

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

HP/207/2023

BETWEEN:



THE PEOPLE

VS

DANNY MBANGWETA

**BEFORE THE HONOURABLE MR. JUSTICE V. S. SILOKA IN
OPEN COURT ON THE 12TH DAY OF OCTOBER, 2023**

For the State: Ms. Besa Susan and Mr. Voster Munsaka, State
Advocates – National Prosecution Authority

For the Accused: Ms. K. K. Kombe and Ms. M. M. Banda, Legal
Aid Counsel – Legal Aid Board

J U D G M E N T

CASES REFERRED TO:

1. *Mwewa Murono Vs The People* (Z. R. 207) SC.
2. *Yoani Manongo Vs The People* (1981) Z. R. 152 (SC).
3. *Gilbert Chileya Vs The People* (1981) Z. R. 33 (SC).
4. *The People Vs Chrison Mwambona* (1971) Z. R. 168 (H.C).
5. *Dorothy Mutale and Richard Phiri Vs The People* (1995/97)
Z.R. 227.
6. *Kaonga Vs The People* (1976) Z. R. 124 (H. C).
7. *Kompafwile v the people* (1972) ZR, page 242.
8. *Chimbini Vs The People* (Court of Appeal, Zambia) 1973.
9. *Ngosa Vs The People* (1973) Z. R.
10. *Peter Yotamu Hamaenda* (SCZ Judgment No. 24 of 1977)

11. *The People vs Chimbala (1973) Z.R 118.*

LEGISLTATION REFERRED TO:

Statutes:

1. *Section 294 Subsection 1 of the Penal Code, Chapter 87 of the Laws of Zambia.*

Other material/books

1. *Black's Law Dictionary, Ninth Edition, Brayn A. Garner 2009, Thomson Reuters.*

1.0 INTRODUCTION

The Accused herein stands charged with the offence of Aggravated Robbery contrary to **Section 294 Subsection 1 of the Penal Code, Chapter 87 of the Laws of Zambia.**

- 1.1. The particulars of the offence are that Danny Mbangweta, on the 29th day of April, 2022 at Lusaka in the Lusaka Province of the Republic of Zambia, whilst armed with a machete, did steal a bag containing cash amounting to K3,000.00 and two cell phones altogether valued at K5,770.00 the property of Oliver Chali Kachaka and at or immediately before or immediately after the time of such stealing did use or threaten to use actual violence to Oliver Chali Kachaka in order to obtain or retain, or prevent or overcome resistance to its being stolen or retained.

2.0 BURDEN OF PROOF

I warn myself at outset that the onus is upon the prosecution to prove its case beyond all reasonable doubt and there is no onus on the Accused to prove his innocence. The Accused is entitled to give and call evidence or say nothing at all and if he elects to say nothing this does not affect the burden on the prosecution. If, after considering all of the evidence in this case, there is any doubt in my mind as to the guilt of the accused, then the Accused, must be given the benefit of that doubt.

3.0 INGREDIENTS OF OFFENCE

In Order to sustain a conviction, the State must prove the following elements:

- (i) That the assailant was armed with an offensive weapon.*
- (ii) Something was stolen*
- (iii) At or immediately before or immediately after the time of stealing, violence must have been used or threatened to be used to the victim or his property to prevent or overcome resistance to the property being stolen or retained.*

4.0 THE PROSECUTION'S EVIDENCE

- 4.1. The State called four witnesses.
- 4.2. The first prosecution witness was Oliver Chali Kachaka aged 32 years, herein after called **PW1**. The evidence of **PW1** was to the effect that on 29th of April, 2022 at about 20:00 hours, shortly after closing his mobile money booth, he was attacked by an unknown man who went away with the sum of

K3,000.00 cash money and two phones and, that in one of the phones there was a cash float amounting to the sum of K7,000.00.

- 4.3. It was **PW1**'s further evidence that as the unknown man attacked him, he tried by all means to protect his property but that during the struggle the belt to the bag snapped and the unknown man took to his heels.
- 4.4. It was **PW1**'s further testimony that as the unknown man took to his heels, he then shouted for help as he also gave chase. With the help of members of the public, the unknown man was apprehended as he tried to cross the Lusaka-Mongu Road.
- 4.5. It was **PW1**'s further testimony that, after the unknown man was apprehended, he was brought to the Taxi Rank en-route to the Police Station.
- 4.6. It was **PW1**'s further testimony that it was at this juncture that he realized that he had a blood face and that blood was oozing out from three deep cuts on his head. Further, **PW1** narrated that it was also at this point that a machete (P2) with blood stains was shown to him and that it was also confirmed that the said machete and a black bag (P3) were found with the unknown man.
- 4.7. It was also the further testimony of **PW1** that after noticing the injuries suffered, he then proceeded to Kanyama Clinic to seek medical attention.
- 4.8. It was also the further testimony of **PW1** that after being attended to at the clinic, he went back home and that the following day, he went to Kanyama Police Station where he

was given a medical report (P1) which he took to Kanyama Clinic.

- 4.9. According to **PW1**, the sum of K3,000.00 and two phones valued at K2,800.00 and K250.00 respectively were stolen by the unknown man but that the two phones were recovered shortly thereafter, together with the bag.
- 4.10. It was the further testimony of **PW1** that he struggled with the unknown man for about four minutes and that he saw him clearly because there was plenty light since the booth was in a car wash, where there were spot lights.
- 4.11. It was the further testimony of **PW1** that a machete (P2), a black bag (P3) and, two phones (P4(a) & (b)) were recovered from the unknown man, now identified as the now Accused.
- 4.12. In cross-examination, **PW1** told the Court that he was attacked on the 29th of April, 2023 at about 20:00 hours shortly after knocking off.
- 4.13. In further cross examination, **PW1** told the Court that he shouted for help during the attack and, with help of members of the public, the now Accused was apprehended.
- 4.14. In further cross examination, **PW1** told the Court that on the material night, there were very few people outside and that he never lost sight of the now Accused as he gave chase.
- 4.15. In further cross examination, **PW1** told the Court that he saw 4 to 5 people apprehending the now Accused and that the machete was picked from the ground stained with blood from the place where the now Accused was apprehended from.

- 5.0 The second prosecution witness was Abishai Sianzala aged 29 years, herein after called **PW2**.
- 5.1. The gist of **PW2**'s evidence was to confirm that on 29th of April, 2023 he was one of the people that gave chase to an unknown man who attacked PW1, who is a neighbor. Following the chase, **PW1** informed the Court that he managed to apprehend the unknown man, who is now the Accused, as he tried to cross the Lusaka-Mongu Road.
- 5.2. In his further evidence, **PW2** told the Court that as he tried to apprehend the now Accused, he produced a machete and attempted to hack him.
- 5.3. It was the further evidence of **PW2** that, after apprehending the now Accused, he was taken to Trisha Police Station where he was handed over to the police.
- 5.4. **PW2** further confirmed that his neighbor (**PW1**) was then taken to the clinic for medical attention.
- 5.5. In conclusion **PW2** also confirmed that he was one of the people who apprehended the now Accused and that he saw him very clearly because the visibility was very clear as there was plenty light. Further **PW2** identified the bag (P3) and the machete (P2), as items found in the possession of the Accused.
- 5.6. In cross-examination, **PW2** informed the Court that he was a neighbor to **PW1** and that the distance in between their shops was about six (6) meters.
- 5.7. In further cross-examination, **PW2** informed the Court that he saw Oliver (**PW1**) being attacked and that he saw someone running away with a bag.

- 5.8. Further under cross-examination, **PW2** told the Court that as he gave chase to the attacker, the attacker threatened to hack him with a machete.
- 5.9. Further under cross-examination **PW2** informed the Court that when the attacker was apprehended, he was found with a bag and a machete.
- 5.10. Further under cross-examination, **PW2** told the Court that he saw and chased the now Accused and that the now Accused was the rightful person who was apprehended by the members of the public.
- 6.0 The third prosecution witness was Martin Kaya Twasa aged 37 years herein after called **PW3**.
- 6.1. **PW3**'s testimony was to the effect that on the 29th of April 2023, while seated in his Taxi which was parked at the Taxi Rank at about 20:00 to 22:00 hours he saw one of his neighbours (**PW1**) being attacked.
- 6.2. According to **PW3**, he saw **PW1** wrestling with an unknown man, who in the process raised a panga and hit **PW1** on the head and then fled away, running towards the western direction.
- 6.3. It was **PW3**'s further evidence that when the attacker noticed that he was being followed, he changed direction and crossed the road and ran towards Relax Bar, which is across Lusaka-Mongu Road.
- 6.4. It was the further testimony of **PW3** that as the attacker was fleeing, members of the public, including himself gave chase and managed to apprehend the attacker in front of Relax Bar.

- 6.5. It was **PW3**'s further testimony that before the attacker was apprehended, he was first hit behind after which he wrestled with him because he still had the machete in one hand and the bag in the other hand.
- 6.6. It was **PW3**'s evidence that as he wrestled with the attacker, he was able to apprehend the man and got the bag and machete after which he was taken to the Police Station.
- 6.7. It was the further testimony of **PW3** that he did not lose sight of the man he was chasing because the area was well lit and that the visibility was very clear. **PW3** identified the now Accused as the man he apprehended and handed over to the Police. **PW3** also identified the machete (P1) and bag (P3) as the items he recovered from the now Accused.
- 6.8. In cross-examination, **PW3** told the Court that he was present when **PW1** was attacked, though he was about 10 meters away.
- 6.9. In further cross-examination, **PW3** informed the Court that he saw the now Accused very well because the visibility was very good.
- 6.10. In further cross-examination, **PW3** told the Court that it was him with other members of the public who apprehended the now Accused in front of Relax Bar.
- 6.11. In further cross-examination, **PW3** informed the Court that it was him who apprehended the now Accused and while apprehending the now Accused, he recovered a black bag (P3) and a machete (P1).
- 6.12. In re-examination, **PW3** told the Court the he saw the Accused very well because the lighting system was very clear.

- 7.0 The fourth prosecution witness was Eugen Mweemba, aged 42 years, arresting officer in this matter, herein after called **PW4**.
- 7.1. In brief, the evidence of **PW4**, was to the effect that he opened up a docket, carried out investigations and arrested the now Accused for the current offence. **PW4** further tendered into evidence P1 up to P5.
- 7.2. In cross-examination, **PW4** informed the Court that when the now Accused was interviewed, he informed him that he worked as a General Worker who off loads cement and that on that day he was paid some money together with his co-workers.
- 7.3. In further cross-examination, **PW4** told the Court that when the now Accused was interviewed, he never informed him that he was in the process of paying his friends and that his two friends were also interviewed but that they never mentioned the issue of waiting to receive payments from the now Accused. That was the case for the State.

8.0 THE DEFENCE'S EVIDENCE

- 8.1. In his defence, the Accused, herein after called **DW1** elected to give sworn evidence and called no witnesses.
- 8.2. In his evidence in chief, **DW1** informed the Court that on the 29th of April, 2022 he went for work at Royal Inn where he works as a labourer who off loads cement. After knocking off he received the day's pay of K500.00 which was also inclusive of the pay of his two friends.

- 8.3. It was his further evidence that after noticing that two of his friends were still showering, he decided to rush home and leave money for food with his better half.
- 8.4. It was also his further evidence that as he was returning from his home to the work place where his friends were waiting, along First Road, he just heard people shouting thief, thief and that in a split second the mob to his shock, descended upon him and apprehended him for something he did not know.
- 8.5. It was the further testimony of **DW1** that after being apprehended he was taken to the Police along First Road where his friends were phoned to come and upon arrival, the friends were also remanded in custody; but later on released.
- 8.6. It was the further testimony of **DW1** that he knew nothing about the K3,000.00, black bag and machete.
- 8.7. In cross-examination, **DW1** told the Court that he did not attack **PW1** and that **PW1** merely implicated him in this matter.
- 8.8. In further cross-examination DW1 told the Court that he was attacked by a mob but that he did not know why the mob attacked him. That was the case for the Defence.

9.0 SUBMISSIONS

- 9.1. I am greatly indebted to the Defence for the well researched submissions. The State on the other had did not file any submissions. This failure is not prejudicial to their case as the Court has considered the evidence on record. The crux of the Defence submission was that the State has failed to prove their case against the Accused beyond reasonable

doubt as guided in the case of Mwewa Murono Vs The People.⁽¹⁾

- 9.2. It was also the submission of the Defence that the evidence of **PW1** to the effect that the Accused person stole from him, the sum of K3,000.00 and two phones cannot be relied on as the prosecutions failed to establish proof that **PW1** had in his possession the said property.
- 9.3. The Defence also submitted that though it is on record that **PW1** was working as a Mobile Money Agent, the prosecution failed to bring any statement from any mobile service provider to show that indeed on that particular day he sent and received money. The Defence urged the Court to take judicial notice that, during mobile money transactions, both sender and receiver received messages confirming the transactions.
- 9.4. The Defence further submitted that the State has failed to prove the case against the Accused beyond any reasonable doubt because the possibility of an honest mistake cannot be ruled out unless there is some other connecting link between the Accused and the offence which would render a mistaken identification too much of a coincidence.
- 9.5. The Defence further submitted that the Court should take into consideration the circumstances under which the offence was committed coupled, with the confusion that existed during the time the Accused was apprehended and, urged the Court to carefully examine the possibility of an honest mistake in identifying the Accused as **PW1**'s assailant since it was dark.

9.6. Further, the Defence submitted that the three witnesses confirmed that the ordeal happened within a short time, failing to afford adequate time to the complainant to properly identify his assailant and worse still, the people who identified the Accused did not previously know him, creating room for an honest mistake. In support of this assertion the Defence relied on the case of Yoani Manongo Vs The People,⁽²⁾ where the SC guided that:

“The concept of honest mistake is normally associated with single identifying witness cases, but of course it is not inconceivable that in a case where there are more than one identifying witness, an honest mistake can be made.”

9.7. It was the further submission of the Defence that, the opportunity for a positive and reliable identification was poor, and it follows that the possibility of an honest mistake cannot be ruled out, unless there is some other connecting link between the Accused and the offence which would render a mistaken identification too much of a coincidence.

9.8. The Defence further submitted that such a link was not established by the prosecution, more so that, the Police did not carry out finger print examination on the phones and the machete recovered, making it very difficult to know whether the Accused person did at any point handle the said phones as the Accused is on record as having testified that he did not steal the phones and that the machete was not his. Failure to uplift finger prints, was therefore, a serious dereliction of duty by the Police, especially that no attempt to conduct the

finger print examination on the phones was made. In support of this assertion, the Defence referred the Court to the case of **Gilbert Chileya Vs The People**⁽³⁾ in which the SC stated:

“Dereliction of duty is failing to make a test which could conclusively prove one way or another the claims of the contending parties would result in a presumption, albeit a rebuttable one in favour of the applicant.”

9.9. Similarly, the Defence referred the Court to the case of **The People Vs Chrison Mwambona**⁽⁴⁾ where the Court held:

“It is the function of the police to secure, to investigate the matter as fully as possible and to pursue every line of inquiry which may help to throw light on it, irrespective of whether any particular line appears prejudicial or favourable to the suspect. In short, it is the function of the police to seek out as much evidence as they can and lay it all before the Court.”

9.10. The Defence further urged the Court to acquit the Accused on the premise that the evidence of **PW1**, **PW2** and **PW3** was marred with a lot of inconsistencies and urged the Court to resolve the said inconsistencies in favour of the Accused person. The Defence referred the Court to the case of **Dorothy Mutale and Richard Phiri Vs The People**⁽⁵⁾ where the Court held:

“Where two or more inferences are possible, it has always been a cardinal principle of criminal law that the Court will adopt the one, which is more

favourable to an accused if there is nothing in the case to exclude such inference.”

9.11. The Defence further referred the Court to the case of **Kaonga Vs The People**⁽⁶⁾ where the Court held as follows:

“Where an Accused gives an explanation, which might reasonably be true, the Accused is entitled to an acquittal even if the Court does not believe it; an Accused is not required to satisfy the Court as to his innocence, but simply to raise reasonable doubt as to his guilt. A fortiori, such a doubt is present if there exists an explanation which might reasonably be true; for the Court to be in doubt does not imply a belief in the honesty generally of the Accused nor the truth of the particular explanation in question.”

9.12. In Conclusion, the Defence beseeched the Court to acquit the Accused person and set him at liberty.

10.0 FINDINGS, DECISION AND CONCLUSION

10.1. I am grateful to the Defence for the detailed submissions presented before me. As earlier on stated the state are not prejudiced for not filing any submissions since the courts has carefully examined the evidence on record. I shall now state my findings of facts and apply the law there to.

11.0 In this matter I have found the following facts established;

- (1) PW1 operated an Airtel Money Booth situate in a car wash near First Road in Kanyama.**
- (2) PW2 was attacked on the material night.**

- (3) *PW1 suffered deep cuts on the face as a result of the attack.*
- (4) *The now Accused was near the car wash at the material time and was apprehended by the members of the public.*
- (5) *The area along First Road is busy.*

11.1. I have found the following facts to be in issue;

- (a) *Whether PW1 had cash money as he was knocking off.*
- (b) *Whether PW1, PW2, and PW3 identified and apprehended the rightful suspect.*

11.2. THE LAW

11.3. The offence pursuant to which the Accused has been charged is aggravated robbery contrary to **Section 294 Subsection (1) of the Penal Code Chapter 87 of the Laws of Zambia.**

This Section provides as follows;

“Any person who, being 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 and is liable on conviction to imprisonment for life, and, notwithstanding Subsection (2) of Section 26 shall be sentenced to

imprisonment for a period of not less than fifteen years.”

11.4. Therefore, from the said Section, the State to sustain a conviction must prove that;

(i.) ***The now Accused was the assailant armed with an offensive weapon or instrument, or there must be two or more assailants;***

(ii.) ***At or immediately before or immediately after the time of stealing, violence must have been used or threatened to be used to the victim or his property to prevent or overcome resistance to the property.***

11.5. In resolving the issues before me, I will ask myself questions.

The first question I ask myself is whether it is the now Accused who was the assailant?

11.6. From the evidence on record it was the testimony of **PW1, PW2, PW3** that it was the now Accused who attacked and robbed **PW1** of his money, bag and two mobile phones. According to **PW1, PW2** and **PW3**, the now Accused was seen clearly, chased and later on apprehended. On the other hand, the Defence submitted that the witness for the State made an honest mistake and therefore, could have apprehended a wrong person. The Defence submitted that the issue of an honest mistake is made concrete by the State's failure to have failed to find something with the Accused that could have corroborated the evidence.

11.7. I have considered the submissions of both parties. In my considered view, it is the now Accused who attacked **PW1**. I

have arrived at this conclusion because of the testimony of **PW1, PW2** and **PW3**. **PW1, PW2** and **PW3** tendered direct evidence of what they saw and did. Direct evidence according to **Black's Law Dictionary, Ninth Edition, Brayn A. Garner 2009, Thomson Reuters** is:

“Evidence that is based on personal knowledge or observation and that if true proves a fact without inference or presumption.”

11.8. In line with that guidance, the submission by Defence Counsel that this Court draws an inference that is more favourable to the Accused as guided in **Dorothy Mutale and Richard Phiri Vs The People** is distinguishable and therefore does not apply. It does not apply because the testimony of **PW1, PW2** and **PW3** was direct evidence, which does not require the Court to draw any inference. Actually, if there is any inference to be drawn by the Court, that inference will be that, it is the now Accused who attacked **PW1**. I say so because the very fact that the now Accused was found with items that belonged to **PW1** shortly after the attack confirms that it is the now Accused who committed the offence, as guided in **Kampafwile vs the People**⁷. Further, all the State witnesses consistently identified the now Accused as the unknown man who attacked **PW1**.

11.9. In arriving at the above conclusion, I am also aware that the Defence vehemently argued that the State witnesses could have made an honest mistake. In support of this argument

the Defence relied on the case of Yoani Manongo Vs The People, where it was held that:

“The concept of honest mistake is normally associated with single identifying witness cases, but of course it is inconceivable that in a case where there are more than one identifying witness an honest mistake can be made.”

11.10. In my considered view, the argument of an honest mistake does not arise because the State witnesses were clear and satisfactory. Further, the testimony of all the state witnesses was tested and their evidence remained firm to the effect that it was the now Accused who was seen attacking **PW1** and later on chased and apprehended.

11.11. In saying so, I am guided by the case of Chimbini Vs The People,⁽⁸⁾ where the Supreme Court stated as follows:

“The case against the appellant rests extremely on the evidence of the Complainant. It is always competent to convict on the evidence of a single witness if the evidence is clear and satisfactory in every respect; where the evidence in question relates to identification there is the additional risk of honest mistake, and it is therefore necessary to test the evidence of a single witness with particular care. The honesty of the witness is not sufficient; the Court must be satisfied that he is reliable in his observation. Many factors must be taken into account, such as whether it was daytime or night-

time and, if the latter, the state of the light, the opportunity of the witness to observe the Appellant.....”

11.12. In the present case, I have considered the fact that the attack was during the night but all the State witnesses informed the Court that the area where the attack was staged was well lit and all the witnesses informed the Court that, they had ample time to see the Accused and never lost sight of him. Further, the testimony of all the witnesses was tested by the Defence. Taking all these aspects into consideration, it is my firm view that it is the now Accused who attacked **PW1**, as confirmed by all the State witnesses.

11.13. Closely related to the above argument, the Defence also argued that the opportunity for a positive and reliable identification was poor, and it follows that the possibility of an honest mistake cannot be ruled out unless there is some other connecting link between the Accused and the offence which would render a mistaken identification too much of a coincidence.

11.14. The Defence further submitted that such a link has not been established by the prosecution more so that the police did not carry out any finger print examination on the phones recovered and the machete making it very difficult to know whether the Accused person did at any point handle the said phones as the Accused is on record as having testified that he did not steal the phones and that the machete was not his. The Defence relied on the case of **Kaonga Vs The**

People for the guidance that, where an Accused gives an explanation, which might reasonably be true, the Accused is entitled to an acquittal even if the Court does not believe it.

11.15. The Defence further submitted that it was the duty of the police to carry out finger print examination on suspected items of crime and that failure to do so amounts to direction of duty which should operate in the favour of the Accused person that he did not handle the phones and machete and therefore did not participate in the commission of the offence. The Defence referred the Court to the case of **Gilbert Chileya Vs The People**, where the Court stated:

“Dereliction of duty in failing to make a test which could conclusively prove one way or another the claims of contending parties would result in a presumption, albeit a rebuttable one in favour of the Applicant.”

11.16. I have considered the argument by the Defence. In my considered view, the issue of direction of duty does not arise in this case. It does not arise because the failure to uplift finger prints does not prejudice the Accused. In line with that proposition, the Supreme Court in the case of **Peter Yotamu Hamaenda**⁽¹⁰⁾ guided as follows:

“Where the nature of a given criminal case necessitates that a relevant matter be investigated but the investigating agency fails to investigate it in circumstances amounting to dereliction of duty

and in consequence of that dereliction of duty the Accused is seriously prejudiced because evidence which might have been favourable to him has not been adduced, the dereliction of duty will operate in favour of the Accused and result in an acquittal unless the evidence given on behalf of the prosecution is so overwhelming as to offset the prejudice which might have arisen from the dereliction of duty.”(court emphasis)

11.17. From the foregoing, it is my considered view that the failure by the State to uplift finger prints does not operate in favour of the Accused and cannot result in an acquittal because the evidence by the State is so overwhelming as to offset the prejudice which might have arisen from the dereliction of duty.

The second question posed is, whether something was stolen.

12.0. The Defence also submitted that the evidence of **PW1** to the effect that the Accused person stole from him the K3,000.00 and two phones cannot be relied on as the prosecution failed to establish proof that **PW1** had in his possession the said property. According to the Defence, **PW1** failed to bring any statement from any mobile service providers to show that indeed on that particular day he sent and received money. The Defence relied on the case of The **People Vs Chrison Mwabona** where the Court held that:

“It is the function of the Police to investigate the matter fully as possible and to pursue every line of inquiry which may help to throw light on it, irrespective of whether any particular line appears prejudicial or favourable to the suspect. In short, it is the function of the Police to seek out as much evidence as they can and lay it before the Court.”

12.1. I have considered the submissions of the Defence. In my considered view, it is clear from the record that **PW1** was violently robbed of his money, phones and bag, which items were found with the Accused. Therefore, the fact that no money was found with the Accused does not change anything because the now Accused was still found with the property which belonged to **PW1** as corroborated by **PW2** and **PW3**.

13.0 The third question posed is, whether at or immediately before or immediately after the time of stealing, violence must have been used or threatened to be used to the victim or his property to prevent or overcome resistance to the property.

13.1. From the evidence on record, it is not in dispute that violence was used when **PW1** lost his money, bag and phones. Further, the medical report clearly indicates that **PW1** was injured on the material date. The Court also using ocular observation confirmed that **PW1** suffered serious injuries during the attack. Regarding violence, the Supreme Court in the case of **The People vs Chimbala**¹¹ held that:

“It is necessary, under a charge of robbery or aggravated robbery, to prove that the taking and force used or threatened contemporaneously with the taking was accompanied by an intent to deprive the owner permanently of the thing taken.”

13.2. In this case there was actual force applied on the victim when his property was being taken, which force threatened the victim. **PW1** struggled with the attacker, which struggle was contemporaneous with the taking of his property with intent to permanently deprive him of the same.

13.3. CONCLUSION

Without more, I have found that the State has discharged its burden beyond any reasonable doubt and I find the Accused guilty of the offence of aggravated robbery as charged and I convict him accordingly.

**DELIVERED AT LUSAKA IN OPEN COURT THIS 12TH DAY OF
OCTOBER, 2023.**


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