

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

HP/205/2024

THE PEOPLE

VS

CHOMBA PHIRI
MISHECK ZULU



Before the Hon. Justice S. Chocho in Open Court.

For the State: Ms. L. Zunduna and Mr. V. Munsaka – State Advocates
- National Prosecution Authority

For the Accused: Mr. F. Mwauluka and Mrs. M. Tatila Mulubwa – Legal
Aid Board.

RULING

Cases referred to:

- 1. George Mulaye Vs. The People SCZ No. 48 Of 2016.***
- 2. Mwewa murono vs. The People (2004) ZR 207.***
- 3. The People V Mukemu (1972) ZR 374 (Reprint).***

Legislation referred to:

- 1. Section 294 (1) of the Penal Code Chapter 87 of the Laws of Zambia.***

1. INTRODUCTION

1.1 This is a Ruling on Case to Answer/No Case to Answer against the two Accused Persons Chomba Phiri and Misheck Zulu.

2. BACKGROUND AND TESTIMONY

- 2.1** The two accused persons stand charged with offence of Aggravated Robbery Contrary to Section 294 (1) of the Penal Code Chapter 87 of the Laws of Zambia.
- 2.2** The State called 2 witnesses to aid their case.
- 2.3** PW1- Thomas Mkandawire, also the victim/complaint testified under oath. His evidence was that he was accosted by 4 male persons, around 14 hours on 18th August, 2023 in Garden compound in Kanele. He testified that one of these men held him by his clothes and the phones in his hands fell to the ground upon which the men got the phones and run away.
- 2.4** PW1 further testified that the whole ordeal took about a minute and he stood in place for about 3 minutes observing and looking at these men run away and around the bars.
- 2.5** PW1 testified that he was advised to check at the 'Malasha' market as that is where stolen phones were sold. He further testified that he proceeded to the Malasha market where he narrated his attack to the market Chairman, who got his mobile numbers and promised to contact him should they see anyone selling phones with description he gave.
- 2.6** PW1 testified that he then went to report the matter at Garden Police Station and whilst there the Malasha market Chairman called him to hurry back. He then proceeded back to Malasha market with the Police officers. It was his testimony that the Police apprehended one person who they brought to the car. The suspect mentioned that he was sent to sell the phone by Chilolo. He testified that the Police officers failed to apprehend Chilolo as he run away.
- 2.7** PW1 testified that 4 phones were stolen from him but could only describe one i.e a Black Tecno. He placed the value of the 4 phones at K770.00.

- 2.8** Pw1 identified A1 Chomba Phiri as the person the Police officers found with the Tecno Phone and one of the 4 men that attacked him. He further testified that he could not recall the other person (A2) as being among the people that attacked him.
- 2.9** Under cross examination PW1 conceded that he did not testify as to why A2 was before Court.
- 2.10** Pw1 testified under cross examination that he did not have proof to show that 'ID1' was his phone as his supplier did not give receipts/details of the phones serial number for one to distinguish one from the other. He testified that he did not have serial numbers of all the 4 phones that were stolen from him.
- 2.11** Pw1 further testified that the attackers were total strangers and that he didn't know them. He further testified that even though he did not give description of the attackers he knows that A1 is one of them.
- 2.12** PW2 – Isaac Chilongozi Phiri Detective Inspection testified on oath. He testified that PW1 reported a case of aggravated robbery on 18th August 2023.
- 2.13** PW2 testified that PW1 reported that he was attacked by 4 men whom he could not identify that stolen 3 mobile phones from him.
- 2.14** PW2 testified that he accompanied Pw1 to Malasha market on same day 18 August 2023 on a tip off from the Malasha market Secretary that someone was noticed selling a phone of the description stolen from him (PW1).
- 2.15** PW2 further testified that he and his fellow officers apprehended A1 Chomba Phiri at Malasha market. A1 was found with a black Tecno phone that PW1 identified, as one of the phones stolen from him.
- 2.16** Pw2 testified that under warn and caution A1 revealed that he had bought the phone from his friend Chilolo and that Chilolo was with Misheck Zulu at time of the purchase. PW2 further testified that he apprehended and arrested A2.

- 2.17** PW2 testified that he made up his mind, arrested and jointly charged A1 and A2 for the subject offence of aggravated robbery.
- 2.18** PW2 identified and produced ID1 being the phone that was found in the possession of A1.
- 2.19** PW2 positively identified A1 and A2.
- 2.20** Under cross examination PW2 confirmed that A1 had informed him that he bought the phone from Chilolo and that A2 had nothing to do with the transaction.
- 2.21** PW2 further conceded that PW1 did not avail him the serial numbers of the stolen phones. He further testified that it was possible that ID1 was not the phone stolen from PW1, on account that no serial number was provided by PW1.
- 2.22** PW2 further conceded that PW1 during time of giving report did state that he could not identify the persons that stole the phones from him.

3. THE LAW

- 3.1 The Court did receive written submissions from both Counsel for prosecution and defence. Let the record show that I shall not repeat the submissions in full, suffice it to say that I have read and considered them even if I make no direct reference to them, in the ruling.
- 3.2 The law provides that at this stage in the proceedings, I am to answer the question - whether/not a reasonable tribunal, on directing itself properly could convict the Accused Persons even without their saying anything to defend themselves.
- 3.3 I have directed my mind to the legislation and authorities as stated in the case law of:
- 1. *George Mulaye Vs. The People SCZ No. 48 Of 2016.***
 - 2. *Mwewa murono vs. The People (2004) ZR 207.***

3. *The People V Mukemu (1972) ZR 374 (Reprint).*

- 3.4 Having regard to the facts and the evidence so far adduced I am satisfied that the state has established a prima facie case against A1 – Chomba Phiri. PW1 has positively identified A1 and he was found with the alleged stolen phone.
- 3.5 Having regard to the facts and evidence so far adduced I am satisfied that the state has failed to establish a prima facie case against A2 – Misheck Zulu. None of the witnesses has placed him at the scene of the crime, particularly so PW1 testified that he only recalled A1 as been among the persons that attacked him. PW2 also conceded that A1 did tell him that A2 had nothing to do with the phone as A1 bought the phone from Chilolo. The Police could /did not apprehend the person called Chilolo.

4. DECISION

- 4.1 I hereby find A1 – Chomba Phiri with a case to answer and put him on his defence.
- 4.2 As relates to A2 – Misheck Zulu I hereby find him with no case to answer and consequently acquit him and order that he be released immediately.

Delivered in Open Court at Lusaka this 25th July, 2024



**S. CHOCHO
JUDGE**

