

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

HP/203/2024

THE PEOPLE
VS
BRINO MUMBA
GOODSON LIMWANYA



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 Brino Mumba and Goodson Limwanya.

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 or Prosecution called three witnesses to aid their case.
- 2.3** PW1 – Detective Constable Ernest Banda testified under oath that on 26th August, 2023 whilst on duty at Kuku Police Post he received a complaint around 23 hours of case of a aggravated robbery from PW2. He testified that, accompanied by PW2 he and other officers were led to Tie City Bar where PW2 identified A1 – Brino Mumba. He further testified that on 1st September 2023 around 22 hours whilst on duty he received a tip off from an informant, which led to the apprehension of A2 – Goodson Lumwanya. It was his testimony that he handed the case over to PW3 – the dealing officer.
- 2.4** Under cross examination PW1 confirmed that PW2 led him to the apprehension of A1. He further testified the black Gucci slippers were recovered at A2's house.
- 2.5** PW2 – Gift Sikanyika also the victim /complainant of the offence testified under oath. It was his testimony that on 23rd August, 2023 he was walking from work he came across A2 and his friend whom he didn't know. A2's friend got his slippers and gave them to A2, even after he said no to request of A2 that PW2 give him his slippers. He testified that he then proceeded to Kuku Police Station to tell the Police as he wanted his slippers back.
- 2.6** He further identified A2 and said he did not know A1 who wasn't there on day his slippers were taken. It was his testimony that he was contacted by the Police around 23 hours on the same day to accompany

them to A2's house who was apprehended. He testified that his white Gucci slippers were worth K300.00.

- 2.7** Under cross-examination PW2 conceded that he owed A2, K70.00 and that he had informed the police that he wanted to withdraw the case but they refused.
- 2.8** PW3 – Detective Inspector Joakim Chitende Mulenga testified under oath that on 24th August, 2023 whilst on duty at Kuku Police Post CID department, he received a docket of aggravated robbery where PW2 reported that he was attacked by five (5) men armed with planks on 23rd August 2023 around 11 hours in the morning. He further testified that PW2 was robbed of K1,000.00 cash and a pair of black Gucci slippers valued at K300.00.
- 2.9** PW3 testified that on 26th August, 2023 he found that A1 had been apprehended and detained. He testified that A1 informed him that it was A2 that threatened and robbed PW2 of his cash and slippers. He further testified that he found on 1st September, 2023 that A2 had been apprehended and detained. PW3 further testified he recovered the black Gucci slippers were found in A2's home after A2 led him there.
- 2.10** Under cross examination PW3 urged the Court to believe his testimony over PW2's evidence. Also, to believe his testimony over any inconsistencies with PW1's evidence.

3. THE LAW

- 3.1** 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.

3.2 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 mirono vs. The People (2004) ZR 207.***
3. ***The People V Mukemu (1972)ZR 374 (Reprint).***

3.3 Having regard to the facts and the evidence so far adduced I am satisfied that the State has failed to establish a prima facie case against the Accused Persons. PW1 and PW3's testimony leaves one to wonder as to what manner of investigation was conducted in this matter. PW3's testimony is in conflict with evidence of PW2 who is the prosecution's key and only eye witness to the alleged offence. In fact, the entirety of the prosecution witness evidence is contradictory in material facts. It lamentably fails to prove the material elements of the preferred charges or even what was stolen if anything.

3.4 The complainant PW2, categorically informed the Police and Court that only his white Gucci slippers and not any cash money was taken from him. PW2 testified that his white Gucci slippers were never recovered, or found on A2. PW2 further testified that he was not attacked or threatened by A2 and his friend, who were not armed.

4. DECISION

4.1 The prosecution witnesses testimony is in my opinion so manifestly unreliable that I could not reasonably and safely convict on. I shudder to think it was fabricated and the witnesses appeared to make up testimony on the stand. How else could PW1 and PW3 both police officers give contradictory evidence on the case they claim to have investigated.

- 4.2 I hereby find that the Accused Persons Brino Mumba and Goodson Limwanya with no case to Answer and consequently acquit them both of the offence of Aggravated Robbery.
- 4.3 It is hereby Ordered that both Brino Mumba and Goodson Limwanya are hereby acquitted and are to be released immediately.

Delivered in Open Court at Lusaka this 19th July, 2024



S. CHOCHO
JUDGE

