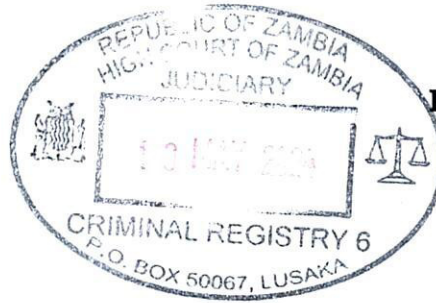


IN HIGH COURT FOR ZAMBIA

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

BETWEEN:



HP/47/2024

THE PEOPLE

V

GEORGE KASONDE

BEFORE THE HONOURABLE MR. JUSTICE I. M. MABBOLOBOLO IN OPEN COURT ON THE 10TH DAY OF MAY, 2024.

For the State: Mr. S. Phiri, State Advocate – National Prosecution Authority

Ms. S. Malundu, State Advocate – National prosecution Authority.

For the Defence: Mrs. A. Banda Chimimba, Legal Aid Counsel - Legal Aid Board

Mr. N. Tembo, Legal Aid Counsel - Legal Aid Board.

JUDGMENT

A. CASES REFERRED TO:

1. *Mwewa Murolo v The People* (2004) ZR 207
2. *R.V. Abramovich* (1914) ALL ER 204
3. *Sidney Zonde, Aaron Chikumba v The People* (1980) ZR 337
4. *Chate v The People* (1975) ZR 298
5. *Ilunga Kalaba and Another v The People* (1981) ZR 102
6. *Kalaluka v The People* (1969) ZR 27
7. *R. v Fanwell* (1954) 1NR 81
8. *Prince Mwiya Maiba v The People* (2010) ZR VOL 2 302
9. *The People v Peanos Luzendi Appeal No. 160/2017*
10. *Elias Kunda v The People* (1980) ZR 125
11. *Mbinga Nyambe v The People* (2011) VOL 1ZR 246

B. LEGISLATION REFERRED TO:

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

1. The accused person stands charged with the offence of **Aggravated Robbery** contrary to **Section 294 (1) of the Penal Code Chapter 87 of the Laws of Zambia**.
2. Particulars of the offence are that **GEORGE KASONDE** on the 26th 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 other unknown persons and whilst armed with an offensive weapon namely, a metal bar, did steal a Samsung phone valued at K4, 500.00, Sunglasses valued at K3,000.00, Brown Belt valued at K1,200.00, K400.00 cash and a Replica Jersey valued at K400.00 altogether valued at K9,500.00 the property of **COLLINS SICHONE** and at or immediately after the time of such stealing, did use or threaten to use actual violence to the said **COLLINS SICHONE** in order to obtain or retain the things stolen or prevent or overcome resistance to its being stolen or retained.
3. The accused person pleaded not guilty to the charge whereupon the matter proceeded to trial.
4. I have throughout the trial and indeed at the time of writing this Judgment warned myself that the burden of proving the charge against the accused lies from beginning to end on the prosecution to prove every element of the offence beyond all reasonable doubt. If at the end I harbor any doubt as to the guilt of the accused person, I am obliged to acquit. The accused person has no obligation whatsoever to prove his innocence as instructively

stated in a plethora of cases not least of which is the case of **Mwewa Muroño v The People**¹.

5. The offence of **Aggravated Robbery** is provided for by **Section 294 (1) of the Penal Code Chapter 87 of the Laws of Zambia** as follows:

“Any person who, being armed with any offensive weapon or instrument, or being together with one person or more, steals anything, and at or immediately before after the time of stealing it, uses or threatens to use actual violence to any person or property to obtain or retain the thing stolen or to prevent or overcome consistence to its being stolen or retained is guilty of the felony of Aggravated Robbery and is liable on conviction to imprisonment for life notwithstanding Subsection (2) of Section Twenty six, shall be sentenced to imprisonment for a period of not less than fifteen years”.

6. From what is indicated in Paragraph 5 above, the State must prove the following elements to establish the guilt of the accused;
- i) *That the accused was with other assailants or was armed with an offensive weapon*
 - ii) *That something was stolen and,*
 - iii) *That at or immediately before or immediately after the time of stealing, violence was used or threatened to be used on the victim or property to prevent it from being retained.*

Prosecution case

7. In support of the charge against the accused, the Prosecution called three (3) witnesses. The victim Mr. Collins Sichone who is aged 44 years and a Businessman was called as the Prosecution’s first witness (hereinafter referred to as **“PW1”**). He told the Court that he went to a place called Clouds Lounge located in Kabwata to watch a Manchester United versus Chelsea football match

around 19:00 hours on 25th May, 2023. That the match started at around 21:00 hours and ended at about 23:00 hours.

8. **PW1**'s testimony was that after the match, he decided to take a walk home since his home is near on the southern side. That as he was walking on Chibwe Road and approaching Chilumbulu Road, a gentleman approached him and started asking him questions like where he was going at that time. He stated that he told the man that he was going home and that he should be left alone. **PW1** stated that the next thing he heard was a bang on his shoulder from another person where upon he lost his mind. Further that he was searched and a few things were stolen from him namely a wallet, Samsung phone, belt, bag, watch and a Manchester United Jersey.
9. It was **PW1**'s testimony that about 10 minutes later, he managed to stand up though in pain and went to the nearest Police Post in Kamwala where he reported the matter to the Officer he found there. That after explaining to the Officer, he gave his wife's number (as next of kin) and was later dropped off at home. That the following day he went to Kabwata Police Station where the matter had been transferred to and where he was given a medical report which he presented at Kabwata Clinic for medical examination. He stated that he was found with multiple bruises on his shoulder, knee and below his left eye.
10. PW1 testified that on the same morning, he received a call from the Police Office at Kamwala to the effect that a wallet had been found and was told to go and identify it which he did including

the contents namely his Identification card, driver's licence and ATM cards for ZANACO and FNB. That he was able to identify the wallet because of its brown color and Lacoste mark with a small red tag on it.

11. When asked whether he was able to identify the person who had hit him looking at the time, **PW1** stated that he was not able to identify the person who hit him from behind, but that he was able to identify the person who had approached him on the night of the attack and did so in open Court. That he was able to identify the person who approached him because he came on his side and he could see him and that although there was not too much light, there was a shop nearby which had some light which made it possible for him to see the person as he approached him.
12. In Cross examination, **PW1** insisted that he saw the person who approached him, but that he did not give the police the person's exact features. He confirmed that he had seen the person for a short time and that no identification parade was held at the Police Station.
13. **PW1** confirmed having given a statement at the Police which he said he had no problem with having admitted into evidence as it was his and the same was later admitted into evidence as **D1**. He conceded that there was nowhere in **D1** where he had told the Police that he could identify the person if he saw him. **PW1** maintained that he was not lying when it was put to him that he was lying that he could identify the person from the evening that he allegedly met him.

14. When it was put to **PW1** that the reason he had pointed at the accused is because he saw him at the Police Station the following day, **PW1** responded that he could identify the accused because he saw him on the night he was attacked. He agreed that the accused has unique features by which one can identify him at first instance. **PW1** further confirmed that he saw one person on the night of the attack and that he did not see the iron bar with which he was hit from behind. When asked whether it was just an assumption that he was hit with an iron bar, **PW1**'s response was that it felt like an iron bar. He confirmed that it is true that it is difficult to distinguish the impact if you are not seeing the object with which you have been hit. He however disagreed that it was possible to mistake a heavy blow for even a stone if you are not seeing.
15. **PW1** denied that he started drinking beer from about 21:00 to about 23:00 hours, but that about 40 minutes before he left the bar, he had started drinking water. **PW1** was referred to Line 5 of **D1** and confirmed that the statement indicated that the act of drinking was continuous. He agreed that alcohol impairs judgment.
16. **PW1** confirmed that the accused was not found with his phone and that he lost hard cash that day but could not remember how much it was. He agreed that he came to learn that the accused was not found with any money and also conceded that there was nothing wrong with the accused person to move at night. Further

that he was not aware that the accused was also going to his own place and just happened to use the same road as **PW1**.

17. **PW1** in further cross examination agreed that he had not told Court about any unique features about the attacker. He admitted that when he was hit, he fell down facing the ground and that he was in a confused state and that he did not see the person who searched or stole from him.
18. The Prosecution's second witness was 38 year old Edward Mumba who is a Constable operating at Kamwala Police Post ("hereinafter referred to as **"PW2"**). He testified that he reported for duty on 25th May, 2023 running from 18:00 hours to 06:00 hours and that while on duty, he received a complaint from a reporter who he came to know as Collins S. Manjengwa who complained that he had been attacked at St. Patrick's Area within Kamwala. That at that time **PW2** had no medical forms so he advised **PW1** to pass through Kabwata Police Station to get a medical report.
19. According to **PW2**, around 03:00 hours an unknown male brought in a suspect whom he had found at his gate within Kamwala residential area. That he came to know the person brought as George Kasonde (the accused). That the person who brought the accused was in a hurry as he was going out of Lusaka so he said that looking at the time, the Police could detain the accused and release him the following morning because he had nothing to do with the accused.

20. **PW2** stated that he ordered the accused to declare his particulars which he did and stated that he did not have anything on him. That upon searching the accused, **PW2** found him with a brown wallet containing ATM cards for (FNB and ZANACO) bearing the names of Collins S. Manjengwa. That when the accused was asked about the owner of these items, the accused kept quiet. That when **PW2** looked at the face and names on the driver's licence, he recalled the person who had reported earlier (**PW1**). That he called **PW1** on his wife's phone and informed him that they had a suspect with a wallet containing two ATM cards and a driver's licence. That he then informed **PW1** to pass through Kabwata Police to get officers from there so that they could go and pick up the accused. Further that before **PW2** knocked off, the Officers from Kabwata came and he handed over the suspect and the wallet with its contents to Detective Constable Chipasha.
21. When asked why he had asked the accused to declare what he had, **PW2** stated that he wanted to know what was in the possession of the accused because he wanted to put him in the cells as it is procedural to ask what detainees have.
22. In Cross examination, **PW2** confirmed that when **PW1** went to report he never told **PW2** that he could identify the accused and that for that reason it was pointless to conduct an identification parade. **PW2** conceded that he did not take down a statement from the person who had taken the accused to the Police Post and that if he had wanted to do so, he would have done so. Further that he agreed that it was very important for that person

to come to Court. **PW2** confirmed that there was no iron bar found and that **PW1** told him that everything happened so fast and that he was confused.

23. **PW2** in further cross examination conceded that a stressful moment can cause impaired judgment. He stated that what **PW1** told him was that he was attacked from behind. He also agreed that as Police, they advise members of the public to report to Police if they pick up anything. Further confirmation was that the accused was picked up around Kamwala near St Patrick's and that no phone or money were found on the accused but only a wallet.
24. **PW2** denied that the accused told him that infact when he was taken to the Police, he was on the way there to take the wallet. He stated that there is nothing wrong about a person moving during the day seeing and picking up a wallet but not at night. When asked what the difference is between day and night **PW2** offered no response.
25. It was **PW2's** confirmation that he wrote a report to his Officer in Charge on the incident. He admitted that in the report he did not state that he had asked the accused to declare what was in his possession and added that he just missed that part. He conceded that it was an important aspect which should have been indicated. When it was put to **PW2** that he had just made it up, he maintained that he just may have missed it.
26. **PW2** denied the assertion that the accused had told him that he had just picked up the wallet or that the accused was taking the

wallet to the police because of the Identification documents that he had found in the wallet.

27. The last Prosecution witness was 34year old Chiko Mumbati Chipasha, a Detective Constable who operates from Kabwata Police Station (hereinafter referred to as **"PW3"**). He testified that he reported for work on 26th March, 2023 at the Criminal Investigations Division offices at Kabwata Police Station and was allocated a docket of the complaint by Collins Sichone Manjengwa. That he informed the Criminal Investigations Officer that there was a suspect at Kamwala Police who had been detained in connection with the same.
28. It was **PW3**'s testimony that he called the Complainant and interviewed him and was informed that he had been attacked by two people in an incident where he was hit with an iron bar and robbed of Samsung cell phone, sun glasses, a belt, all valued at K9,500.00 and a brown wallet containing ATM cards for ZANACO and FNB and a driver's licence. That the Complainant returned a medical report which had earlier been issued to him at Kabwata Clinic.
29. According to **PW3**, he proceeded to Kamwala Police Post where he found Constable Mumba who handed to him a brown wallet with the contents referred to above all belonging to Collins Sichone Manjengwa which were found in the possession of the accused who they had detained whilst on duty. **PW3** stated that he was led to the cells where he picked the accused who he came to know as George Kasonde. That the accused was then

transferred to Kabwata Police Station where further investigations were carried out. Further that a Warn and Caution Statement was administered to the accused in Bemba, a language he seemed to understand after which he gave a free and voluntary response that he understood the charge and denied the charge.

30. **PW3** was able to identify the Wallet, Driver's licence, Zanaco ATM card, FNB ATM card and the Medical Report which were admitted into evidence as **P1**, **P2**, **P3**, **P4** and **P5** respectively.
31. He proceeded to testify that the distance from where PW1 was attacked and the Police Post in Kamwala was about 500 metres. That the suspect was apprehended from within Kamwala area near the Shopping Centre which is adjacent to the residential area as well.
32. In Cross examination, **PW3** confirmed that at the time **PW1** reported the matter he did not tell them that he could identify his attacker. He agreed that **PW1** had said that he was drinking from about 21:00 hours and that over consumption of alcohol impairs judgment. **PW3** stated that he did not carry out a test to determine how intoxicated **PW1** was because it was not relevant to his investigations. He admitted that **PW1** had told him that the incident happened so fast but did not mention the word stressful to him. He further agreed that **PW1** had informed him the attacker was from behind and that **PW1** fell facing down after the attack.

33. When it was put to **PW3** that upon falling down, **PW1** did not see anyone searching him, his response was the **PW1** had not put it that way. He agreed though that it is difficult for someone to know the number of attackers from behind if one does not turn. He also conceded that they did not recover any iron bar.
34. **PW3** stated in further cross examination that the apprehending Officer was Constable Mumba after the accused was taken to the Police Post by an unknown person. Further that the person who apprehended the accused would not be testifying in Court as no statement had been taken from him.
35. It was **PW3's** concession that the accused was never found with any money or phone in his possession. Further that he had read the Report by Detective Constable Mumba. That Constable Mumba never mentioned that he had asked the accused to declare what he had in his Report but that he mentioned that upon being interviewed. He conceded that under the offence charged against the accused, that piece of information was vital.
36. **PW3** agreed that as Police, they encourage people to take things like IDs when they are found. He denied that the accused had told him that he had just picked the wallet. He maintained that the distance from where the accused was apprehended and the Police Post was about 500m. **PW3** agreed that there is nothing unusual about a person seeing a wallet, picking it and checking what is inside and deciding to take it to the police. He stated that he was not aware that the accused was on his way to Kamwala Police Post to take the wallet when he was apprehended.

37. **PW3** confirmed that **PW1** stated that he was attacked by two persons and that he was not aware that **PW1** had testified that he did not know the number of his attackers. He conceded that if he told Court that **PW1** told him that he did not know the number of attackers when he told **PW3** that the number was two, then the statements would be contradictory.
38. **PW3** agreed that no identification parade was conducted and that this was because **PW1** had not given the description of the attacker.

Defence case

39. The accused person (hereinafter referred to as “**DW**”) gave evidence on his own behalf and called no other witness. He informed Court that he started off from home and went to Mtendere on a date he cannot recall well but in 2023 on his business of selling shoes and skirts by going through people’s houses.
40. He stated that on his way back and when he reached Kabwata, he felt tired and that is how he turned at a bar called East Point so that he could take a beer to cool down. That the time was about 18:00 hours and he started drinking until he realized that it was too dark and decided to go back home. That as he was going home after 20 metres of walking, he saw a wallet lying down then he stopped and picked it up and said to himself that some drunkards must have dropped it. That upon opening the wallet, he found cards and driving licence but there was no money inside.

41. **DW** testified that he told himself that he would not throw away the wallet but that he would take it to the Police because the owner of the identification documents would be disturbed if **DW** threw it away. That he folded the wallet and put it in his pocket with a view to taking it to the Police.
42. It was his testimony that he started walking along the road and when he reached Total Filling Station, he heard a voice telling him to stop and two people approached him and asked him where he was coming from whereupon he answered that he was coming from East Point where he had been drinking beer and that what had made him take that route was because he was thinking of taking the wallet he had picked up to the Police Station. Further that the people said he could not pick up a wallet and that he was a thief with that scratch on his face. That he was then told to join the group of people ahead of him and that he was going to explain where he was going.
43. **DW** testified that he knew that the people who had stopped him were Police Officers because they said so. That he together with about 5 other people who he did not know were taken and left at Kamwala Police Post. That when they reached at the Police Post, they were told to remove their shoes and belts. That one of the Police Officers who took them there mentioned that there was one person who said he had picked up a wallet. Further that **DW** was told that there was something he knew about the wallet and that he would be taken into the cells.

44. Regarding the testimony by the Prosecution that the person who apprehended **DW** found him in his yard, **DW** refuted this and stated that it was not in the yard but on the tarmac.
45. In respect of the Prosecution testimony that **DW** and others unknown had attacked **PW1**, the accused stated that it was a lie as he just picked up the wallet
46. In Cross examination **DW** responded that the items he was selling in Mtendere were 6 pairs of men's shoes and 9 ladies' skirts. That after selling, he remained with 2 pairs of shoes and 1 skirt and that he had these when he was apprehended. **DW** admitted that when he reached Kamwala Police Post he was told to remove the belt and his shoes and that these are the only items he removed at the Police. **DW** denied that the wallet was found in his pocket after he was searched by the Police. That Constable Mumba had lied when he testified that the wallet was found in **DW**'s pocket.
47. **DW** denied the assertion by Constable Mumba that he was apprehended at a gate or outside the yard near the Staff College but that it was at Total Filling Station along the road where vehicles passed.
48. Responding to a question on where exactly **DW** had picked the wallet, he stated that after moving about 20 metres from East Point on the road used by buses from Chilenje.
49. When asked how much he made from his sales of merchandise in Mtendere, **DW**'s response was that he made K480. When asked whether after being searched and told to remove his belt and shoes he had declared this money, **DW** hesitated for some

time before responding that he told the Police Officer that this is the money he had remained with after drinking without indicating the amount.

50. On what mode of transport, he normally used, from Kabwata to Misisi where he stays, and why he did not use it that day, **DW**'s response was that he gets on the bus and it drops him at Kamwala and that on that day he did not use the bus because he had business and he wanted to sell his merchandise.

Submissions

51. At the close of the Defence case, I invited Submissions and both the Prosecution and the Defence indicated that they would make brief *viva voce* Submissions.
52. The Prosecution submitted that it had proved its case beyond reasonable doubt because all the elements of Aggravated Robbery have been proved. First, the property was stolen and secondly violence was used at the time of stealing. Further more than one person was present when the Complainant was attacked as the record will show from the testimony of Collins Sichone, **PW1**. That the Complainant was attacked slightly after midnight and at about 03:00 hours, the accused was apprehended and found in possession of the wallet belonging to the Complainant. Further that this was too short a time for property to exchange hands considering the hours in question between 24:00 hours to 03:00 hours when very little activities take place.

53. The authorities on recent possession adverted to by the Prosecution at the stage of case to answer were reiterated namely **R. v Abramovich²** and **The People v Sidney Zonde, Aaron Chikumba³** where the Supreme Court held that the doctrine of recent possession applies to a person in the absence of any explanation that may be true.
54. The Prosecution went on to submit that it found it odd that a person is attacked around 24:30 hours and around 03:00 hours the accused is apprehended outside the yard of another person. That thereafter when asked by the police to declare the belongings, the accused fails to declare that he had a wallet which was only found on his body after the police searched him. The case of **The People v Ilunga Kalaba and Another⁵** was called in aid for the position that odd coincidences if unexplained may be supporting evidence for the prosecution for an explanation which cannot reasonably be true.
55. It was the Prosecution's Submission that the accused had given evidence before Court on how he found himself with the wallet, but that the explanation cannot reasonably be true taking into account the circumstances as aforesaid. The Submission therefore is that those odd coincidences are only supportive of a guilty verdict.
56. Defence Counsel on behalf of the accused submitted that the State had failed to prove beyond reasonable doubt that indeed the accused had committed the offence in question. That for a conviction to be secured it is trite law that both the commission

and the identity of the offender must be proved before Court beyond reasonable doubt.

57. According to the Defence, the Record shows that the Complainant, **PW1** did not give any description to the Police as to his attackers. That the Arresting Officer told Court that the Complainant had told him that the people who had attacked him had done so from behind and that an identification was not conducted because the Complainant did not describe the attacker. The case of **Chate v The People**⁴ was cited for the position that investigation officers should take description of assailants at the time the initial report is made.
58. The Defence proceeded to submit that the accused has given a reasonable explanation as to how he came into contact with the wallet in question. That the accused stated that he picked it up in the night on his way home. Further that the record will show that the police told Court that there is nothing unusual about a man picking a wallet and deciding to take it to the police upon seeing identification documents. The cases of **Kalaluka v The People**⁶ and **R. v Fanwell**⁷ were cited for the position that where a reasonable explanation is given it does not matter whether the explanation is reasonable or not

Consideration and Decision of the Court

59. I have considered the information, the Prosecution and Defence testimonies including the respective submissions. I will proceed

to deal with the elements set out in Paragraph 6 which the State ought to prove to establish the guilty of the accused.

i) **Whether the accused was armed with an offensive weapon or was with other assailants.**

60. **DW** stated that he was attacked from behind with something that from the impact felt like it was an iron bar. In Cross examination, he indicated that he did not see the iron bar used to attack him. **PW2** and **PW3** also confirmed that there was no iron bar recovered at scene. In my view, it cannot be assumed that the fact **PW1** was hit from behind, then the only object that could have been used was an iron bar. As conceded by **PW1** in Cross examination, it is difficult to distinguish the impact if one has not seen the object with which they have been hit. It is possible in my estimation, that depending on how severe the impact of a blow or a stick is, one might mistake that for an iron bar. In the result, I have found no evidence that the object used to hit **PW1** was an iron bar. What is true is that he was hit with an object that he did not see.
61. The Complainant **PW1** has indicated that as he was walking, a gentleman approached and started asking him questions and the next he heard was a bang on his shoulder. Further that though he could not see the person who had hit him from behind he clearly saw the person who had approached him and started asking him questions. The view I take is that the person who may have hit **PW1** could have been hiding near by waiting for the distraction to happen as it did. The information about the person

who approached him and started asking questions was not dispelled in Cross examination.

62. The Defence put questions to the Prosecution witnesses regarding the number of persons who had attacked **PW1** from behind. In the questions that were put and responses, non of them dispelled the fact there was at least one other person beside the one who had approached **PW1** and who he had seen. Whether there was one or more than one attacker from behind is in my view of no consequence because it has been established that there was more than one person when **PW1** was attacked.
63. Related to the above is the question of identification of the accused. **PW1** stated that he was not able to identify the person who hit him from behind, but that he would be able to identify the accused as the person who had approached him on the night of the attack because although there was not too much light, there was a shop at a nearby shop which had light and which made it possible for him to see the person who had approached him. The Defence on the other hand argues that no description of the attacker was given to the Police by **PW1** and also that no identification parade was held. **PW1** testified that though he had not given a description of the attacker, when he reported the matter, he was able to identify the accused at the Police Station when he was later called.
64. The view I take is that, the identification of the accused by **PW1** hours after he had been attacked was adequate identification. **PW1** stated that the accused was asking him questions about

where he was going that time after he approached **PW1**. Further that **PW1** responded that he should be left alone which means there was an engagement and opportunity for **PW1** to see the person who was asking him questions. Further still that the accused came to his side and he was able to identify him as there was light coming from a nearby shop. I am fortified by the case of **The People v Prince Mwiya Maiba**⁸ where Matibini, J held among others that:

- “a) There may be exceptional cases where the contact between the witness and the alleged culprit was so extensive, and the opportunity for observation so favorable, that an identification shortly afterwards would in effect be recognizing someone the witness has seen before. In such exceptional case, the Court might well feel quite safe, once the integrity of the identifying witness was accepted in concluding notwithstanding the absence of connecting link or other evidence.*
- b) It is always important to bear in mind that in cases of single witness identification, the question or issue is not one of credibility in the sense of truthfulness, but one of reliability in observation.*
- c) The credibility of a witness depends on his knowledge of facts, his intelligence, his interestedness, his integrity and his veracity.”*

65. I believe the testimony of **PW1** who struck me as an intelligent, reliable and truthful witness of decent demeanor on the account of events following the incident.

66. The accused has testified that he picked up **PW1**'s wallet on his way home from Break Point in Kabwata and was on his way to the Police Post in Kamwala taking the wallet there when he was apprehended by persons he believes were Police Officers. In the

prosecution's evidence, the accused was apprehended outside the yard of another person who decided to take the accused to the Police Post. It appears odd to me that around 03:00 hours the accused, was apprehended and upon being searched at the Police, was found with the wallet that had been stolen from **PW1** following his attack earlier barely a few hours ago. I am fortified by the case of **The**

People v Peanos Luzendi⁹ where the Supreme Court held that old coincidences when put together tend to confirm the prosecution case and amount to corroboration.

67. The Prosecution has demonstrated through evidence of **PW2** that when the accused was taken to the Police and asked about the wallet, he offered no explanation. It was only in Court that he gave an explanation which he was perfectly entitled to do. In the case of **The People v Elias Kunda**¹⁰ the Supreme Court held that:

- "a) In cases where guilt is found by inference, as for instance where the doctrine of recent possession is applied, there cannot be conviction if an explanation given by the accused, either at an earlier stage (such as to the police) or during the trial, might be reasonably true."*
- b) Where an accused person is in possession of property recently stolen, the Court may infer guilty knowledge if he gives no explanation to account for his possession or if the Court is satisfied that the explanation offered is untrue."*

68. In another case of **Mbinga Nyambe v The People**¹¹, the Supreme Court held among others that:

- a) When a Court purports to draw an inference of guilt in a case of recent possession of stolen property, it is necessary to consider what other inferences may be drawn*
- b) Although the evidence against the appellant was circumstantial, the totality of the evidence took the case out of the realm of conjecture and allowed the Court to draw an inference of guilt.*
- c) The Appellant was convicted of the murder on the basis of strong circumstantial evidence of being found in possession of the bicycle, and the radio that went missing the night the deceased was shot.*

69. In the present case, the accused offered no explanation at the Police Station on why the wallet that had been stolen from **PW1** a few hours ago was found in his possession. In Court, his explanation was that at the time he was apprehended around 03:00 hours he was on his way to Kamwala Police Post taking the wallet to the Police after he had picked it up. I am not satisfied with his explanation which struck me as an afterthought. The accused who testified that he had earlier on been selling merchandise and had made a total of K480 before he went to East Point did not declare the purported merchandise that had remained namely two pairs of shoes and a skirt when he was taken to the Police because in the view I take it was not true that he had been selling any merchandise or that any had remained. The only items that he was told to take off and handover when he was taken to the Police was his belt and his shoes. There was no mention of the two pairs of shoes and a skirt.

70. From my discourse above, it is evident that the other two elements of the offence namely

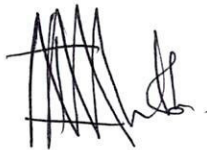
(i) ***Whether there was something stolen and,***

(ii) ***Whether there was force used,***

have already been established and it would not be prudent to repeat the evidence which is clear on these elements as may be gleaned from exhibits **P1, P2, P3, P4** and **P5** properly admitted into evidence.

71. Having considered the evidence in its totality, I have no hesitation in holding that although the evidence against the accused is circumstantial, the totality of it all is that the case has been taken out of the realm of conjecture. I accordingly find the accused guilty of the offence of **Aggravated Robbery** contrary to **Section 294 (1) of the Penal Code Chapter 87 of the Laws** of Zambia and convict him accordingly.

DELIVERED AT LUSAKA THIS 10TH DAY OF MAY, 2024.



I. M. MABBOLOBOLO

HIGH COURT JUDGE