseds for the current offence. **PW5** also tendered into evidence the Postmortem Examination Report (**P1**).
- 2.56 In cross-examination, **PW5** told the Court that **A3** told him that a stone was used to injure the Deceased but that the stone was not recovered.

- 2.57 In further cross-examination, **PW5** informed the Court that he did not discount the story of Pethias Mapulanga throwing the stone but that the said Mapulanga is on the run.
- 2.58 In further cross-examination, **PW5** told the Court that Pethias Mapulanga together with **A1**, **A2** and **A3** beat up the Deceased.
- 2.59 In further cross-examination, **PW5** informed the Court that he did not consider that Pethias could have had the motive to murder the Deceased.
- 2.60 In further cross-examination, **PW5** informed the Court that from his investigations, **A1**, **A2**, **A3** and Pethias Mapulanga beat up the Deceased.
- 2.61 That was the close of the Prosecution's case.

3.0 THE CASE FOR THE DEFENCE

- 3.1 A1 elected to give Sworn Evidence and called no witness. While **A2** and **A3** elected to remain silent and did not call any Witnesses.
- 3.2 In his evidence in Chief A1 told the Court that he is the father to both A2 and A3 and that the deceased was the husband to A3.

- 3.3 It was **A1**'s further evidence that the deceased and A2 cohabited for a long time but that on 5th May, 2024 they went on separation,
- 3.4 It was **A1**'s further evidence that on the 4th May, 2024 he was awakened by shouts of Thief, Thief and Hule, Hule but that when he went outside, he did not see anybody after which he went back to bed.
- 3.5 It was **A1**'s further testimony that in the Morning, A2 came to inform him that her Husband Thomas Chisi was beaten and laying died at Chunga Bridge.
- 3.6 It was **A1**'s further Testimony that following that report he rushed to Chunga Bridge where he found Thomas Chisi dead.
- 3.7 According to **A1** when he arrived at the scene at 06 hours he found a lot of people. The matter was accordingly reported to the Police.
- 3.8 It was A1's further Testimony that when the Headman arrived, he was informed that the noise he heard in the night emanated from a fight that ensured between Pethias Mapulanga and Thomas Chisi.
- 3.9 According to **A1**, Pethias Mapulanga and Thomas Chisi were fighting over **A2** but that **A2** could not have been in a relationship with Mapulanga because the two were related.

- 3.10 It was **A1**'s further testimony that he could not have killed his son in Law because he had no reason of doing so.
- 3.11 Further, **A1** informed the Court that he was not at the Bridge when the deceased was beaten by Pethias Mapulanga.
- 3.12 In cross-examination, **A1** admitted that **PW1** informed the Court that while he was inside his house, he heard him shout Thief, Thief.
- 3.13 In further Cross-Examination, **A1** admitted that when **PW1** came out, he saw him chasing someone towards the Bridge.
- 3.14 In further cross-examination, **A1** admitted that **PW1** Informed the Court that when he arrived, he found him together with the other Accuseds beating Thomas Chisi.
- 3.15 In further cross-examination **A1** admitted that **PW1** was his neighbor.

That was the close of the Defence's case.

4.0 SUBMISSIONS BY THE STATE

- 4.1 The state did not file any submissions. The state relied on the evidence on record.

5. SUBMISSIONS BY THE DEFENCE

- 5.1 The defence had indicated to the court that they would file in written submissions by the 23rd April 2025. However, no written submissions were received by the said date, Written

submission not binding on the court, the court decide to proceed without the submissions. The none submission of the written submissions will not prejudice the Accuseds as the court has considered the evidence on record in full.

6. ISSUES FOR DETERMINATION

6.1 The following issues have been framed up for determination:

- (i) Whether a human being was killed.
- (ii) Whether the cause of death was unlawful.
- (iii) Whether it is the now Accuseds who killed the deceased.
- (iv) Whether the now Accuseds in killing the deceased had the malice afore thought.

7.0 ANALYSIS AND DECISION

7.1 The offence of Murder is provided for under Section 200 of the Penal Code Chapter 87 of the Laws of Zambia.

This Section provides:

“Any person who of malice afore thought cause the death of another by unlawful act or omission is guilty of Murder.”

7.2 The Supreme Court in the Case of The People Vs Hosia Malumbi (Selected Judgement) summarized the elements of Murder as follows:

“In the charge of Murder, the elements are (i) With Malice aforethought; (ii) Causing death of another person; (iii) by unlawful act or Omission. And Malice afterthought is deemed to be established by evidence proving (a) Intention to cause death or grievous bodily harm; (b) knowledge that the act or omission causing death will probably cause grievous harm; (c) an intent to commit a felony using Violent Means in the commission of the felony.”

(i) Whether a Human Being was killed?

8.0 From the evidence, it is not in dispute that a Human Being died. All the witnesses of the Prosecution and the Defence admitted that Thomas Chisi a Human Being was found dead at Chunga Bridge.

(ii) Whether the cause of death was unlawful.

9.0 From the evidence of the prosecution and Defence, it has been confirmed that the deceased died as a result of beatings received.

9.1 Further the Autopsy revealed the presence of 1500 ml of blood in abdominal Cavity due to rupture of the liver.

9.2 There were also bruises on the torso and head. Cause of death was BLUNT IMPACT TRAUMA TO THE TORSO. A Manner of death is Unknown,

9.3 From the Analysis of the Post Mortem Report and the Testimony of the Prosecution Witnesses it has been established that the cause of death of the deceased was an unlawful act.

(iii) Whether it is now accused Who killed the deceased.

10.0 From the evidence on record, it has been established that it is **A1, A2** and **A3** who Murdered the deceased.

From the evidence on record, **PW1, PW2** and **PW3** informed the court that it is **A1, A2** and **A3** together with **PETHIAS MAPULANGA** now on the ran who were found beating Thomas Chisi.

10.1 The Three Accused having formed a common Intention to beat the deceased are all principal offenders within the meaning laid down in Section 22 of the Penal Code.

10.2 Section 22 of the Penal Code provides:

“When two or more persons form a common Intention to prosecute an unlawful purpose in conjunction with one another, and the prosecution

of such purpose, an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence?”

10.3 I must say I believe the testimony of the prosecution not only because it was unchallenged and credible but also that the witnesses had no motive to implicate the now accuseds. (see *Misupi vs the people*).

(iv) Whether the now Accused in killing the deceased had the malice afore thought.

11.0 According to Section 204 of the Penal Code Chapter 87 of the Laws of Zambia, malice afore thought shall be deemed to be established by evidence proving any one or more of the following circumstances:

- (a) An Intention to cause the death 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 death 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 may not be caused;

- (c) An intent to commit a felony; and the 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.

11.1 In *Lubandae V The People* (1983) ZR54. It was held that:

“By Cocking the riffle, following the altercation it is evident that the Appellant either Intended to kill a human being or Cause grievous harm or foresaw human death or grievous harm was a likely result of his act, further a reasonably prudent person in his position would have realized that death or grievous harm was likely result of such an act.”

11.2 Therefore, the Accused herein in beating and kicking Thomas Chisi knew that death or grievous harm would occur.

11.3 In beating and kicking the deceased, the Accuseds herein had the intention of causing death or cause grievous harm to the deceased.

11.4 From the above analysis, I have found that the state has established that the Accused herein had the Malice aforethought to Murder Thomas Chisi.

12.0 CONCLUSION

12.1 In conclusion, it is my considered opinion that the state has proved its case beyond any reasonable doubt as guided in the Case of Mwewa Muruno V The People (2004) Z.R. 207.

12.2 I therefore find the Accuseds GUILTY as charged and I Convict them accordingly.

**DELIVERED AT LUSAKA IN OPEN COURT THIS 5th DAY OF
MAY, 2025.**


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

