

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

Appeal No. 94/2024

**BETWEEN:**

**REAGAN MALUPANDE**

**AND**

**THE PEOPLE**



**APPELLANT**

**RESPONDENT**

**Coram: Mchenga DJP, Majula and Muzenga, JJA**  
**On 17<sup>th</sup> February, 2026 and 24<sup>th</sup> March, 2026**

*For the Appellant:*

*Mr. M. Mungalu, Senior Legal Aid Counsel, Legal Aid Board*

*For the Respondent:*

*Mrs. Y.M. Banda, Senior State Advocate, National Prosecutions Authority*

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## **JUDGMENT**

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MAJULA JA, delivered the Judgment of the Court.

**Cases referred to:**

1. *Jack Chanda v The People SCZ Appeal 29/2002*
2. *Shadreck Malisen Biyemba Njobvu v The People SCZ Appeal 165/2017*
3. *Lloyd Haamwambwa v The People SCZ Appeal 129/2022*
4. *Mashes Tolosi v The People (Appeal No. 69 of 2022)*
5. *Whiteson Simusokwe v The People (SCZ Judgment No. 15 of 2002)*
6. *Dorcias v The People (CAZ Appeal No. 124 of 2018)*
7. *Precious Longwe v The People (CAZ Appeal No. 182 of 2017)*
8. *Francis Kamfwa v The People (SCZ Appeal No. 125 of 2017)*

9. *Tshiabu Quibilia Benos v The People* (Appeal No. 201/2020).
10. *Phiri v The People* (1970) ZR 78
11. *Kelvin Kabwe v The People* (SCZ Appeal No. 123 of 2017)
12. *Jutronich, Schutte & Lukin v The People* (1965) ZR 11
13. *Alubisho v The People* (SCZ Judgment No. 2 of 1976)
14. *Gideon Hammond Millard v The People*, SCZ Judgment No. 10 of 1998

### **Legislation referred to:**

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

## **1.0 INTRODUCTION**

- 1.1 This appeal arises from the Judgment of the High Court at Ndola, delivered on 27<sup>th</sup> November, 2023 by Malumani J, in which the Appellant, Reagan Malupande, was convicted of murder contrary to **Section 200 of the Penal Code, Chapter 87 of the Laws of Zambia**, following the death of Justine Moonga. Dissatisfied with that decision, the Appellant has appealed to this Court.
- 1.2 The principal issue for determination is whether the Court below erred in holding that the failure of the defence of provocation negated malice aforethought and thereby reduced the offence to manslaughter, rather than entering a conviction for murder with extenuating circumstances.

## **2.0 EVIDENCE BEFORE THE LOWER COURT**

- 2.1 The evidence showed that on 26<sup>th</sup> September, 2022, the Appellant and the deceased, who were friends, attended a daytime wedding ceremony at Kapitolo Village in Mpongwe District, where alcohol was consumed. During the event,

disorder broke out and the Appellant became aggressive, armed himself with a wooden stick, and chased his wife. When the deceased tried to intervene, the Appellant struck him several times with the stick, including on the head and back, causing him to fall and cry out that he was dying. Community members intervened, disarmed the Appellant, and found the deceased lying motionless with serious injuries. The deceased later died, and the Appellant was handed over to the police.

- 2.2 Investigations recovered the stick used in the assault, and a post-mortem examination revealed severe blunt force injuries, including bleeding in the brain and a ruptured spleen. The cause of death was polytrauma from blunt force trauma.
- 2.3 In his defence, the Appellant admitted drinking alcohol and striking the deceased once with a stick, claiming he did so in response to being attacked and without any intention to kill, while also acknowledging that he was drunk and his memory was unclear.

### **3.0 DECISION OF THE LOWER COURT**

- 3.1 The trial Judge set out the elements of murder and held that malice aforethought could be inferred from the weapon used, the manner of the attack, the injuries inflicted, and the Appellant's conduct. The Court found that both men had attended a wedding and consumed alcohol, and that during a fight the Appellant struck the deceased several times with a wooden stick, including on the head. Medical evidence confirmed that the deceased died from severe blunt force injuries, which the Court linked directly to the assault.

3.2 The Appellant's claim of self-defence was rejected as inconsistent and unsupported, and the force used was found to be excessive. The Court further held that intoxication did not negate intent. It accordingly found that malice aforethought was proved and convicted the Appellant of murder.

#### **4.0 GROUNDS OF APPEAL**

4.1 The Appellant was aggrieved with the decision of the Court below and filed this appeal anchored on the following grounds:

1. *The learned trial court below erred in law and fact when it held that a failed defence of provocation negated malice aforethought or intention and consequently reduced the offence of murder to manslaughter when the correct verdict ought to have been a conviction of murder with extenuating circumstances.*
2. *The learned trial court below erred in law and fact when he sentenced the appellant to 45 years imprisonment with hard labour in the face of extenuating circumstances which entitled the appellant to a lesser sentence.*
3. *Alternatively, the learned trial court below erred in law and fact when it sentenced the appellant to 45 years imprisonment with hard labour for the offence of manslaughter when the appellant was a first offender who deserved the court's leniency and there being no aggravating factors.*

#### **5.0 APPELLANT'S ARGUMENTS**

5.1 In written submissions filed on 11<sup>th</sup> February, 2026, Counsel for the Appellant addressed the three grounds of appeal. On

the first ground, it was contended that the trial Judge erred in reducing the offence from murder to manslaughter on the basis of a failed defence of provocation.

- 5.2 Counsel argued that the Court had found all the elements of murder proved, including malice aforethought, and that the defence of provocation failed due to excessive retaliation. Under **Section 205(1)** of the **Penal Code**, only a successful plea of provocation reduces murder to manslaughter. Where it fails, the conviction remains one of murder, though the circumstances may mitigate sentence. Reliance was placed on *Jack Chanda and Another v The People*,<sup>1</sup> *Shadreck Malisen Biyemba Njobvu v The People*,<sup>2</sup> *Loyd Haamwambwa v The People*<sup>3</sup> (following *Mashes Tolosi v The People*<sup>4</sup>), as well as *Whiteson Simusokwe v The People*,<sup>5</sup> *Dorcas v The People*,<sup>6</sup> and *Precious Longwe v The People*.<sup>7</sup> Counsel urged this Court to substitute the manslaughter conviction with one of murder with extenuating circumstances.
- 5.3 On sentence, Counsel submitted that the term of 45 years imprisonment with hard labour was manifestly excessive. Although extenuating circumstances were found, it was argued that insufficient weight was given to them. Counsel cited *Francis Kamfwa v The People*,<sup>8</sup> *Jack Chanda and Another v The People*,<sup>1</sup> *Whiteson Simusokwe v The People*, and *Tshiabu Quibilia Benos v The People*<sup>9</sup> as comparable authorities where lesser sentences were imposed. It was submitted that the sentence was disproportionate and warrants interference.
- 5.4 In the alternative, Counsel argued that the trial Court failed to accord due leniency to the Appellant as a first offender.

Relying on *Phiri v The People*,<sup>10</sup> *Kelvin Kabwe v The People*,<sup>11</sup> and *Jutronich, Schutte & Lukin v The People*,<sup>12</sup> Counsel submitted that the sentence was so severe as to induce a sense of shock. A reduction of sentence was accordingly sought.

## 6.0 RESPONDENT'S ARGUMENTS

- 6.1 In written submissions filed on 16<sup>th</sup> February, 2026, learned Counsel for the Respondent submitted, on the first ground of appeal, that where a defence of provocation fails, the proper verdict is murder with extenuating circumstances. Reliance was placed on *Jack Chanda & Another v The People*<sup>1</sup> and *Shadreck Malisen Biyemba Njobvu v The People*.<sup>2</sup>
- 6.2 Counsel contended, however, that the trial Court's error was one of form rather than substance. Although the offence was described as manslaughter, the findings supported a conviction for murder with extenuating circumstances. The misdescription, it was argued, did not invalidate the conviction but only affected the manner in which it was framed.
- 6.3 On the second and third grounds, relating to sentence, Counsel submitted that the term of 45 years' imprisonment with hard labour was justified notwithstanding the presence of extenuating circumstances.
- 6.4 Reliance was placed on *Jutronich, Schutte & Lukin v The People*<sup>12</sup> and *Alubisho v The People*,<sup>13</sup> which outline the limited grounds upon which an appellate Court may interfere

with sentence, namely where there is an error in principle or the sentence is manifestly excessive.

- 6.5 It was submitted that the sentence imposed in this case was neither wrong in principle nor so excessive as to induce a sense of shock. The Court was accordingly urged to dismiss the appeal on sentence.

## **7.0 HEARING OF THE APPEAL**

- 7.1 The hearing of this appeal took place on 17<sup>th</sup> February, 2026. The Appellant was represented by Mr. Mungalu, who indicated that he would rely entirely on the written arguments filed on behalf of the Appellant.
- 7.2 On the opposing side, Learned Counsel Mrs Y. M. Banda also relied on her filed submissions. She initially maintained that the conviction was safe. However, she conceded that the learned trial Judge erred in convicting the Appellant of manslaughter. In her view, the proper conviction ought to have been murder with extenuating circumstances.
- 7.3 Counsel nevertheless submitted that the sentence of forty-five (45) years imprisonment imposed by the trial Court was appropriate, having regard to the excessive force used in the commission of the offence.

## **8.0 ANALYSIS AND DECISION OF THIS COURT**

- 8.1 We have meticulously examined the record and the grounds of appeal, particularly the arguments concerning the conviction for manslaughter. At the outset, this appeal raises two central questions. First, whether the trial Court erred in holding that

the failure of the defence of provocation negated malice aforethought and thereby reduced the offence from murder to manslaughter, instead of convicting for murder with extenuating circumstances. Second, whether the sentence of 45 years imprisonment with hard labour was excessive in light of the extenuating circumstances said to have been established.

- 8.2 We note that the learned trial Judge relied on the decision in ***Jack Chanda v The People***,<sup>1</sup> where the Supreme Court held that a failed defence of provocation, allegations of witchcraft, and evidence of intoxication may constitute extenuating circumstances.
- 8.3 However, upon analysing the reasoning of the Court below, we are satisfied that the learned Judge fell into error in proceeding to convict the Appellant of manslaughter. Once the defence of provocation was rejected on the basis that excessive force was used, it was not open to the Court to return a verdict of manslaughter. The proper course, in such circumstances, is to convict for murder with extenuating circumstances. This principle has been clearly articulated in several authorities, including ***Shadreck Malisen Biyemba Njobvu v The People***<sup>2</sup> and ***Lloyd Haamwambwa v The People***.<sup>3</sup>
- 8.4 Accordingly, we find that the trial Court's statement that a failed defence of provocation negates malice aforethought or intention was a misdirection in law. We therefore set aside the conviction for manslaughter and substitute it with a conviction for murder with extenuating circumstances.
- 8.5 Turning to ground two, we hold the view that the ground is misconceived as the trial Court did not find the existence of

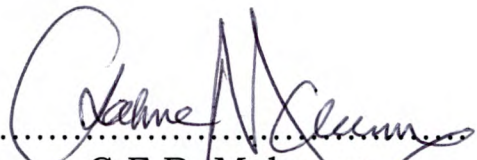
extenuating circumstances. The sentence was based on the conviction for manslaughter. Ground two is therefore dismissed.

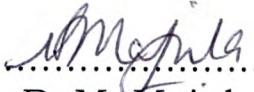
8.6 Having set aside the conviction for manslaughter, the sentence of 45 years' imprisonment imposed is equally set aside. Ground three is thus rendered otiose.

## 9.0 CONCLUSION

9.1 Having found merit in the first ground of appeal, we set aside the conviction for manslaughter and quash the sentence of 45 years imprisonment. In its place, a conviction for murder with extenuating circumstances is made.

9.2 Having considered the circumstances of the case, we impose a sentence of 20 years imprisonment with hard labour with effect from the 26<sup>th</sup> November, 2023, the date he was taken into custody.

  
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 C.F.R. Mchenga  
**DEPUTY JUDGE PRESIDENT**

  
 .....  
 B. M. Majula  
**COURT OF APPEAL JUDGE**

  
 .....  
 K. Muzenga  
**COURT OF APPEAL JUDGE**