

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

HP/140/2019

THE PEOPLE

VS

CHARLES KAVINDELE MUWEMA

*Before the Honourable Mr. Justice M.D. Bowa on 31st of December, 2024
in open court.*

*For the State : Mr. V. Choongo State Advocate National Prosecutions
Authority.*

For the Accused : Mr. C.J Musonda of Jonah Sitimela & Partners.

JUDGMENT

Cases referred to:

1. *David Zulu vs. The people* (1977) ZR 151 (SC)
2. *William Muzala Chipango and Others v The People* (1978) ZR 304
3. *Kachingwe Daka vs the People Appeal no 158 2021*
4. *R vs Onufrejczyk* 1955b1 ALL ER 247
5. *George Nswana vs. The people* (1988-89) ZR 174
6. *Mambwe vs. The People*(2014) SCZ Appeal No.113 of 2012,
7. *Esia Mupasha and 2 others vs the People* SCZ No. 12, 13 & 14 at 202
8. *Li sha Ling v the Queen (Hong Kong)* (1988) UKPC 18
9. *Borniface Chanda Chola & Others vs the People* 1988-89 ZLR

Legislation referred to:

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

Other materials:

1. *Adrian Keane and Paul McKeown* (2011) *The Modern Law of Evidence* 9th edition
Oxford University Press

2. **Background**

- 2.1 The Accused person Charles Kavindele Muwema appeared before the High Court sitting at Lusaka on information for a count of Aggravated Robbery C/S 294(1) and another for Murder C/S 200 of the penal Code Cap 87 of the laws of Zambia.
- 2.2 In the first count, it was alleged that on the 24th July 2018 at Mumbwa in the Mumbwa District of the Republic of Zambia, The Accused, jointly and whilst acting together with persons unknown, did steal from Zacharia Jere a Toyota sprinter motor vehicle registration No. ACJ 4236 valued at K35,000.00 the property of Dalitso Phiri and at or immediately before or after the time of such stealing did use or threatened to use actual violence to the said Zacharia Jere in order to obtain or retain the said property or prevent or overcome resistance from its being stolen.
- 2.3 In the second count, the State contend that the Accused did on the 24th of July 2018 at Mumbwa, in the Mumbwa District of the Central Province of the Republic of Zambia, jointly and

whilst acting together with others unknown, did murder Zacharia Jere.

2.4 He appeared for plea on the 10th July 2020 and denied both counts.

3. The Trial

The State's Case

3.1 The Prosecution called 15 witnesses in aid of its case.

3.2 PW1 was Annania Mahema a farmer and resident of Kembe Ranch in Chibombo District. He testified that his son Zacharia Jere was a taxi driver and operated from Tandika at Town center. In late July 2018, he received a call from his nephew Mr Makando Inambao, who informed him that on the 24th of July 2018, his son had been booked from the taxi rank at Tandika to Mumbwa and did not return to Lusaka.

3.3 Upon receipt of this news, PW1 left his farm on the 26th of July and travelled to Lusaka. He met Makando to get further details. Mukando told him that when he called Zacharia's number, the person that picked up the call said Zacharia had hit into 5 people and had therefore gone into hiding. Further that people had actually lost their lives between Nalusonga and Mumbwa.

- 3.4 Acting on this information, PW1 arranged for a vehicle from one of his sons and set out for Mumbwa with 2 of his other sons to make further inquiry. They went straight to the police to establish if there was an accident that had been reported and were told that there had not been any. They then went to Nalusonga at the check point to ask if the vehicle his son had been driving had passed through. They were informed that no vehicle fitting the description and license plate they provided had passed through there.
- 3.5 They then started driving back towards the toll gate where they established that the vehicle did pass through the toll gate but did not return. It was at that point that PW1 and his nephews drove to Chipwalo police falling under Emmasdale police station to report that his son was missing together with the vehicle that he was driving.
- 3.6 After a week, the police requested for some money to get information from the mobile service providers. 4 days later the police called and told him they needed resources to carry out investigations in Kabompo. PW1 then facilitated the trip by hiring a vehicle. He and a relative accompanied the police on

the trip to be undertaken to Kabompo. They arrived in Kabompo around 2300 hours and spent the night.

- 3.7 The next morning, they went to see one Juliet Musumba at her house. This was the mother to Charles Muwema (The Accused). She was asked if there was any vehicle that had been to her house. Her response was that there had been none. She was asked about her phone and she said her phone was with her son Charles Muwema. She asked a young lady to get the phone and to fetch Charles.
- 3.8 The police said they were looking for the owner of that phone. It turned out to be a Techno phone. She insisted that the phone was hers and that she had bought it. She was then asked to accompany the police to Kabompo police station where she was detained in police cells. Charles Muwema remained behind and said he would take food for his mother the next day.
- 3.9 He testified further that Juliet was asked if she had removed her sim and placed it in another phone. Her response was that she seldom had the phone as it was her son Charles that would have it at most times. He accompanied the police back to the village and upon arrival, the officers were informed that

Muwema had left the village soon after they had left with his mother.

3.10 They returned to the police station and found Charles's wife who had taken food for her mother in law. When asked where her husband was, she said she was not married. She changed positions when pressed further by the police. She disclosed that she had seen a vehicle that had been brought in the area and that her mother in law knew where it was.

3.11 Juliet was taken out of cells and when asked said she could lead the Police to the car. She proceeded to do so. She led them to a house where a car was found within Kabompo area. The vehicle was a Toyota sprinter grey in colour. He could not recall the number plate.

3.12 The owner of the house was asked about the vehicle. He stated that he was holding on to the vehicle as collateral as Charles Muwema owed him money. That there was a pastor who was present and witnessed the transaction when Charles was borrowing the money. The named pastor was picked up by the police as was the person he stated had the vehicle documents.

3.13 PW1 testified further that the vehicle was towed to the police station and all the 3 gentleman being the house owner, pastor and gentleman allegedly with the vehicle documents were put in police cells. Muwema's mother was also put in cells. After 4 days and whilst planning to return to Lusaka, the police decided that the pastor and the one in possession of the documents should remain in Kabompo. They picked up Juliet, Muwema's wife and gentleman in whose possession the vehicle was found and travelled with them to Lusaka. They were taken to Emmasdale police station and upon arrival were remanded in custody. He heard they were released after a few weeks.

3.14 A few days later the police informed him they had information that one Peter Mulenga a taxi driver was implicated by Muwema whom he alleged had sold him the car. PW1 embarked on a search for the said Peter also believed to be operating from the same taxi rank as his son did. He booked a vehicle following a tip on Peter's whereabouts to Garden house area in the company of police officers. They managed to apprehend Peter and took him to town center police post. After 2 months he heard Peter was released. He called the dealing officer to

complain about the expense he had incurred to follow up suspects around that were being released.

3.15 He was later informed that Charles Muwema had been apprehended and brought to Lusaka. A request was made to him by the police for transport to travel to Mumbwa. 3 vehicles were used for the trip. 1 police vehicle, another for a Caucasian doctor, and another that he arranged for family members. They set out to Mumbwa where Muwema showed officers a location he had allegedly killed PW1's son from.

3.16 Another gentleman in the company of the doctor started to dig at the spot shown to the police. The doctor found some bones which were about 6 in number. The other bones were given to the family who were granted the go ahead to bury. He testified that the bones were burnt and appeared like charcoal.

3.17 They were then taken to another spot where the body was allegedly burnt. The body fat burnt displayed the outline of a human being at the place it lay. According to the witness, this was a meter away from where the bones were found. The family members then proceeded to the Copperbelt to bury what they

believed to be their son's remains. He identified the Accused from the dock as the Muwema he had been referring to.

3.18 When cross-examined, PW1 testified that he was not with his son on the day that he disappeared and therefore not present when his son was booked. He agreed that the information he had about the booking is based on what he was informed by his nephew Imakando. He could not recall the number plate for the vehicle his son was driving. He only came to know the owner of the vehicle after the incident.

3.19 Questioned further, PW1 testified that the phone recovered from Juliet's village was a Techno whilst his son owned a Samsung phone. He did not take the time to examine the vehicle papers found. He did not know about the bones before they left for Mumbwa on the last trip. All he knew is they were going to find a dead body as there had been a confession to the killing from what he gathered.

3.20 Questioned further, PW1 confirmed that he was not present when the Accused was interviewed by the police. He therefore did not know what he told them. He did not agree that it was officers from Mumbwa that led the Emmasdale team to the

scene. They were informed that a lady farmer was the one that had discovered the bones. He agreed as such, that the police officers at Mumbwa knew where the bones were. He was aware that they are the ones that buried the bones. He further agreed that the police from Lusaka needed the help of Mumbwa police so that they could be taken to the place the bones were found. He further agreed that he could not tell who the bones belonged to by just looking at them.

3.21 Questioned further, Pw1 revealed that his family did collect the bones before the analysis but that the doctors told them they would give them feedback after 3 days. After 3 days they were told to bury and not given the result. He did not agree there was a chance they buried the body of a different person other than his son.

3.22 When re-examined it was PW1's evidence that he could not tell if the doctors had examined the bones before they were given to them. All he could say was that the bones were given to them after they had been at the scene.

3.23 PW2 was Makando Inambao a Taxi driver resident in Chazanga compound in Lusaka. His evidence was that he has

been operating from Town center since 2018. On the 26th July 2018 he reported for work. Wisdom Ganizani Phiri, the young brother to the owner the vehicle that his cousin Zacharia Phiri was driving, approached him. He told PW2 that his relative had gone with the vehicle the previous day. That he had been booked to go to Mumbwa and up to that point there had been no trace of Zacharia. Further that the vehicle was needed. He asked PW2 to call Zacharia.

3.24 He tried to call his relative but his number was off. Wisdom gave him another number which he said he had used to talk to Zacharia. He dialed the number and it rang. The person that picked up the call initially did not say anything. He then said Zacharia was hired by them the previous day and was over speeding. That he hit into 5 people in the process and they had therefore hidden him somewhere and waiting for at least 22:00 hours before they could start off.

3.25 He asked who the gentleman on the line was and where they were. The gentleman stated he would not disclose his identity or where they were as he could not tell if PW2 was truly a

relative or police officer who wanted to apprehend them. He cut the line shortly after.

3.26 PW2 tried to call the number after an hour. It was off. He continued trying in the evening but the number was still off. The following morning, he thought about calling his uncle Mr. Annania Mahema (PW1), and told him about Zacharia's disappearance, the discussion he had with Wisdom and the man that picked up the call he made to Zacharia's number. His uncle told him he would travel to Lusaka.

3.27 His uncle later informed him the vehicle had been traced and that his cousin Zacharia had been killed. Further that the suspect was apprehended and that that they were going to be taken where the remains were discovered.

3.28 When cross examined, the witness testified that the person he spoke to on the phone did not reveal his identity. He did say that Zacharia had been booked from Tandika . He could not remember the number he was given to call.

3.29 Alice Botha was PW3 a farmer resident in Mutombole village Chief Mudendema Chiefdom in Mumbwa District. It was her evidence that she does her farming within Mumbwa District.

She recalled that on 18th November 2018, she went into the field at about 06:00 hours in the morning. She was clearing the field and cutting down some trees. Around 09:00 hours she finished the clearing and started taking the trees she had cut down to the end of the field.

3.30 In the process, she stumbled across 2 bones. She used the hoe she had to move the bones on the side towards the end of the field. She decided to pass through the bush to return home and 3 meters from where she left the bones, she found a lot of bones. When she took a closer look, she concluded that these bones looked like they belonged to a human being. The first 2 bones she saw looked like bones from the feet to the knees. The other one looked like a jaw and bone behind a skull. Others had the appearance of bones from a forearm. The other bones were burnt so she could not identify which bones they were.

3.31 She testified further that there was a position where it appeared to her that this person had been laying as there was visible fat on the ground that clearly defined the body outline. The legs were visible as was the position the arms were spread out on the ground.

3.32 She then went home. The distance from her field to her home was about 7Kilometers. At home, she informed her husband Gabriel Mwale about the discovery of the bones. He in turn went and informed the headman Mutombole about the discovery and they went to see the bones. Upon her husband's return , he informed PW3 that the headman would report the matter to the police the following day.

3.33 A few months thereafter, she saw a lot of vehicles going to the field. She was by the roadside at the time. She followed the vehicles and found the cars parked near the field. The people in the vehicles disembarked and went into the field. Among the people was a white man who said he had come to see the bones. They came with a pick and started exhuming the bones using the pick. The white man picked up 2 bones from the legs and the jaw and part of the skull and left. The family members remained and started exhuming the smaller bones and packed them.

3.34 PW3 was told to go to the police station with the headman by one of the police men who was present. She then went and gave

a statement to the police. The other motor vehicles that came to the field also left.

3.35 Grace Maseko of Kabanana in Lusaka testified as PW4.

Her evidence was that on the 24th of July 2018, she was with her husband Zacharia Jere at their home and he left around 05:00 hours for work. At around 18:00 hours, he called to inform her that a client had booked him to go to Mumbwa. At around 21 hours he called to advise he had reached Mumbwa and was now on his way coming back. He did not return that night.

3.36 The following morning she tried to call him. The line was not going through. She then went to inform his relatives that her husband did not return home the previous night. The family started looking for him but did not find him. After 5 months she was informed that her husband's vehicle was found in Mumbwa. Annania Mahema, his uncle (PW1) told her this. They travelled as a family to Mumbwa and to the spot where her husband's suspected remains in the form of bones were found. The bones were collected and the family proceeded to the Copperbelt to bury the remains.

3.37 When cross examined, she testified that PW1 is the deceased's uncle not his father.

3.38 PW5 was Widsom Ganizani Phiri a Taxi driver based in Kanyama. He testified that in the month of June 2018 he was working for his brother Dalitso Phiri as a taxi driver. At the time his brother had 2 taxis. His brother asked him to look for another driver to drive the second vehicle. He managed to find Zacharia Jere to be that driver.

3.39 PW5 took his vehicle for fitness testing on 24th July 2018. Upon his return from RTSA at 14:00 hours, Zacharia called to say his car was not working properly. He asked if he could use PW5's vehicle as he had been booked. He came through to pick up the vehicle from the Taxi Rank at Hungry Lion near Tandika. PW5 left his driving licence, NRC and white book in the car. Zacharia informed him he would return the vehicle around 2000 hours.

3.40 According to the witness, Zacharia had told him he had been booked to go to Stumbeko. He waited until 20 hours and there was no communication from his colleague. The following morning, PW5 started calling Zacharia's airtel line. The phone

was outside coverage. Around 09:00 hours he tried on an MTN line which went through. The person that picked up the line told him Zacharia had been over speeding with the vehicle and run over about 5 people at Stumbeko area. Further that they had hidden him somewhere and would only return to Lusaka around 21:00 hours.

3.41 This unsettled PW5 who decided to see Zacharia's cousin at Town center and explained what had happened. He also passed on the MTN line that he had called on. His cousin (PW2) was also told the same thing he had by the person that picked up the phone. They reported the matter to Matero Police.

3.42 News later came in that the vehicle had been recovered and he was asked to identify it. This was at Emmasdale police station. He proceeded to identify the vehicle. He also learnt that Zacharia was dead although they did not get to see the body. He identified the vehicle when the court was moved to view it accordingly.

3.43 When cross examined, PW5 testified that he handed over the vehicle to Zacharia around 17:00 hours and maintained that he left his driver's licence, NRC, and white book in the vehicle.

He did not ask his friend who had booked him. Asked about the MTN number he called Zacharia's phone on, the witness testified he could not recall the number but that he gave both numbers to the police. He testified that only Zacharia's driver's licence was recovered from what was in the vehicle.

3.44 PW6 was Mabvuto Dalitso Phiri a mechanic of Garden house area in Lusaka. He testified that on the 17th July 2018 his vehicle a Toyota sprinter Reg No. LJ 4236 went missing. He testified that he works in Kitwe and had left the vehicle with his young brother Wisdom.(PW5) The vehicle was due for fitness inspection. The previous week he had employed a second driver named Zacharia Jere to use a different car as a taxi.

3.45 He travelled to Kitwe and called to establish if the car had been taken for fitness on a Monday. It was taken the following day. Wisdom called later that day to tell him Zacharia had asked to use the vehicle saying he had a customer he wanted to take to Mumbwa and would be returning the same day. Further that he had not returned from the time he left and his phone was not going through.

3.46 Pw6 tried to call the number and wasn't going through. He then advised his brother to report the matter to the police. They started in earnest to look for the vehicle and the search continued for about a month. Relatives believed Zacharia was ok was only around September 2018 when he was informed that his phone was traced to be in Kabompo. PW6 was asked for a contribution to facilitate the police travel to Kabompo with family members.

3.47 He made a contribution and sent his own representative to go with the entourage. 2 days later, he received photos on WhatsApp showing his car had been found parked at a house and being towed from that house to the police station. The vehicle remained at the police station in Kabompo until he complained to the police at Emmasdale. He was given documents to facilitate its pick up from Kabompo and delivery to Emmasdale police. It was later released to him on condition that he availed it whenever needed. The vehicle was in just as good a condition as when it disappeared. Later, he learnt that the matter was before court and he was to avail the car when required.

3.48 He explained that his vehicles were being used as Taxis that included the Toyota Sprinter that went missing. Further that Zacharia took over as driver of one of his vehicles after he had dismissed one of his other drivers. He identified a letter of sale confirming he purchased the vehicle and consequently that he owns the vehicle. He added that the white book got lost when the car went missing. He had left it with his brother Wisdom on the day he left for Kitwe as it was needed to obtain fitness. He testified further that he bought the vehicle from one Robert Ngulube at K20,000. Mr. Ngulube also availed a copy of his driver's licence at the time of the sale which he identified.

3.49 When cross examined, PW6 confirmed he was aware that the car assigned to Zacharia had a fault with the suspension among several other issues. He was not present when Zacharia was being booked so he could not tell if the person the police say did so is the one that actually hired him. He was not aware that his brother Wisdom had spoken to one of the people that had booked Zacharia.

3.50 PW7 was Kenneth Sangambo a church leader in the Church of God based in Manginga District of North Western Province. He

recalled that in March 2018, a young man by the name of Muwema Kavindele came to his home. He told him that he was into the business of buying and selling timber. However that the vehicle he had hired for this purpose had been detained. He had therefore approached PW7 to lend him some money or to help find someone that was in a position to assist in this regard, so that he could retrieve the detained vehicle.

3.51 PW7 knew the Accused to be a person engaged in business and he saw the vehicle with him for about a week. He had no money so he took him to his brother in Christ Kennedy Kasanga whom he thought may have some money to help. Mr. Kasanga agreed to help. The Accused promised to pay back the money within a week. The total amount borrowed was K2500.

3.52 When Muwema received the money, it was assumed he went and paid the forestry officers to release the vehicle that had been impounded by the forestry department. Muwema later told him the vehicle had been released to him and that he was on his way to Lusaka. He called after 2 days to advise he was in Lusaka. A few days after, Mr. Mawema called PW7 advising

he was in Mufumbwe and would be coming back to the village later.

3.53 He was not seen for the next 6 months and the person he borrowed money from started demanding for his money from him since he had facilitated the transaction. Because he had continued pestering him, PW7 took the lender to Muwema's mother Juliet Musamba. He explained the circumstances to her and she accepted to pay the money in the absence of her son who was nowhere to be seen. This was in July 2018. She promised to pay back upon her return from a business trip in Lusaka.

3.54 Whilst awaiting her return, word reached him that Muwema was back in the village and at his home. He and PW7 both travelled to Kawanda area to see Muwema at his house using PW7's motor bike. They only found children present. The children confirmed Muwema was in but that he had left home momentarily to return shortly. Whilst waiting they saw a vehicle coming to the village where they were. This was a Toyota Sprinter Reg No. ACJ 4236. Muwema Kavindele emerged from

the car and was the one that was driving it. He was alone in the car.

3.55 When he came out of the car, he welcomed both men and ushered them into the house. He asked for forgiveness acknowledging that time had passed without honouring his obligation. He explained that this was due to challenges faced when doing business. He asked Mr Kasanga how much interest had accrued on the money borrowed. Mr Kasanga's response was he needed to check his records. That this could be done from his home where he kept the records. Muwema asked for some time to rest as he claimed to have travelled the whole night. Since they would use Muwema's vehicle PW7 was excused. This was now around August 2018.

3.56 PW7 thus left as per request and went to his home. Around 19:00 hours he saw Mr Kasanga and Muwema come to his house. They came to pick him up as he was the one that had witnessed the payment of the money borrowed. They therefore wanted him to witness the settling of the debt. He was in the company of a friend one Charles Nambwa at the time. Kasanga's house was about 1.5 km from PW7's home.

3.57 Upon arrival, they went through the books of his business and Kasanga advised that the total accrued was now K11,000. Muwema asked for time to look for this money. He said he had used the money he had to purchase the vehicle that he had with him referring to the Toyota Sprinter ACJ 4236. Mr Kasanga expressed misgivings about granting the Plaintiff more time to settle the debt. He insisted that Muwema's vehicle should remain as security with him until his mother's return and hoped that she would pay as undertaken which he found the most likely option.

3.58 Muwema agreed to leave the car whilst awaiting his mother's return and that if she did not manage to settle the debt a different arrangement could be entered into. He asked to take his wife and child home and return with the car later. This was accepted and done.

3.59 Mr. Muwema went to PW7's house at 21:00 hours and advised him that he had taken the car to Mr. Kasanga's home and was looking for transport to go back to his home. He asked a friend to take him home.

3.60 2 to 3 weeks later, PW7 was at a filling station refueling his motor cycle. As he was about to leave, he saw a police motor vehicle stop near him and an officer came out of the vehicle armed with a firearm and stated he was looking for him. He was asked to accompany the officer to the police station. They proceeded to Mr. Kasanga's house where they found a lot of people. He heard one person among the people there say he had found his car. It was then that it dawned on him that this had to do with Muwema Kavindele's vehicle.

3.61 Both he and Mr. Kasanga were taken to Kabompo police station. The vehicle was also towed there. They learnt they had been apprehended because of the vehicle which the police had come for from Lusaka. He was told Mr. Kasanga had mentioned that he was the one that had taken Muwema Kavindele to him as an uncle. He explained what he knew of the matter.

3.62 He was kept in police custody until the following afternoon when he was released. He confirmed that Muwema Kavindele was his nephew and he was aware that he was in the business of buying and supplying timber to Lusaka. That the only thing he knew about the Sprinter was that he saw it with Muwema

but he does not know if he owns the motor vehicle. He proceeded to identify the motor vehicle by make, colour and reg number.

3.63 When cross examined, it was PW7's evidence that he did not ask Muwemi where he got the vehicle from but that he had stated that he had moved well in his business and had bought the vehicle.

3.64 Kennedy Kasanga Ngowani a peasant farmer of Manginga area in Northwestern Province was PW8. He testified that on the 22nd March 2018, Muwema Kavindele and Kenneth Songobo (PW7) came to his house to look for some money. Muwema Kavindele told him he had a truck filled with timber which he wanted to take to Lusaka to sell. However that he did not have money to allow him to continue with the transaction. It was agreed that he would add interest on the money that he would borrow from him.

3.65 Documents were signed confirming the agreement and PW8 gave Kavindele K2500. He testified further that he waited for the month to lapse to receive the payment as agreed. Kavindele did not show up. He just called to say he was in Kabompo

collecting timber and on his way to sell the consignment in Lusaka. He however did not turn up to settle his debt. As a consequence PW8 turned to Kenneth Sangombo (PW7) who brought Muwema to him to ask for his money. Kenneth insisted he was just a witness of the transaction.

3.66 Eventually, Sangombo went to the village where Muwema stayed to try and trace him. In the month of August 2018, they received a call from the neighborhood watch who advised that Muwema was back at his home. Further, that he had come with a car. Pw7 then went and picked him up with his motor bike and they went to Muwema's village to check on him. The people there confirmed he had come but gone off to the market. They were asked to wait for him and after a while he arrived.

3.67 Upon his arrival Muwema invited the 2 into his house. PW8 told him he had come to collect his money. His response was the money he was supposed to pay him was what he had used in part to purchase the car that he had come with. He told Muwema that he owed him about K11,000. They left together for PW8's home using his car along with his children. Muwema was the one that was driving the car. They checked his books

and confirmed that indeed the K11,000 he claimed was the money which was owed after accruing interest.

3.68 Muwema then asked for more time to enable him to look for the money. PW8 refused to accommodate the request but said he could only allow him more time if he left the car he was with as security since he had waited for a period of 6 months without Muwema showing up to make good on his commitment. It was agreed that he would leave the vehicle but he requested that he drops off his children at home. They proceeded to do so in the company of PW7 Muwema then dropped off his children and then drove back to PW8's home after leaving PW7 at his house. He left the keys for the vehicle with him. He further told PW8 that he was waiting for his mother's return and then see if they could sell off cattle and pay the debt so that he could collect his car.

3.69 The following morning, PW8 decided to open and check the vehicle. He found a driving licence in the names of Zacharia Jere. He did not find anything else. Later Muwema came to his house with his mother. He requested for an extension and

grace period of another month for him to settle the debt. PW7 accepted the request and agreement was reduced in writing.

3.70 After a month, they came back and brought K4000 with a view of collecting the vehicle. PW8 refused to allow the release of the vehicle. They did not leave the money. Later, whilst waiting for Muwema's return, he received some police officers at his house. They came to inquire about the owner of the vehicle that was in his possession. He testified that the number plate for the car was ACJ 4236. The police picked him up and towed the vehicle to Kabompo police station. Muwema's mother was also picked up but Muwema himself was nowhere to be seen. He informed the police what he knew about the matter. Statements were recorded and he was put in police custody for 2 days.

3.71 Later, Muwema's mother Juliet, PW8 and Muwema's wife were taken to Lusaka and were in custody for another 3 days. They were released and told that they would be called again after Muwema was apprehended. He was later informed that Muwema had been apprehended and that he would be required to testify in court. He proceeded to identify the car keys, and driver's licence in Zacharia Jere's names. He further identified

the motor vehicle by make, license plate and colour. He also identified the accused from the dock.

3.72 It was PW8's further evidence that as far as he as he was aware, the vehicle belonged to Muwema Kavindele. That Kavindele had told him that all the money he had was used to purchase the vehicle. He was therefore surprised to later learn that the vehicle was not his.

3.73 When cross examined, it was his evidence that he did search the vehicle well and all the compartments. He found the licence inside the car front flap on the driver's side. This was the only licence he found in the car. He did not call Muwema when he discovered the licence. It was a surprise that he found a licence in someone else's names. However, as far as he was concerned, he was going to surrender everything to Muwema once his money was paid to him. He disputed the suggestion that he planted the licence.

3.74 PW9 was Victor Telendi a forensic pathologist in Zambia police. He gave a background of his qualifications obtained from Ukraine as a Pathologist and work experience as a forensic

pathologist in Ukraine and in Zambia. He testified that he carries out postmortem examination on dead bodies.

3.75 He explained that before conducting such postmortems he obtains a history from the relatives and police as it helps the pathologist arrive at a right conclusion. He testified that in the present case, he received information from the police that a person was killed and his body was dumped in the bush in the Kafue National Game Park. According to the police, this happened in July 2018. In November 2018, the police, visited this place and found some bones and fragments of bones which they buried along Mumbwa road.

3.76 On the 19th December 2018, PW9, his assistant and the police visited the scene and exhumed these bones. He proceeded to examine the bones. Afterward, he produced a report detailing his findings and description of what he established during the examination. He identified and produced the postmortem report in court.

3.77 He explained that there was an error on the report on the date of death reported to be 24th December 2018 instead of 24th July 2018 as advised by the police. He added that the police

had buried the bones in Malendema area. After exhuming the bones he took them to UTH for examination.

3.78 According to the witness, all the bones were damaged by animals and fire but when he examined the bones he could tell that there were human bones. The fragments were very small so it was difficult to tell if they were human bones or for an animal. However some of the bones were in good condition. He concluded that these were bones for an adult person although he could not tell the age of the person as the bones were destroyed. He further could not form an opinion or conclusion on the cause and manner of death of this person. The only conclusion he could make was that these were human bones for an adult human being. He could not tell the sex of the person. There were not enough bones to enable him arrive at such a conclusion. that a pelvic and skull usually help but none of these were there.

3.79 When cross examined he agreed that in most cases pathologists deal with bodies that are identified to them and not bones. He confirmed that the history given in this case was that the bones were buried by the police in Manginga area.

Further, that it was the police that led him to the place where the bones were buried and he was in their company during the exhumation.

3.80 He maintained that the bones recovered were damaged by animals or fire. He agreed that no one identified the bones. Further that he could not be sure if the small fragments were human or for an animal. He was however sure that 5 of the recovered ones were human.

3.81 Questioned further, it was PW9's evidence that he could not be sure if the bones found belonged to the named deceased or when the death occurred.

He was not re-examined.

3.82 PW 10 was Detective Inspector Shampongo with the Zambia Police and scenes of crime officer. After giving his credentials qualifying him to be a scenes of crime officer, he testified that his duties include the lifting of fingerprints from the scene of crimes and taking of video recordings. He told the court that he uses a video camera or still picture camera when taking such footage.

3.83 He recalled that in December 2018 he was assigned to go to Lusaka police station to record a video of a scene reconstruction exercise that was to be undertaken. At Lusaka Central police. Inspector Jere introduced him to one male suspect that he came to know as Charles Muwema Kavindele that was being investigated for Murder and aggravated robbery.

3.84 He proceeded to inform the suspect his rights and a warn and caution statement was recorded from him. This was done in an office with a conducive environment, and the suspect was in good health. Inspector Jere informed the suspect about the scene reconstruction exercise that was about to take place. The suspect freely and willingly agreed to lead the police to the scene. PW10 was doing the recording before the exercise started and while the warn and caution was administered.

3.85 The suspect informed Mr. Jere that he would be leading the team to Mumbwa. A Land Cruiser was used for this purpose. There are only 2 seats in front with the rear seats facing each other. Inspector Jere, PW10 and the Accused sat in the rear. Doctor Telendi(PW9) and the driver were in the front seat.

There were a total of 8 people including other officers that went on that trip.

3.86 From the position they sat communication with the driver was possible so the Accused was able to lead the driver. Before reaching Mumbwa, the suspect asked the driver to stop by a lay by opposite the filling station. He told Mr. Jere that this was the point they had parked before the deceased was killed. They then drove another 50 meters or so and parked.

3.87 The accused then narrated how he and his friends disembarked from the vehicle and heard someone screaming twice. He pointed to the spot where he said he heard the screaming. When PW10 and other officers reached the point he pointed to, he observed melted fat on the ground that appeared to be something that had been burnt. The Accused was also present. Doctor Telendy ordered officers to dig nearby the scene where the fat was.

3.88 Villagers that noted the group's presence approached them and confirmed that the bones were buried at that spot. The assistant pathologist present started digging until the bones were found. It was PW10's further evidence that a number of

bones were found. They looked broken and appeared to have burnt.

3.89 After retrieving the bones, the Doctor packaged them and they were taken for examination. Afterward PW10 and other officers proceeded to Mumbwa police station where they reported their presence in the District. The officers from Mumbwa confirmed having received such a report from the villagers. They then travelled back to Lusaka. He added that the exercise ended at 16:00 hours.

3.90 He testified that he used a Panasonic full HD camera to do the recording that lasted over 5 hours. The camera was in perfect condition and regularly serviced. A memory card used for storage of the recording was kept as part of evidence and eventually transferred onto a flash disc. He testified further that he has his own password to access the laptop that he used to transfer the recording. The laptop is also regularly serviced and is the property of Zambia police. He tendered in the flash disc in evidence.

3.91 When cross examined the witness testified that he was not aware the suspect was initially charged with a Mr. Peter

Mulenga. He was not sure how long the interview in the office lasted. It took an hour to get to Mumbwa and the digging lasted between 15 -20 minutes He testified further that the suspect just pointed to the scene from a distance and not at the precise point of the discovery of the bones. That was the reason he did not record the accused at the point the bones were recovered.

3.92 Questioned further, PW10 confirmed that it was not the accused that identified the place the bones were buried. He did not capture any footage where the suspect was giving directions to the drivers but maintained the accused pointed in the direction where the bones were found. He testified that it was the villagers who pointed to the exact spot the bones were buried.

3.93 He declined the suggestion that he edited the video. He agreed that Dr. Telendiy would not be lying if he told the court he was led to the scene by the police. Questioned further, the witness testified that he recorded what he felt was important and tried to preserve the battery and space on the card. This, he explained, would account for the breaks in the clips in the video footage.

There was no re-examination

3.94 PW11 was Shadreck Jere a detective Inspector based at Woodlands police station. He testified that he was the scene reconstruction officer in this case. His evidence was essentially the same as that given by PW10 on the scene reconstruction exercise. The only variation being that the Accused told the officers he had been in the company of a Peter Mulenga and 2 others. That he informed the officers that he had remained in the vehicle whilst his friends took the deceased in the bush which was followed by the screams. That he also informed them he heard 2 screams of “mayo nafwa” and when the friends returned they told him to drive off and ignore what had happened.

3.95 He further testified that they had not gone to Mumbwa police at the time they visited the scene. They had gone straight to the scene and only went to the station after. It was upon arrival that they met detective Inspector Phiri who at the time was in charge of the burying of the bones that were found.

3.96 They put the suspect in cells so that they could verify with their fellow officers where they had buried the bones. According

to PW11, the officers then led the Lusaka team to the exact point where they had retrieved the bones. He identified the suspect and person that led the police to be Charles Kavindele Muwema, the Accused person.

3.97 A week after their return to Lusaka, PW11 was assigned to travel with the suspect to Manninga in Northwestern Province. He was tasked to go and retrieve a letter of sale for a Toyota sprinter associated to the Murder investigation. Once in Maninga, the Accused directed the police to his house. When they arrived there, the house was deserted but not locked. They managed to enter the house with the Accused following behind. He started looking for the letter of sale and found it.

3.98 It was hand written in blue ink. He observed that a page appeared to have been removed from a hard cover book and also noted it was torn at the top of the page and bottom part where the signatures were supposed to be. The document was dated 24th July 2018. The purported seller was indicated to be Zacharia without a surname and the buyer Charles Kavindele. 3 witnesses names were listed. He could only remember Peter Mulenga as one such name.

3.99 After retrieving the letter, they travelled back to Lusaka and he handed it over to the arresting officer. He identified the letter and confirmed it had all the features he described.

3.100 When cross examined, it was the witness testimony that he had not had any interaction with the docket before the scene reconstruction. He could not recall seeing any photos of the scene where the bones were exhumed. He was not aware that Emmasdale police had information from Mumbwa police about the discovery of the bones prior to the 19th of December 2018 as put to him. He disclosed that he already knew they would be going to Mumbwa when the matter was assigned to him. He reiterated that the Accused led the police to the area where the bones were found.

3.101 Questioned further, he testified that the police found the exact spot where the bones were with the aid of the villagers. He further agreed with the suggestion put to him that the suspect did not know the precise spot where the bones were. Further that the suspect did not tell him they would be going to Mumbwa on that day. Any suggestion that he did so would therefore be a lie.

3.102 When re-examined PW11 clarified that the suspect showed the police the general area but did not pin point the exact spot where the bones were retrieved. Further that during his debriefing on what his assignment was to be, he was informed he was going to Mumbwa but not exactly that it was for the purpose of recovery of bones.

3.103 Lewis Mubanga a detective Inspector based at Solwezi Central police station was PW12 . Whilst on duty on the 5th of December 2018, he received information from Emmasdale police station that they were looking for a male person wanted for the offence of murder. Investigations were immediately instituted and on the 6th of December 2018, he managed to apprehend one Charles Muwema Kavindele. He was apprehended from a place called Mulempa villa in Solwezi at his uncle's house. The officers in Emmasdale were informed about the apprehension.

3.104 2 days later the offices travelled and picked him up. The officers confirmed that this was the person that they had been looking for. He identified the Accused as the person he apprehended from the dock.

3.105 Juliet Musumba a general worker employed at Kalemba Rural Health Center Manginga District in Northwestern Province was PW13. Her evidence was that in between April and May 2018, her son Kavindele Muwema Charles used to conduct the business of selling timber. He would cut logs within Manginga District and sell in Lusaka.

3.106 He had a truck load of timber but had no money to pay the Forest Department. He thus informed PW13 that he wanted to borrow some money from Mr. Edward Kasanga. He borrowed that money and ferried the logs to Lusaka. He further informed her he would buy a car from the proceeds.

3.107 She travelled to Likulu to buy some fish. Whilst in Likulu her son called and informed her that he had found and bought a car. This was sometime in July. She travelled back to Kabompo and did not find him with a vehicle. When she asked after it, he informed her that the car was with Mr. Kasanga who was holding on to it because of the money he had taken from him that he had taken long to pay back.

3.108 She later saw police officers from Lusaka arrive and inquired from her whether she was Juliet Musumba. She confirmed that

she was. They asked whether she had a phone and she told them she did and that it was a Techno dual sim phone that had both Airtel and Mtn cards. They later requested for her phone which she surrendered to them. She was picked up and taken to Kabompo police station.

3.109 The police told her the vehicle she had allegedly purchased was stolen. She explained to them that the one who had purchased the car was her son whom they had left at home. They asked about the whereabouts of the car and she informed them it was with the person whom her son had borrowed money from. She led the police to Mr. Kasanga's house where the car had been parked. It was towed to the police station. The following day both Mr. Kasanga and her were taken to Lusaka at Emmasdale police station where they were remanded in custody for 2 weeks. It was her further evidence that after 2 weeks, a female police officer directed that they be released and left for Kabompo.

3.110 She testified that the last 2 digits she recalls from the 97 number that was on her phone ends with 57. Her NRC number was 131680/22/1. After she had been released from the cells

she was informed that her son had been apprehended by people based in Solwezi on account of the same vehicle that had reportedly been stolen.

3.111 When cross examined, PW13 testified that her son had told her he had borrowed K2000. She agreed that the police did suspect her to have stolen the vehicle. Further that her son did bring papers relating to the car allegedly stolen which remained with the police. Whilst in custody she was informed she could only be released once her son had been apprehended. Questioned further she testified that the police did not tell her anything about a person that had been killed. She learnt about the killing whilst at Emmasdale police.

There was no re-examination.

3.112 PW14 was Mwila Syanajoba a cyber security and compliance manager at Airtel networks plc. He told the court that he has the responsibility of ensuring the company's data bases are secure and compliant with the laid down regulations. He also works with law enforcement agencies to ensure that all warrants that are served on the company are executed.

3.113 He recalled that in the August 2018, Airtel received a warrant to provide all records and KYC details for number 0976056691. He pulled out the records on this number and provided the police the KYC details that showed that the number was registered in the name of Mr. Zacharia Jere.

3.114 Later on, the company received another warrant from the police to search a number from the first call records that airtel had provided. The serial report revealed that 2 sim cards had been used on the device. The first sim card to be used was for Mr. Zacharia Jere. The second sim card was for number 0974875557. A warrant was issued to probe this number & KYC details. The records showed that the number was registered in the names of Juliet Musamba. The records further showed that Juliet Musamba's location was in Kabompo.

3.115 He testified that in the case of Zacharia Jere, the call records showed that the last calls were made on 25th July 2018 and the location was Nalusanga in Mumbwa. He provided this information to the police and proceeded to identify the call records, KYC documents in respect of Zacharia Jere and Juliet Masamba.

3.116 He testified that in terms of reliability of the data, the systems are very secure and access is via unique user name and password. Further that the systems are protected by various firewalls to prevent any unauthorised access. He added that the IT team regularly maintains the system to ensure it is in efficient working order and at the time the documents were generated, the system was in good and regular working order.

3.117 He tendered in evidence without objection the stated documents. He testified further that the last call from Zacharia Jere was made on 25th July 2018 to another number 0974068051. He testified that at times photos of identity cards of an Applicant may not be clear but the company ensures it captures all the details. The image is just a backup.

3.118 He added that the location of Zacharia Jere on the 24th of July 2018 was mostly Radian Stores but on 25th the location showed Nalusanga Mumbwa.

3.119 When cross examined, the witness testified that the investigator only asked him to provide call records, KYC and serial details. He was not called upon to provide any analysis of the information obtained.

3.120 Masola Simushi A detective sergeant based at Emmasdale police station was PW15. He testified that at the time of initiation of the inquiry into this matter, he was based at Chipwalu Emmasdale area. Whilst on duty on the 31st of July, 2018 he received a report from Mr. Annania Mahema that his nephew one Zacharia Jere, a Taxi driver went missing after being booked by unknown people at Tandika area near Radian Stores in Lusaka. Mr Mahema suspected that the vehicle had been stolen and that his nephew had been killed.

3.121 Acting on the report he opened 2 dockets. He requested for the cell number of the missing person which was given to him as 0976056691. He submitted the number to Airtel to avail him with the call activities. He was furnished with the records which showed that the call activity of the missing person ended in Mumbwa Nalusangu area between the 24th and 25th of July 2018.

3.122 He further submitted the serial number of the missing persons phone from the call records shown as 865510031187320 to the police for probing and discovered that another sim card was put on the phone of the missing person. He testified that the

sim card was 0974875557 registered in the name of Juliet Masumba.

3.123 He further submitted Juliet's phone number to check for call activity. The call activity report was availed and showed that the person using the number was in Kabompo Manyinga in Northwestern Province.

3.124 He prepared and obtained a route instruction permitting him to travel to another district accompanied by I officer constable Kayongo and the complainant Mr Annania Mahema.

3.125 He testified that he managed to track Juliet Musamba in Manyinga area and interviewed her in relation to the phone she had put her sim card. He explained to her that he was following a report on a missing person and that her sim card had been placed in the missing person's phone.

3.126 He further requested to see the phone that she was using. She picked up the phone from where she was having it charged and came along with her son Charles Kavindele Muwema. He noted that the phone that she brought was not the one that he was looking for. When asked about the whereabouts of the phone she had put her sim card in, she did not give him an answer

he considered satisfactory. He therefore decided to ask her to accompany him to Kabompo police station for further investigations.

3.127 Charles Kavindele Muwema was present and was asked by PW15 to accompany his mother to the police station he refused to do so. At kabompo Police station, Juliet Masumba disclosed that the person who was in a better position to explain was actually her son as he was the one that normally used his mother's phone. She further revealed that the vehicle that was parked at Kennedy Kasanga's house was being held as security as her son owed him money.

3.128 It was PW15's further evidence that Juliet led him to where the vehicle was parked within Mayinga area and he recalled that this was towards the end of August 2018. They found the vehicle parked and Mr. Mahema identified the vehicle as the one that his nephew had been driving.

3.129 When confronted, Mr Kennedy Kasanga explained that he was in possession of the vehicle as collateral from Charles Kavindele who owed him money. Pw15 proceeded to retrieve the motor vehicle and towed it to Kabompo Police Station. He

searched the motor vehicle and it was in good condition and able to move.

3.130 Mr Kasanga handed over a driver's licence for Zacharia Jere which he said he found in the vehicle when he got it from Kavindele. Nothing else was found in the vehicle. They proceeded to look for Kavindele from where they had left him at his mother's place. He had fled. They went back to kabompo police and recorded statements from the witnesses.

3.131 Whilst at the police station Kavindele called his mother. PW15 was handed the phone and spoke to him. He said he had travelled to Lusaka to look for the people who sold him the vehicle. He also said he had the white book for the vehicle.

3.132 Pw15 advised him to go to the nearest Police station and turn himself in. He did not report to any police station. The officers then turned their attention to try to recover Zacharia Jere's phone. They were informed that the phone had been given to a young boy in the village named George. They drove to the village and did not find this George. The officers were informed he had gone to some distant farms and would not be returning shortly. PW15 thus left instruction for the phone to be handed over to

Kabompo police upon his return. He also left word with the CIO at Kabompo to expect someone to hand over the phone.

3.133 He added that he received documents from one Dumbo Mwila which included a letter of sale between a Mr. Robert Ngulube and the complainant Dalitso Phiri (PW6) A statement was recorded from Ndumba Mwila. The team then returned to Lusaka and continued investigating the matter.

3.134 In December 2018, he received intelligence information from an informer to the effect that Charles Muwema Kavindele was hiding in Solwezi in Kiwama area. He sent word through his informer to inspector Mubanga based at Kiwama Police post to apprehend Charles Kavindele.

3.135 On the 5th of December 2018, he received a report from Mr. Mubanga informing him that he had managed to apprehend Mr. Kavindele. Other officers were assigned by the CIO to pick up the suspect from Solwezi. PW15 later administered a warn and caution statement and interviewed the Accused person in connection with the offences. He contended that he travelled from Kabompo to look for a motor vehicle to buy and was sold the car by one Peter Mulenga and others. Since he was unable

to drive in Lusaka he requested them to escort him up to Mumbwa. That he further stated that the driver was Zacharia Jere and at some point 2 of the gentlemen stopped the car and took the deceased into the bush where they pinned him down. He then heard a scream for help and the 2 re-emerged from the bush without Jere. They told him he was lucky as they would also have killed him. He did not report this to any nearest police station.

3.136 He further stated that the letter of sale between Peter Mulenga and him was at his home Kabompo. He expressed willingness to lead officers to the crime scene. As PW15 was committed to some other work at the time, the CIO assigned Detective Inspector Jere and Inspector Shamapongo the scenes of crime officer to do the scene reconstruction.

3.137 PW15 received a postmortem report from officers who went for the scene reconstruction. He also received a statement from Alice Botha who discovered the remains in Nalusanga Mundemdema area in Mumbwa District, the place that the Accused led the officers. He added that this was also the same

area where the call activities of the deceased ended. He also viewed the video footage of the scene reconstruction.

3.138 The CIO assigned detective Jere to go to Manginga at the Accused residence where he had alleged the letter of sale to him was. PW15 concluded the letter of sale recovered and handed over to him was fake for a number of reasons. Firstly that the purported letter of sale indicated a different registration number. Notably, that it showed the vehicle bought was ACJ 4632 which was different from the vehicle he had been investigating bearing Reg number ACJ 4236.

3.139 He also noted that the purported letter of sale was not signed by any party being vendor, purchaser and their witnesses. Further, the Accused had told him it was Peter Mulenga that sold him a vehicle, but the letter was showing that the deceased Zacharia Jere was the person that sold him the motor vehicle.

3.140 Having noted these anomalies and other pieces of evidence that extended to the leading to the scene of crime; the call activities of the deceased terminating in Mumbwa where a decomposed body was found; the fact that the Accused was found to have

been in possession of the motor vehicle; that the phone of the deceased was also found to have been in possession of the Accused as per call activities, and that the driver's licence of the deceased was in the vehicle in possession of the Accused person, PW15 thus made up his mind to charge and arrest Charles Muyema Kavindele for one count of murder C/S 200 of the Penal Code and one count of aggravated Robbery C/S 294 Cap 87 of the Laws of Zambia.

3.141 He proceeded to identify and produced in evidence the letter of sale between Robert Ngulube and Dalitso Phiri, what he labelled a purported letter of sale between the deceased and the Accused; the driving licence for Mr. Zacharia Jere, the postmortem report, the call records and KYC documents for the Zacharia Jere for the number 0976056651 and call activity for Juliet Masumba's number; and the motor vehicle a Toyota sprinter reg No. ACJ 4236.

3.142 He went on to explain his dependence and significance of each of the exhibits and basis of his conclusion that the Accused committed the charged offences. He also identified the Accused as Charles Kavindele the person that he arrested. He added

that he managed to apprehend Peter Mulenga the person that Kavindele claimed had sold him motor vehicle and person he alleged he was with in Mumbwa. When PW15 presented Mulenga before the Accused, he stated that he did not know him. PW15 reminded the Accused that this was the Peter Mulenga that he had claimed has sold him the car. He offered no response.

3.143 PW15 further submitted Peter Mulenga's number to airtel. The results of the search showed that at the time the Accused was in Mumbwa with the deceased, Peter Mulenga's call records showed that he was in Garden area in Lusaka. The search further showed there was no connection between the two. He testified further that Peter Mulenga was released later pursuant to a Nolle prosequi by the Director of Public Prosecutions. PW15 supported this because there was no connection whatsoever to link Peter Mulenga. He further concluded that the white book for the vehicle was with the Accused person who kept changing stories about this.

3.144 When cross examined he agreed that he continued to conduct a search on call records even after he had apprehended the

suspect as he wanted to establish the truth. He maintained that exhibit P8 being a document that purported that the deceased sold the vehicle to the Accused was fake. The said document was recovered from the Accused person's home. That he led the police to the recovery of the letter. He did not establish who wrote the letter and considered it unnecessary to do so as it was describing a different motor vehicle. He agreed that Peter Mulenga was charged with the Accused. That he was mentioned by the Accused but when presented to him failed to identify him. He agreed that none of the State witnesses witnessed the stealing of the vehicle or saw the Accused do so. He nonetheless insisted that he could ascertain who was involved in the crime based on circumstantial facts. He further maintained that the deceased was never in possession of the vehicle documents as Dalitso Phiri passed them on to Wisdom not to the deceased.

3.145 He did not produce the white book which he believed was still in the hands of the Accused, who had declined to lead him to its recovery. He agreed that he did not get the car key from the Accused but from Mr. Kennedy Kasanga (pw8) where the car

was left as collateral by the Accused person. The documents were in the vehicle as Wisdom was supposed to take it for fitness inspection.

3.146 When referred to the pathologist report, he agreed with the conclusion of the expert was it was not possible to determine the cause of death from the bones. He confirmed however that this is one of the pieces of evidence he relied on to inform his decision to arrest the Accused. He further agreed that the pathologist was not able to determine the sex of the individual. Hence that he agreed based on the report that it is difficult to determine who the fragments found belonged to.

3.147 He agreed that it was true he had failed to recover the deceased phone. He maintained that he did make an effort to recover the phone but it was difficult to get a hold of the George it was allegedly given to.

3.148 Cross examined further PW15 testified that the theft occurred on 24th July 2018 and the vehicle was recovered sometime in August or September 2018.

There was no re-examination.

4. Ruling at close of prosecution's case.

4.1 At the close of the State's case I was satisfied that a prima facie case had been established on both counts charged and I placed the Accused on his defence. He opted to give sworn testimony and called no witnesses.

5. Accused defence

5.1 The Accused testified that in July 2018, he managed to secure 31 tons of timber for sale from one Prince Akoloka in Manginga. He called the driver of a truck for BK logistics and after a day went and loaded the timber. He had hoped to buy a car from the proceeds of the sale. He paid the transporter but was short of settling the full payment by K2000. He therefore went to see his uncle Kenneth Sangombo (PW7) and asked if he could be assisted with the money for clearing the truck.

5.2 His uncle told him he didn't have the money but that he could take him to a friend by the name of Mr. Kasanga who lends money. They went to see Mr. Kasanga and he agreed to give the Accused the K2000. Interest was to be payable at K500 after a month.

5.3 He proceeded to clear the truck and started off for Lusaka. He arrived in Lusaka on the 24th of July 2018 and contacted his

usual customers a Chinese company and was paid K72,000 for the consignment. He paid the driver K18,000 for the transport and then went about his mission of looking for a car to buy. He saw a lot of cars with the “For sale” sign.

- 5.4 He reached a place known as Tandika near City market. He found a Toyota Sprinter Reg No. ACJ 4236 Beige in colour. It also had a “for sale” sticker on it. As he went closer to the car, he saw a man seated inside the car and he appeared to be on the phone. He waited for him to finish the call. He approached the gentleman and asked him about the price at which car was being sold. The gentleman came out of the car and introduced himself to him as Zacharia Jere from Lusaka Garden house area. He told the Accused that the car was going for K20,000.
- 5.5 He asked him to open the bonnet, checked the engine and concluded it was ok. It was the Accused further testimony that he asked Zacharia why he was selling the car and he told him he wanted to buy another vehicle in Mumbwa and was short of money. The Accused asked him if he had the vehicle documents and Mr. Jere said that he did. He got into the car and showed him a white book in the names of Dalitso Phiri. There was also

a letter of sale which showed that the vehicle was bought by Dalitso Phiri from another person whose names he could not recall. Also shown to him was a road tax certificate. He was thus satisfied the vehicle was genuine after seeing these documents.

- 5.6 The deceased further said that Dalitso Phiri was his uncle who resides in Kitwe. Being a family member he was not bothered to change ownership which was the reason why the White book was still in his name. Mr. Jere further gave the Accused the assurance that as he was buying the car, he would request his uncle to travel on a date of his convenience to facilitate the change of ownership.
- 5.7 Having expressed his interest to proceed with the purchase, the Accused negotiated to bring the price down to K18,000. Zacharia Jere's wife who was proposed to be the witness was not at home. Jere therefore called 3 persons that were introduced to the Accused as his brother and 2 friends one of whom was Peter Mulenga. Mulenga stated that he could help in the writing of the letter of sale.

- 5.8 The other gentleman went to make copies of the NRC's drivers licence and the letter of sale was prepared. The Accused informed the gentlemen that he lived in Northwestern Province in Manyinga. He called his family to inform them he had bought a car. Zacharia Jere then asked for a lift to Mumbwa where he said he wanted to go and pay for the car that he had desired to purchase. The Accused agreed to offer him a lift.
- 5.9 On that trip was the Accused, Peter Mulenga, Zacharia Jere and another person he did not know. When they arrived in Mumbwa at a filling station, the deceased and his friends dropped off. Zacharia wished him a safe trip and said they would keep in touch.
- 5.10 The Accused then started off on his own and reached Kaoma at around 2000 hours. He decided so spend a night. He started off the next morning and safely arrived at his home at 11:00 hours. He showed the car documents to his family and asked his wife to keep them safe.
- 5.11 After 3 days of his arrival, Mr. Kasanga came to his house demanding for his money. The Accused told him he did not have money and asked him for time to pay back. Mr. Kasanga

insisted that he should keep the car as collateral until he paid back the money. The Accused accepted this proposal. The vehicle was taken to Mr. Kasanga. He checked and made sure he had not left anything in the car and handed over the key to Mr. Kasanga.

5.12 On the 16th August 2018, the Accused was standing by the roadside when he saw a Toyota Regus heading to his house. He didn't think much about whom it might be as a lot of visitors came to his home. A short while later his wife called and told him there were visitors from Emmasdale Police. He found this news odd and decided to attend to the visitors. He found 3 people seated in the car. 2 were standing outside. They introduced themselves to the Accused as officers from Emmasdale police. A Mr. Masola (PW15) in particular introduced himself as the dealing officer in a matter in which there was a complaint of a missing person by the name of Zacharia Jere. They asked the Accused if he knew such person.

5.13 He told the police that he knew a Zacharia Jere as the person who sold him the car. The other officer produced a document from airtel and asked him if he knew a number he pointed out.

He confirmed a number shown to him to be his mother's one Juliet Musamba, who was seated next to him. The police asked her to accompany them to Kapombo police station for questioning. He and his wife offered to accompany his mother. One among them said they had not come to pick up the whole family and were only interested in the owner of the number they were inquiring into. That happened to be his mother. They however allowed the Accused wife to accompany her.

5.14 Left at home alone with his children the Accused felt uncomfortable and decided to go through to the police station after his mother. He picked up the documents for the car and decided to hide the letter of sale. He booked a taxi, picked up his Children whom he left with an aunt and head out to Kabompo police station. In the process he tried to call Zacharia Jere's number but his line was not going through.

5.15 When he reached Kapompo police station, he found his mother at the inquiries area. He was advised to return the next morning as the dealing officers had left. The next morning his family advised him to make a follow up with Mr. Jere in Lusaka and that they would hand over the documents for the car to the

police. He was further to alert the police once he had found Jere since he knew where he lived. He set out for Lusaka the following day.

5.16 When he reached, Solwezi, he received a call from one of the officers who confirmed having received the car documents. This officer further told him to be communicating on whatever developments relating to the matter. He called the officer when he reached Kitwe and eventually in Lusaka, to inform him of his travel. The next morning he called the officer to tell him he was on his way to garden house to Zacharia's house. When he reached the house that Zacharia had shown him, he found the gate locked. He tried to knock, there was no response. A neighbour came out and advised that the people that used to live in that house had moved. Further that he did not know where Mr. Zacharia Jere had moved to.

5.17 He called Mr. Masola to update him on this development. His phone was off. He tried calling on his mother's line instead and Mr. Masola picked up the call. He briefed him that Zacharia Jere had shifted. Mr. Masola asked him to continue looking for him. The Accused found this to be a challenging task as he

had no idea where to look. He decided to go back to Kapompo to meet with Mr Masola and the dealing officer. Once back in Kabompo, his uncle informed him that the officers had left for Lusaka. Officer Masola when finally reached told him to go after them in Lusaka.

5.18 The Accused did not have money to travel back. He went to Solwezi to source money and about 4-5 days later whilst at his uncles home, some police officers arrived at the house. They told him they had come for him. They picked him up and he was taken to Kiyawama police station in Solwezi.

5.19 Upon reaching the station, he was informed by one of the officers that the reason he had been apprehended was because they received information from Emmasdale police station that they were looking for a murder suspect by the name of Charles Muwema Kavindele, and that he was that person.

5.20 After being held in custody for 5 days, the Accused was transferred to Lusaka at Emmasdale police station. He spent another 2 nights at the police station. Mr. Masola came to his cell and told him he was the new dealing officer. He further told the Accused that he knew him to be innocent of the allegations

and he would let him go if he paid him K20,000.00. The Accused declined to pay that bribe and maintained he did not steal the vehicle. Mr. Masola then said he had no option but to take him to court.

5.21 A week later, he was called and taken in an office at Emmasdale police station where he found 7 officers. They were officers from Central Police Anti- theft of motor vehicle squad. He was questioned on how he bought the vehicle and put back in cells. He informed the officers he had hidden the letter of sale between Jere and himself at his home. He explained to the officers that he did so as he was scared of losing the car and all the document since he did not have photocopies. They assured him transport would be arranged to pick up the letter from Kabompo. After a month or so transport was arranged and some officers travelled to Kabompo. The letter was retrieved from his bedroom.

5.22 His family then inquired what the way forward would be in light of the fact that the officers were now in possession of all the relevant documents. The officers response was that the matter was beyond them as they were too junior to make that

determination. According to the Accused, by that time he did not know where the vehicle was. However the CIO Mr. Moya then told him the car was given back to Dalitso Phiri.

5.23 Back in Lusaka, officer Masola repeated his demand for the K20,000 he had earlier solicited for. The Accused refused to give in to the demand. The officer then dragged the him to his office by the shirt and started beating him. He handcuffed the Accused and tied his legs with a rope. He then lifted the Accused and suspended him using a rod placed between 2 tables. The pain he felt was unbearable. He felt as if his hands were being cut off. The officer said he was doing this for not heeding to his demands.

5.24 Officer Masola then told him there were some bones they had found in Mumbwa that belonged to Zacharia Jere the person that sold him the car. The Accused told Mr. Masola he did not know anything about the bones. He was then advised he was to be taken to Mumbwa to go and exhume the bones which he said his fellow officers had buried in Mumbwa. He was then taken back to the cells barely able to walk from th beatings.

5.25 2 weeks later he was picked up and taken to Central Police where he found other police officers. These officers were to accompany the team set up to travel to Mumbwa with the Accused. The officers said they knew where the bones were buried. A pathologist also accompanied the group to Mumbwa. On the way to Mumbwa one of the officers who had a firearm started threatening him. He said if the Accused did not do what they wanted him to do, they were going to kill him from the scene.

5.26 There was an officer who sat next to the driver and giving directions to where they were going. They arrived in Mumbwa Town and the point where he dropped off Jere and his 2 friends. He told the police that this was the point he had dropped them off. The officer with the firearm started beating him in the car and told him they wanted him to say a few things once they had arrived at the place where the bones were buried.

5.27 In particular, that he should say he heard Zacaraiah cry 3 times. Further, that he should also say that the 2 friends to Zacharia also threatened to kill him if they did not start off for Kabompo. That the idea was to make believable that Mr. Jere

was killed by the Accused friends. They drove on a bit further to a point where the Accused was made to say what he had been asked to. He was to be killed if he did not co-operate. Afterward, they went to Mumbwa police station to pick up a police officer who knew the exact place where the bones were alleged buried.

5.28 He was put in police cells for 2 hours and the officers returned to pick him up from the cells. Inspector Phiri informed him they had gone to the place the bones were buried and arranged to exhume some fragments of bones. He did not accept this to be true as he has never seen the fragments of the bones till present day. They returned to Lusaka and he was taken back to Emmasdale police station.

5.29 He appeared before a Subordinate court a month after and later transferred to Lusaka Central Correctional facility. Asked about the discovery of Zacharia Jere drivers licence in the car, it was the Accused testimony that Mr. Kasanga had been with the car for 2 weeks and he did not say anything to him about the licence. He thus only saw the licence in court. He insisted that the letter of sale was given to him by Mr. Zacharia Jere

and was not a fake document. That the letter of sale exhibit P8 was not the one that was presented by the arresting officer in court. His evidence was therefore that the police conjured up exhibit P8.

5.30 His reaction to the evidence that Mr. Jere's number was used on his mother's phone was that whilst they were travelling to Mumbwa just before the toll gate Zacharia Jere had wanted to call the person he was going to buy a car from. However his phone went off because his battery was low. Mr Jere therefore requested if he could insert his sim card in the phone that the Accused was using in order for him to make that call.

5.31 The Accused allowed him to do so. He did not accept or agree with the video recording played back in court. He saw a photo of Jere at the end of the video that made him question where the photo was taken from. Further that the video did not show him. He stated that he did not commit the alleged offence of aggravated robbery.

5.32 He did not understand why he had been charged. It was the police that led him to the place where the bones were buried. He further did not know how they reached the conclusion that

the bones belonged to Zacharia Jere. He was not convinced from what he heard from the pathologist (PW9) that Zacharia Jere is dead and that the recovered bones were his.

5.33 When cress-examined he agreed he had not produced any documents to show he was in the timber business. The timber he had was worth K72,000. He was paid for the delivery. He did not pay Mr. Kasanga in spite the fact the he had remained with K14,000 after purchase of the car. He agreed that he did not tell the court that at the time he got back the car from Mr. Kasanga it did not have a for sale sticker.

5.34 He did not agree that the issue of the sticker did not arise when the prosecution witnesses were on the stand. He maintained that he did find Zacharia Jere at Tandika and that his car was the only among several found there that had a for sale sticker. It was his first time to meet Mr. Jere. He insisted that Zacharia showed him a white book in Dalitso Phiri's names and a letter of sale between Dalitso Phiri and another person. He agreed that he also saw a road tax certificate in relation to a Toyota sprinter. He agreed that he did not conclusively confirm from the documents he was given showed that the vehicle belonged

to Zacharia. He agreed that the documents he was given did not in any way show that the car belonged to him.

5.35 He testified that he did not have any witness of his own. He still went ahead to transact with Zacharia Jere in spite of this. He agreed that he had not told the court he spoke to Dalitso before he made the payment to Zacharia. He agreed that it would have been prudent for him to ask for a letter of sale between Zacharia and Dalitso before making payment.

5.36 Cross examined further, the Accused agreed that he did hear PW8 say he had kept the car as collateral. Further that he found strange that PW8 stated he found the driving licence in the car and did not contact him about it. He did not agree the licence was found in the car by PW8. He could not recall the date that Zacharia asked to place his sim card in the Accused mother's phone but was certain it was the day he purchased the car. He agreed that he testified that the sale was witnessed by 3 of Zacharia's friends who also made the trip. It was not strange to him that Zacharia made the request to use his phone instead of the other 3 friends that he knew and that were in the car.

5.37 He testified that Zacharia inserted his sim card into his phone.

He contended that he made a call to the person he asserted he wanted to buy a car from. He was aware there were airtel printouts that were produced in court in relation to Zacharias phone. He confirmed that number 0974875557 was his mother's number. He agreed that the airtel printout confirmed this.

5.38 He testified that he was not aware that it was this number that was inserted in Jere's phone as suggested to him. He changed position and stated that he was aware that his mother's sim was inserted into Zacharia's phone on 6th August 2018 at 14:40 hours in Kabompo according to the airtel print outs. He agreed that he was aware that the airtel printouts do not show that any other sim card was inserted into Zacharia's phone on the 24th July 2018, the day that he professed to have travelled with him.

5.39 He did not agree that the evidence he had given about Zacharia asking to use his phone to insert his sim card is a new issue arising for the first time in his defence.

5.40 Questioned further, the Accused agreed that he lead the police to the recovery of exhibit P8 from his home. When shown the exhibit, the witness testified that this was not the letter he was referring to he just saw this letter in court. This was not the one retrieved from his home. According to the Accused, Peter Mulenga prepared the letter which was one of sale between him and Zacharia Jere. He did not agree this was the same letter exhibited P8.

5.41 Pressed further he agreed he had not given any reason why the police would cook up a document in P8 produced before the court. He did not agree that he brought up the issue of exhibit P8 not being recovered from his house in his defence.

5.42 He agreed that there was evidence suggesting that he had led the police to the recovery of the bones. He however did testify that he had been threatened by the police during the leading to follow as they led. He agreed that he raised the issue of the crying for the first time in his defence as he gave his testimony. This was also true about what he contended the police told him. He further agreed that his evidence about him being told by the police in Mumbwa that they were going to pick up an

officer who knew where the bones were came up in his testimony for the first time. He further agreed that his evidence about him being in cells whilst the officers went to the scene to carry on autopsy only came up for the first time in his defence. This was also true about his contention that there was an officer who sat next to the driver as they head out to Mumbwa giving the driver directions.

5.43 Questioned further he insisted that he was tortured by the police including the arresting officer. He made a report about this but nothing was done. He agreed that at no point did PW9 the pathologist contend the bones were for Zacharia Jere. That he said they were for an adult human being. He agreed that he also raised his contention that the police told him they had found Zacharia Jere's bones at the time of his apprehension for the first time in defence.

5.44 When re-examined, the Accused testified that the documents relating to the timber were not before the court as they move with the person that purchases the stock. That the documents don't remain with the seller. He decided to keep the K14,000 balance after he purchased the vehicle as he wanted to re-

invest it into his business. That's why he defaulted in paying PW8. He testified that he removed the for sale sticker immediately after the transaction was made. He did not see it necessary to move around with the sticker advertising the sale of the car that he had already bought.

5.45 He further clarified, that he did not confirm the car belonged to Zacharia because the white book was showing the names of Daltiso Phiri as owner. He proceeded to buy the car nonetheless because Zacharia Jere told him that he bought the vehicle from his uncle Dalitso Phiri who lived on the Copperbelt. He assured the Accused that being family, it didn't bother him to do the change of ownership.

5.46 He testified further that the letter of sale between him and Mr. Jere had Zacharia Jere names in full it also had the correct details of the car he purchased which are a Toyota sprinter Reg No ACJ 4236. He testified that he did not make a copy of the letter of sale. He came from the village in Kabompo where there are no photocopies around. He further entertained no suspicion that would prompt him to photocopy all the documents hurriedly.

5.47 His position on Zacharia driver's licence purportedly found in the car, was that PW8 would have told him if he had indeed found the licence right in Kabompo. He hid the letter of sale because it had the names of the witnesses who were present at the time he was purchasing the motor vehicle which he thought would make it easier for him to trace them. He maintained that he found the charges against him unfair as he was not convinced that Zacharia Jere is dead. Secondly that the report from the pathologist does not show that the bones found were for Zacharia Jere. Lastly, that the police are the ones that led him to the place where the bones were exhumed.

6. Court's determination

6.1 I have carefully considered the evidence before me and the parties respective positions. The Accused faces 2 counts. The first being Aggravated Robbery provided for under section 294 (1) of the Penal Code. The section provides in part that:

“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 or immediately 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 resistance to its being stolen or retained, is guilty of the felony of aggravated robbery....”

6.2 Taking the above into consideration, it can be discerned that the offence can be committed by a person acting alone whilst armed with an offensive weapon or instrument or acting in the company of another or more, use or threaten to use violence in the process of stealing something from a victim to ensure their intention to steal is achieved.

6.3 The burden of proving all these elements beyond reasonable doubt rests on the prosecution.

6.4 The second count is that of Murder contrary to section 200 of the Penal Code, 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.

6.5 In order to establish that an accused has committed the crime therefore, the State has to establish beyond any reasonable doubt that the accused did with such malice aforethought cause the death of the person claimed to be deceased.

6.6 It is established in evidence that on the 24th of July 2018 one Zacharia Jere left home for work at Tandika taxi rank located at Lusaka's Town Center where he operated as a Taxi Driver. The State's case is that he was booked by some clients to take them to Mumbwa and alerted his colleague and workmate PW5 about this agreement. He asked his colleague who was driving a better vehicle a Toyota Sprinter reg No. ACJ 4236, if he could

use his car for the trip. He was given this car and that was the last that was seen of him.

6.7 The State contends that the person that booked him was the Accused person who then proceeded to murder Mr. Jere and took off with the vehicle that was recovered from Kabompo in Northwestern Province a month or so later. The State relies on the fact of this possession of the vehicle argued to have been stolen in circumstances of an aggravated robbery and that phone records show he had used Mr. Jere's sim card on his mother's phone that was in his possession on the day Jere disappeared, and finally that he led them to the scene where human remains in the form of bones were recovered to conclude that the Accused authored the crime of Aggravated Robbery and in the process murdered Zacharia Jere.

6.8 The Accused position on the other hand is that he is a businessman engaged in selling of timber. He sold a consignment and travelled to Lusaka to buy a car from the proceeds of the sale. He encountered Mr. Zacharia Jere at a Taxi Rank with the Toyota Sprinter in issue bearing a "for sale" sticker. He engaged Mr. Jere and agreed on a price for the sale

of the vehicle. Mr. Jere was paid and asked for a lift to Mumbwa where he was to meet a person that had offered to sell him another vehicle. The Accused therefore gave him a lift to Mumbwa in the company of two of Zacharia's friends who witnessed the sale, dropped them off in Mumbwa and he proceeded to Kabompo where he resided.

6.9 He disputes murdering Mr. Jere or forcibly stealing the vehicle in circumstances of an aggravated robbery. He was tortured and told what to say when supposedly leading the police to the scene where the bones were recovered and he questions whether Mr. Jere is indeed dead or if the bones recovered were his in light of the inconclusive evidence of the identity of the remains as proposed by the State pathologist (PW9).

6.10 The questions that I am to resolve in this matter are therefore whether or not the Accused and Mr. Jere entered into an agreement for the sale of the Toyota Sprinter reg No. ACJ 4236; Secondly whether there was in fact an aggravated robbery that occurred; thirdly whether or not Mr. Jere is dead and the recovered remains belonged to Mr. Jere; and lastly, whether or

not it was the Accused assuming I am inclined to find that there was such robbery and murder, that authored the crimes.

6.11 There are clearly 2 contrasting positions advanced of the circumstances in which the Accused found himself in possession of the vehicle. What is also certain is that there are no eye witnesses that speak to the commission of the offences. The evidence presented on behalf of the State is therefore to a large extent circumstantial. **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”.

6.12 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. A closer look at the evidence is considered below.

6.13 PW5, told the court that both he and Mr. Jere worked for his elder brother Mr. Dalitso Phiri as taxi drivers. In fact, that his brother asked him to find a second driver and it was he that engaged Mr. Jere. I accept that on the 24th of July 2018, Mr. Zacharia Jere requested if they could trade cars to enable him undertake a trip to Mumbwa where he had been booked to drop off some clients with a view of returning later that night. Support of the fact of such booking was given by the evidence of PW4 Grace Maseko Mr. Jere wife, who testified that her husband called her to tell her he had been booked to travel to Mumbwa and would return later that evening. He called her when he had arrived there and that was the last she heard from him.

6.14 PW14's evidence Mr. Mwilu Siyanagowa the Cyber Security and Compliance Manager at Airtel confirms that the call records submitted to the police pursuant to a warrant served on the company show that the last calls made from Mr. Jere's phone on the 25th of July 2018 was in Nalusanga in Mumbwa. This confirms and I accept that he actually travelled to Mumbwa.

6.15 I further find credible the evidence of PW1 Mr. Jere's uncle. He was alerted of his nephew's disappearance by another nephew PW2 and embarked on a search for him. I accept that he reported the matter to the police and when alerted about call records being traced to Kapompo and the need to help finance a trip there readily did so. I accept that he accompanied the police to Kapompo and that he was present when the missing vehicle was recovered from PW8's home. He was also present when the bones were being exhumed by Pw9 in Mumbwa.

6.16 I am satisfied based on the evidence of PW6 Dalitso Mabvuto Phiri that he is the owner of the Taxi's that were being driven by PW5 and Mr. Jere. He gave undisputed evidence of how he purchased the vehicle in question and that it was being driven by his brother PW5 who was meant to have taken it for fitness

inspection and renewal on the day that Jere went with it to Mumbwa. I accept as confirmed by PW5, that the white book was in the vehicle at the time for that purpose. He confirms that he received the report of both Jere and his vehicle having gone missing.

6.17 Both PW2 and PW5 gave evidence of how in their quest to trace Zacharia Jere they had called his number and that the person that responded suggested Jere was being kept safe after having run over 5 pedestrians in Mumbwa due to excessive speed. The fact that no such report was found at the police when PW1 was embarking on the search for Jere raised a red flag to the family that something might have happened to him.

6.18 I find credible evidence of the call records search that led the police to Kabompo. It was because of the search on Jere's number that Airtel were able to confirm that his sim card had been removed from his phone and placed in a Techno phone that was traced to PW12 Juliet Musumba, the Accused mother based in Kabompo.

6.19 I accept that the police travelled with a view of tracing the owner of the phone in which Jere's sim had been put. When

questioned, Juliet revealed it was actually her son, the Accused that had been using the phone. I further accept that when questioned further about the missing vehicle, she led the police to PW8's home where the vehicle was recovered. The circumstances in which the vehicle ended up with pw8 was explained by PW7 and PW8.

6.20 The Accused contended he needed to borrow money to secure the release of a truck with his timber consignment that he was desperate to sell. He approached PW7 his uncle if he could help. PW7 in turn offered to introduce him to his friend PW8 who was in the business of lending money. I find as not in dispute that the Accused was introduced to PW8 and was given the ZMW 2000 he sought on the understanding that he was to repay it shortly after the sale of his timber. However, months passed and the Accused was nowhere to be seen.

6.21 He resurfaced in August of 2018 and when word reached PW8 who had by then exerted considerable pressure on PW7 for the delayed payment, the 2 men went to check on the Accused at his house. I accept the evidence that they did not find him but he was soon thereafter to arrive driving the Toyota Sprinter. A

discussion about the Accused's plea for more time to settle is debt was resolved by the Accused agreeing to let PW8 hold on to the vehicle as collateral until full payment of the principal sum and interest had been made.

6.22 It is not disputed that PW7, PW8 and PW12 were at some point treated as suspects and in fact detained. This calls for caution when dealing with their evidence as such witnesses may be considered to have an interest to serve. The Supreme Court in the case of **William Muzala Chipango and Others v The People**² held that:

"Where because of the category into which a witness falls or because of the circumstances of the case he may be a suspect witness that possibility in itself determines how one approaches his evidence. Once a witness may be an accomplice or have an interest, there must be corroboration or support for his evidence before the danger of false implication can be said to be excluded."

6.23 I accordingly caution myself on relying on the evidence I however exclude the danger of any false implication based on the credibility of the witnesses, their observed demeanour and consistency of their testimony. PW13 is the Accused person's biological mother, I find no reason why she would choose to

give false testimony against her son. She was able to confirm her son was using her Techno Phone and lead the police to the recovery of the vehicle based on what she knew about the debt and collateral arrangement. I accordingly accept their evidence in toto.

6.24 The fact of the recovery of the vehicle and Mr. Jere's drivers licence from PW8 was supported by the evidence of PW1, and PW15 the case officer.

6.25 Based on the facts and evidence before me, I do not accept the Accused version of events. There is nothing credible he presents to support the assertion that Zacharia Jere had sold him the car. The presence of the ownership documents in the car was with a view of facilitating fitness inspection and renewal. PW5 gave credible evidence about the request made to him by Jere to use the vehicle for a trip to Mumbwa and there is evidence as discussed above, that he actually travelled to Mumbwa.

6.26 I do not accept that there was a for sale sign on the vehicle. I find as a fact that the Accused approached Mr. Jere in the guise of booking him for a trip to Mumbwa. I accept that he led the

police to his house and the recovery of exhibit P8 the purported letter of sale although in his defence he attempts to disown it. He describes it as a document that the State cooked up and that what he presented to the police had Jere's full names and correct licence plates for the vehicle in question.

6.27 However the arresting officer was able to demonstrate that this was the document that the Accused had attempted to pass off as a letter of sale between Jere and himself. A glance will indeed confirm that it is not signed and refers to a different vehicle bearing reg no ACJ4632 giving credence to the arresting officers evidence that it was not an authentic document.

6.28 The Accused casts aspersions on the integrity of the arresting officer suggesting he has solicited for a bribe from him. He asserts that he refused to pay that bribe and advances this seemingly to justify his theory that the resultant frustrated officer was then upset about the refusal and cooked up evidence to fix the accused. I do not accept this evidence as true.

6.29 I therefore dismiss the Accused assertion that Mr. Jere sold him the car. He admits that the documents purported to have

been handed over to him by Jere did not in any way suggest that he owned it. Further that he did not bother to call the named owner in the white book on whether the sale had his blessings. I do not accept that any assurance of change of ownership in the manner proposed by the Accused in his evidence was given by Jere.

6.30 The next question to be determined naturally is what happened following the trip to Mumbwa? was Zacharia Jere the subject of an aggravated robbery and murder? It is not disputed that PW3 a farmer resident in Mutombole village in Mumbwa District discovered some bones as she was cultivating her land. She describes stumbling across burnt fat clearly displaying the layout of a human body that had lay and was burnt within the field .She told her husband about this development who in turn alerted the headman. Mumbwa police were eventually informed about the discovery of the bones and proceeded to bury the remains that were to be later exhumed by a State pathologist (PW9) in the company of officers from Emmasdale police and Jere's family members.

6.31 PW9 informed the court that whereas he could confirm the available fragments were for an adult human being, he was not able to tell the age or sex of the remains. A good number of bones had been burnt, destroyed and scattered by animals. The Accused rides on this conclusion to argue there is no evidence that Jere is dead or importantly in this case, that the discovered remains belonged to him.

6.32 There is no body that was ever presented and confirmed to be that of Jere. The question that begs to be answered therefore is in the absence of conclusive evidence of the alleged deceased having been killed, can he be presumed dead in this case?

6.33 The learned authors Adrian Keane and Paul McKeown (2011)

The Modern Law of Evidence 9th edition Oxford University

Press at page 662 states that:

“Where there is no acceptable affirmative evidence that a person was alive at some time during a continuous period of seven years or more, on the proof or admission of the basic facts (i) that there are persons who would be likely to have heard of him over that period; (ii) that those persons have not heard of him; and (iii) that all due inquiries have been made appropriate to the circumstances, that

person will be presumed to have died at sometime within that period.”

6.34 According to the evidence on record, Mr. Jere went missing in July 2018 and trial in this matter commenced on 15th of July 2020. This is a period of less than 7 years in which a person can legally be presumed dead. I am therefore not able to make such a presumption. However, there is nothing that precludes the court from drawing on inference that the bones that were found belonged to Mr. Jere and that he was therefore killed from the circumstantial evidence.

6.35 In the case of **Kachingwe Daka vs the People**³, the Court of Appeal referred to an English Court of Appeal decision in the case of **R vs Onufrejczyk**⁴ wherein the court held:

“ On a criminal charge, the fact that the murdered man was killed, like any other fact, can be proved by circumstantial evidence, being evidence which leads only to that one conclusion of fact, although no body is found”

6.36 The court also held that:

“in the present case there was evidence from which the jury could infer that S was dead, and, if he was dead, the circumstances of the

case pointed to the fact that his death was not a natural death, and accordingly, the jury having been warned that the circumstantial evidence must be so cogent as to convince them that the facts could not be accounted for by any other rational hypothesis than murder, a corpus had been established and the jury were entitled to find that the appellant murdered S.”

6.37 The Court of Appeal case thus makes it clear that circumstantial evidence can be used not only to prove that a person is dead but also that the person was murdered. Further that this is possible, in a case where the evidence is so cogent, that the only inference that can be drawn is that the person was dead and was murdered.

6.38 I find this to be true in the case before me. The circumstantial evidence points to the fact that the bones belong to Mr. Jere. The likelihood that the bones that were recovered belong to another person are diminished by the fact that he has not been seen since the date he travelled to Mumbwa. The bones were recovered from Mumbwa the last place as confirmed by Airtel call records show that he communicated with anybody.

6.39 I am also prepared to infer from the circumstantial evidence that the vehicle was forcibly taken from him in circumstances

of an aggravated robbery. The fact that Jere is dead confirms the violent nature of the robbery thus making it aggravating. All evidence points to the Accused as the perpetrator of the crime. He was found to have been the person in possession of the vehicle reporting missing on 24th July 2018 barely a month later in Kabompo in August 2018. The doctrine of recent possession is clearly applicable in this case.

6.40 The Supreme Court of Zambia considered the application of the doctrine of recent possession in the case of **George Nswana vs. The people**⁵ in which the court stated:

“The inference of guilt based on recent possession particularly where no explanation is offered which might reasonably be true, rests on the observance of any reasonable likelihood that the goods might have changed hands in the meantime and the consequent high degree of probability that the person in recent possession himself obtained them and committed the offence. Where suspicious features surround the case that indicate that the applicant cannot reasonably claim to have been in innocent possession, the question remains whether the applicant not being an innocent possessor, was the thief or a guilty receiver or retainer”.

6.41 In the case of *Mambwe vs. The People*⁶ the Supreme Court went further to state that:

“The possessor of goods recently stolen may fairly be regarded as either the actual thief or else a guilty receiver. His possession raises a presumption; that of his guilty connection with any further crime that accompanied the theft such as theft or Robbery. However as to what time is near enough to be recent, no general rule has been given. The period within which the presumption can operate varies according to the nature of the article stolen. Three months would be sufficiently recent for a motor vehicle. But for such articles that pass from hand to hand easily like a cell phone, one month would be a long time, but seven days would be sufficiently recent....”

6.42 As stated earlier, I do not accept as reasonably true the explanation of the Accused that Jere sold him the car. Beyond the circumstances earlier discussed I noted the conduct of Accused when the police first confronted the mother. She was the primary suspect and he was present when the police arrived at her home. He did not volunteer any information about having bought the vehicle.

6.43 Instead, he considered golden the opportunity presented to him when the police opted to take his mother and his wife for

questioning to make his escape. He left Kapompo and went into hiding until PW 12 officer Lewis Mubanga managed to apprehend him from his uncle's house in Mulempa village in Solwezi where he had sought refuge.

6.44 The Accused also had the misfortune of not thoroughly checking the vehicle. So whereas he managed to remove the white book and PW5's licence that were in the vehicle as I am convinced that he did, he did not realize Zacharia's licence was in the upper sun screen flap and discovered by PW8 who held on to the car as collateral. Only the Accused can account for what happened to Jere and in this case undoubtedly authored the aggravated robbery and murder that occurred most probably acting jointly with others unknown.

6.45 There was also evidence of leading that the police refer to as "*scene reconstruction*." offered by PW10, and PW11 officers Victor Shampongo and Shadreck Jere respectively. The former is a scenes of crime officer whilst the latter is a scene reconstruction officer. They gave evidence that the Accused willingly took part in the scene reconstruction which in essence

involved leading the police to the location where the human remains were recovered.

6.46 There was evidence of a recording of the entire exercise to demonstrate that he voluntarily led the police to the scene where the bones were recovered. The theory thus being he could only lead the police to the location where the bones were recovered as he was responsible for the killing and leaving the body there.

6.47 In **Esia Mupasha and 2 others vs the People**⁷ the Supreme Court adopted with approval the passage In **Li sha Ling v the Queen**⁸ 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,”

6.48 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.”

6.49 The State was able to demonstrate through its witness PW10 the circumstances in which the recording was done and there is no question that the footage played back in court shows he volunteered to lead the police. I dismiss the Accused assertion in this regard that he was beaten and told what to say in the process.

6.50 However there is a twist to this tale. Evidence was led that confirms that Mumbwa police were earlier alerted about the discovery of the bones by PW3 through a headman. This led the police to visit the scene and to bury the bones **before** the team from Emmasdale police in the company of PW9 the State pathologist and the Accused arrived at the scene and exhumed the bones.

6.51 This suggests that the Zambia Police Service was aware of the site prior to the Accused leading them to the area. It is in my view, immaterial that the Emmasdale police team contend they only went to the site for the first time when the Accused led them there. The fact remains the “Zambia Police Service” had visited the scene earlier.

6.52 In the case of **Borniface Chanda Chola & Others vs the People**⁹ the Supreme 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 guilty.”

6.53 I find this to be true in the present case. Nothing new was discovered at the scene already visited by the police.

6.54 It is a fundamental principle in the law of evidence that the court retains discretion not to consider an admissible confession if the prejudicial effect outweighs its probative value. Therefore whereas the evidence was admissible for passing the voluntary test, I am inclined to exclude it in light of what I had stated to be the police prior knowledge of the site

before the Accused led them there and that nothing new was discovered. The prejudicial effect would in such circumstances outweigh the proposed evidence's probative value.

6.55 That said, the question is, is there sufficient evidence notwithstanding the exclusion of the evidence of leading on which the court can come to the inescapable conclusion that it was the Accused that committed the offences. Put differently, has the available circumstantial evidence taken this case out of the realm of conjecture and attained such a high degree of cogency that permits nothing else than an inference of the Accused guilt?

6.56 I entertain no doubt in my mind that it does. All the dots and pieces of what is akin to a jigsaw puzzle fit together and point to nothing else than the guilt of the Accused. PW6 confirms owning the Toyota Sprinter and another vehicle that were being operated as Taxis by Pw5 and the deceased. I am satisfied that on the 24th of July 2018, the deceased exchanged vehicles with PW5 to make a trip to Mumbwa where he was booked by the Accused most probably in the company of others unknown.

6.57 The deceased did not return leading to a search for him by PW1 and a report to the police of the missing Jere and the vehicle. The police investigations and search through Airtel network reveal that the deceased last made a call from Mumbwa confirming he traveled there. The Accused turns up with the missing car in Kabompo barely a month after it is reported missing and uses it as collateral to pay back a loan obtained from PW8. He presents a contract of sale purporting to be evidence that the deceased sold him the vehicle that is not witnessed by anyone and has the wrong vehicle licence plate. He disappears when the police turn up in Kabompo having established that the deceased sim was used on a phone traced to the Accused mother based in Kapompo. His mother PW13, confirms that he was the one in possession of the phone at the time and leads the police to the recovery of the vehicle that had also been in her son's possession.

6.58 Finally the deceased's card is found in the vehicle with no trace of the white book that was left in the vehicle. The inference that I am prepared to draw is that the Accused booked the unsuspecting Zacharia Jere to Mumbwa with the sole intent of

stealing the motor vehicle. He proceeded to attack and killed the deceased in Mumbwa and left his body in the bush. It is unknown if he set the body on fire or if was burnt by a spreading fire ignited by persons clearing the fields oblivious to the presence of a body in the field.

6.59 I further conclude that the Accused drove the vehicle to Kabompo and most probably authored the contract of sale exhibit p8 to justify his assertion that he bought the car. I am prepared to infer the white book was in the vehicle and only the accused knows its whereabouts.

6.60 I accordingly find that the State has discharged its burden of proving this case beyond a reasonable doubt. I find the Accused guilty on both counts of aggravated robbery and Murder Contrary to sections 294 (1) and 200 of the Penal Code respectively and I convict him accordingly.

Dated at Lusaka this 31st day of December 2024



Judge