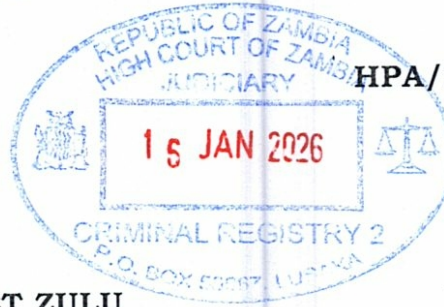


IN THE HIGH COURT OF ZAMBIA
 HOLDEN AT LUSAKA
 (Criminal Jurisdiction)



BETWEEN:

VIOLET ZULU
 V
 THE PEOPLE

BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 16th DAY OF JANUARY,
 2026

For the Appellant : Mr K. Phiri and Mr E. M Mutale, Musa Dudhia & Company
 For the Respondent : Ms N. Mwewa, State Advocate, NPA

J U D G M E N T

CASES REFERRED TO:

1. *R v Windasi* 1963 R&N 10,
2. *Shampeta and another v The People* 1967 ZR 168
3. *Mwaba v The People* 1974 ZR 264
4. *Patrick Masissani v The People* 1977 ZR 331
5. *The People v John Kapalu Kanguya* 1979 ZR 288
6. *Semmy Lasco Kavinga v the People* CAZ Appeal No 51 of 2018
7. *Like Silishebo v The People* Appeal No 172 of 2018 [2019]
8. *Dennis Munyinya v The People* Appeal No 51/2023

LEGISLATION REFERRED TO:

1. *The Constitution of Zambia, Chapter 1 of the Laws of Zambia*
2. *The Penal Code, Chapter 87 of the Laws of Zambia*
3. *The Criminal Procedure Code, Chapter 88 of the Laws of Zambia*
4. *The Termination of Pregnancy Act Chapter 304 of the Laws of Zambia*
5. *The Legal Aid Act, Chapter 34 of the Laws of Zambia*
6. *The Children's Code Act No 12 of 2022*

1. INTRODUCTION

1.1 The Appellant herein, Violet Zulu, appeared before the Subordinate Court of the First Class sitting at Lusaka facing

one charge of Abortion contrary to **Section 152 of the Penal Code Chapter 87 of the Laws of Zambia.**

- 1.2 The particulars of the offence alleged that Violet Zulu, on dates unknown, but between 6th December, 2023 and 26th December, 2023 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, being a woman with a child, with intent to procure her own miscarriage, did unlawfully administer noxious herbs to herself.
- 1.3 Violet Zulu on being called upon to plead to the charge, admitted the said charge. She was convicted of the offence and sentenced to seven (7) years simple imprisonment with effect from 3rd January, 2024.
- 1.4 Dissatisfied with the conviction and sentence, Violet Zulu on 5th July, 2024, applied for leave to appeal out of time. The record does not show whether the application was granted. However, the appeal was processed and transmitted to this Court.

2. GROUNDS OF APPEAL

- 2.1 Violet Zulu advanced the following amended grounds of appeal:
 1. *The learned trial Magistrate erred in law and in fact by failing to inform Violet Zulu of her right to independent legal representation before, during and after taking plea.*
 2. *The learned trial Magistrate erred in law and in fact by failing to take the necessary steps to ensure that Violet Zulu understood every element of the charge and the consequences of pleading guilty to the charge.*

3. *The learned trial Magistrate erred in law and in fact by convicting Violet Zulu on her own plea of guilty which was not unequivocal;*
4. *The learned trial Magistrate erred in law and in fact by failing to warn Violet Zulu who was unrepresented that the offence with which she was charged carried a long custodial sentence.*
5. *The learned trial Magistrate erred in law and in fact by failing to inform Violet Zulu who was unrepresented that there existed lawful grounds for terminating the pregnancy which formed a defence to the offence that she was charged with;*
6. *The learned trial Magistrate erred in law and in fact by failing to take into account Violet Zulu's state of mind at the time of taking plea and admitting guilt and by further failing to address the prolonged pre-arraignment detention prior to the acceptance of the charge and plea;*
7. *The learned trial Magistrate erred in law and in fact when she imposed a sentence of seven years simple imprisonment as the sentence did not reflect the leniency that should be accorded to a first-time offender; and*
8. *The learned trial Magistrate erred in law and in fact when she neglected to take into account that Violet Zulu readily admitted the charge and did not waste the Court's time in arriving at an appropriate sentence for a first-time offender.*

3. SUBMISSIONS AT THE HEARING

SUBMISSIONS BY COUNSEL FOR VIOLET ZULU

- 3.1 At the hearing, Counsel for Violet Zulu relied on the amended grounds of appeal, which were filed on 31st October, 2025, stating that they advanced eight grounds of appeal.
- 3.2 In augmenting, Counsel stated that in the first six grounds of appeal, the pertinent question to be addressed was whether in light of the defective plea, a conviction could be sustained. It was Counsel's submission that the record spoke for itself, and the conclusion that ought to be drawn was that the conviction was improper, as it was based on a plea of guilty that was defective. Accordingly, it should be set aside.
- 3.3 Further submission was made, that should the Court be inclined to set aside the conviction, it would not be in the interests of justice to send back the case to the Court below for fresh proceedings, as Violet Zulu had been behind bars for two years as at December, 2025.
- 3.4 It was contended that the interests of justice would be better served, if Violet Zulu was acquitted and set at liberty. Reliance was placed on the case of *Mwaba v The People* ⁽³⁾, with submission being made, that the time that the Appellant had spent in custody was taken into consideration, and the Court said that it would not be in the interests of justice to order a re-trial.

3.5 Further reliance was placed on the case of ***Silishebo v The People*** (7), with Counsel stating that the Supreme Court took a similar position in that matter.

3.6 The submission was also that should the Court not uphold grounds one to six, then reliance was placed on the seventh and eight grounds.

RESPONSE BY COUNSEL FOR THE STATE

3.7 Counsel, in response, submitted that they filed a response on 27th November, 2025. She stated that a perusal of the record of the Court below, did not reveal any procedural impropriety and the plea was unequivocal.

3.8 Thus, Counsel's prayer was that the sentence be upheld.

3.9 The prayer in the alternative, was that should the Court agree with Violet Zulu's submissions, the matter should be sent back to the Subordinate Court for rehearing, as Violet Zulu had not served as substantial portion of the sentence, and she would not suffer any prejudice.

REPLY BY COUNSEL FOR VIOLET ZULU

3.10 The submission in reply was that arguments in reply were filed on 16th December, 2025 on which reliance was placed. Counsel stated that Violet Zulu would continue to suffer prejudice should the matter be set back for re-trial as she would continue being behind bars through no fault of her own, and be subjected to the very system that misconducted itself. Thus, the interests of justice would be served if Violet Zulu was set at liberty.

4. DECISION OF THIS COURT

4.1 I have considered the appeal.

4.2 The first four grounds of appeal were argued together. They allege as follows:

1. *The learned trial Magistrate erred in law and in fact by failing to inform Violet Zulu of her right to independent legal representation before, during and after taking plea.*
2. *The learned trial Magistrate erred in law and in fact by failing to take the necessary steps to ensure that Violet Zulu understood every element of the charge and the consequences of pleading guilty to the charge.*
3. *The learned trial Magistrate erred in law and in fact by convicting Violet Zulu on her own plea of guilty which was not unequivocal; and*
4. *The learned trial Magistrate erred in law and in fact by failing to warn Violet Zulu who was unrepresented that the offence with which she was charged carried a long custodial sentence.*

4.3 Violet Zulu argued that the first four grounds of appeal constituted procedural irregularities. Further argument was made, that Violet Zulu was arrested and charged with the offence of abortion on or before 27th December, 2023. It was stated that she appeared before the Subordinate Court after a period which exceeded fourteen (14) days of being detained, and she was in a postpartum state to answer to the charge.

- 4.4 Thus, as the record showed, Violet Zulu pleaded guilty to the charge. Reference was made to **Section 204 of the Criminal Procedure Code Chapter 88 of the Laws of Zambia** on taking plea.
- 4.5 Based on that provision, it was argued that a Court has a duty firstly, to state the charge, then secondly to explain the charge, and thereafter ask an accused person whether they admit or deny the charge.
- 4.6 The argument was that special protection is accorded to accused persons who are unrepresented, as they are taken not to have the benefit of seeking advice from Counsel on the charges that they face, and the implication arising therefrom.
- 4.7 Therefore, it is incumbent upon the Court to offer protection by explaining the charge and ensuring that an accused person fully understands the charge that they are pleading to.
- 4.8 Reliance was placed on **Article 18 (2) (b) of the Constitution of Zambia** as providing that:

“(2) Every person who is charged with a criminal offence-

(a).....

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;”

- 4.9 The argument was that in this case, Violet Zulu was taken to Court on or about 12th January, 2024 after she was arrested on or about 27th December, 2023, and she was in postpartum condition and was unrepresented when she took plea.
- 4.10 It was argued that the cumulative effect of these circumstances, being the prolonged detention without charge, lack of legal representation and Violet Zulu's vulnerable physical and emotional state, cast doubt on whether she understood the nature and consequences of the charge at the time that she took plea.
- 4.11 Therefore, the plea taken was tainted with procedural irregularity, and could not be said to have been made in full compliance with the constitutional guarantees of fair hearing as provided in **Article 18 (2)**.
- 4.12 Reliance was placed on the cases of ***Shampeta and another v The People* (2)** and ***The People v John Kapalu Kanguya* (5)** as further authority.
- 4.13 The argument was that the Court has a duty to ensure that an accused person, especially an unrepresented one, understands the charge that they are facing, and where they plead guilty, that they admit each and every element of the offence charged.
- 4.14 Reliance in that regard was placed on the case of ***R v Windasi* (1)**, where the Court stated that:

“It has been pointed out time and time again by the High Court that Magistrates before accepting

a plea of guilty, must satisfy themselves that the accused admits each of the ingredients of the offence with which he is charged. Magistrates have been instructed that an answer "I admit" may be equivocal and that it must be elaborated. It is the duty of a Magistrate to put questions to the accused, particularly if he is not represented, so that the Magistrate satisfies himself that the accused admits each of the ingredients of the offence with which he is charged."

- 4.15 It was stated that in this matter, the record did not show that Violet Zulu admitted every element of the offence of abortion, as the record showed that while the charge was explained to her, not all the elements of abortion were explained which would have confirmed that Violet Zulu understood the charge before she took plea.
- 4.16 In contending that the plea was unequivocal, the submission was that this was because when Violet Zulu took plea, she stated that she was five to six months pregnant. However, the statement of facts read that she was eight months pregnant.
- 4.17 Further argument was made, that Violet Zulu stated that the foetus came out before its' father denied responsibility, whereas the statement of facts suggested that the alleged father denied responsibility, and thereafter, Violet Zulu allegedly aborted the foetus.

- 4.18 It was also stated that Violet Zulu took herbs and not that the herbs were taken to procure an abortion.
- 4.19 Relying on the case of ***Semmy Lasco Kavinga v the People*** ⁽⁶⁾, the argument was that the plea of guilty was unequivocal, as it was not free of ambiguities, and as the accused person was unrepresented, the Magistrate had a duty to ensure that the accused person understood the constituent elements of the offence charged, and then asked whether they admitted the said elements.
- 4.20 In response, the State argued that ***Section 204 of the Criminal Procedure Code*** makes no explicit provision that the Court should explain the charge whether an accused person is represented or not. It was contended that the trial Magistrate was on firm ground in convicting Violet Zulu as the provisions of ***Section 204 of the Criminal Procedure Code*** were complied with, as the plea was taken in Nyanja and she admitted the charge.
- 4.21 Further argument was made, that the provisions of ***Article 18 (2) (b) of the Constitution*** were complied with as Violet Zulu was taken to Court two weeks after she was apprehended, and the charge was explained to her in Nyanja, the language that she preferred.
- 4.22 Referring to the case of ***R v Windasi*** ⁽¹⁾ it was conceded that more questions should have been asked and further reference was made to ***Section 152 of the Penal Code***.
- 4.23 The argument was that in line with that provision, the relevant ingredients of abortion are that a pregnant woman

must knowingly take a substance or use force to procure a miscarriage.

- 4.24 Therefore, where an accused person denies any of those elements, the plea will be unequivocal
- 4.25 Reliance in that regard was placed on the case of ***Patrick Masissani v The People*** ⁽⁴⁾.
- 4.26 Based on that, the argument was that Violet Zulu's admission of the offence did not match the facts which were presented, which did not relate to the offence of abortion, as she did not admit that she was pregnant and that she took herbs.
- 4.27 Thus, the questions relating to the correct duration of the pregnancy at the time and the father of the child not taking responsibility were immaterial to the charge and the plea was unequivocal.
- 4.28 Ground Five of the appeal contends that the trial Magistrate erred in law and in fact, by failing to inform Violet Zulu that there existed lawful grounds for terminating a pregnancy which formed a defence to the offence with which she was charged.
- 4.29 Reliance was placed on the case of ***Mwaba v The People*** ⁽³⁾ stating that in that case, the Court held that the Magistrate was under a duty to explain the statutory defence to the appellant before his plea was recorded, and certainly before he was put on his defence.

- 4.30 It was argued that **Section 3 of the Termination of Pregnancy Act, Chapter 304 of the Laws of Zambia**, provides a defence to the offence of abortion.
- 4.31 The argument was the said provision provides for a complete defence, and the Magistrate should have explained the said defence to Violet Zulu at the time that she took plea. As such, Violet Zulu was deprived of an opportunity of setting up the defence when she took plea and the conviction should be quashed.
- 4.32 In response, the State conceded the provisions of **Section 3 of the Termination of Pregnancy Act**. They further agreed that as was held in the case of *Mwaba v The People* ⁽²⁾, the Magistrate should have explained the statutory defence to Violet Zulu.
- 4.33 Argument was made, that the Court of Appeal in the case of *Dennis Munyinya v The People* ⁽⁸⁾ had this to say on the plea in relation to the case of *Mwaba v The People* ⁽³⁾:

“We have not observed anything wrong with the way the trial Magistrate approached the availability of the defence in the proviso. Even though the appellant was not represented, having opted not to say anything about his belief that the prosecutrix was above the age of sixteen years, it was not for the trial Magistrate to tell him to say something about it. Such an approach would have been a misdirection as it would have had the effect of suggesting to the appellant that raising the

defence was probably desirable in the circumstances of the case.”

4.34 It was argued that the Court below was on firm ground in convicting Violet Zulu despite the availability of the defence in the ***Termination of Pregnancy Act*** as mentioning the defence under that Act would have been suggestive to Violet Zulu, when herself in her very detailed plea, did not mention it.

4.35 It was further argued that no prejudice was occasioned to Violet Zulu as the defence was not available to her, as she stated that the foetus was delivered in the toilet, and it was thrown in the river where it was retrieved by the Fire Brigade.

DECISION

4.36 The record shows that when Violet Zulu took plea before the Subordinate Court, she was unrepresented. It was argued that as Violet Zulu was unrepresented, the trial Court had a duty to explain the charge and the ingredients of the offence and ensure that Violet Zulu understood them, before she was called upon to plead to the charge.

4.37 ***Section 8*** of the ***Legal Aid Act Chapter 34 of the Laws of Zambia***, provides that:

“8. (1) A person charged with an offence before a subordinate court may apply to the court for legal aid and if the court considers that-

(a) the accused has insufficient means to enable the accused to engage a practitioner to represent the accused; and

(b) having regard to all the circumstances of the case, it is desirable in the interests of justice that the accused should be represented by a practitioner;

the court may grant a legal aid certificate in the prescribed form.”

4.38 From the provision, it is clear that for persons who appear before the subordinate Court on criminal charges, the grant of legal aid is not mandatory. However, a person may apply for legal aid, and the Court if satisfied, may grant a legal aid certificate.

4.39 However, in **Section 72 (2) of the Children’s Code Act No 12 of 2022**, a child who appears in a criminal Court, is entitled to legal representation, and under sub section (3) of the said Section, where a child who is in conflict with the law cannot afford legal representation of their own choice, the Legal Aid Board shall provide legal aid services.

4.40 The wording of **Section 8 of the Legal Aid Act**, is such that it does not place a duty on the Subordinate Court to inform an accused person of their right to apply for legal aid, as it states that an accused person may apply for legal aid.

4.41 When it comes to the taking of plea before a Subordinate Court, **Section 204 of the Criminal Procedure Code** states that:

“204. (1) The substance of the charge or complaint shall be stated to the accused person by the court,

and he shall be asked whether he admits or denies the truth of the charge:

Provided that where the charge or complaint contains a count charging the accused person with having been previously convicted of any offence, the procedure prescribed by section two hundred and seventy-five shall, mutatis mutandis, be applied.

(2) If the accused person admits the truth of the charge, his admission shall be recorded, as nearly as possible, in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there shall appear to it sufficient cause to the contrary.

(3) If the accused person does not admit the truth of the charge, the court shall proceed to hear the case as hereinafter provided.

(4) If the accused person refuses to plead, the court shall order a plea of "not guilty" to be entered for him."

4.42 It has been seen from the authorities that both parties have relied on, that a Subordinate Court has a duty, when an accused person appears before it, to explain the charge and the elements of the charge to an accused person who intends to plead guilty.

4.43 Further, the Subordinate Court must be satisfied that all the elements of the charge have been admitted before a charge

can be said to unequivocal, and a plea of guilty to be deemed to have been properly entered in that respect.

4.44 Accordingly, in the case of ***Shampeta and another v The People*** ⁽²⁾ the Court held that:

“For a plea of guilty to be effective, the accused must appreciate the nature of the charge, he must intend to plead guilty, and he must admit sufficient facts to enable him to be convicted of the offence charged.”

4.45 Then in the case of ***The People v John Kapalu Kanguya*** ⁽⁵⁾ the accused person in answer to charge of driving a motor vehicle whilst under the influence of intoxicating liquor or drugs contrary to Section 198 of Cap. 766, said "I understand the charge, I plead guilty".

4.46 Thereafter the Court recorded a plea of guilty, and the facts were read out and he admitted them to be correct. On appeal, it was held that:

“The plea was equivocal, the accused being unrepresented, the magistrate before accepting a plea of guilty should have satisfied himself that the accused admitted each and every ingredient of the offence with which he was charged. Admitting the facts does not validate an equivocal or imperfect plea.”

4.47 In this matter, the record shows that when Violet Zulu took plea, she responded as follows:

“I admit the charge. I drank herbs and I have two more children and have no support. In the toilet the child came out. It was five-six months. I explained to him and he denied the responsibility for the pregnancy, the father. I know it is wrong.”

4.48 The offence of abortion is created in **Section 152 of the Penal Code** which states that:

“152. (1) Every woman being pregnant who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used, commits a felony and is liable, upon conviction, to imprisonment for a term of fourteen years.

(2) Any female child being pregnant who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing or uses any force of any kind commits an offence and is liable to such community service or counseling as the court may determine, in the best interests of the child:

Provided that where a female child is raped or defiled and becomes pregnant, the pregnancy may be terminated in accordance with the Termination of Pregnancy Act.”

- 4.49 The record shows that Violet Zulu was aged Twenty-Four years when she appeared before the Subordinate Court. As such, the provision that was applicable to her was **Section 152 (1) of the Penal Code**, although the indictment reflects that the charge that was preferred was pursuant to **Section 152 of the said Penal Code** in general.
- 4.50 In the manner that the charge was framed, being in general, and not specific to **subsection (1) of Section 152 of the Penal Code**, no prejudice was occasioned to Violet Zulu, as she was an adult when she took plea.
- 4.51 The elements of abortion in relation to Violet Zulu, where that she was a woman, who was pregnant, and with intent to procure her own miscarriage, she unlawfully administered to herself any poison, or other noxious thing, or used force of any kind, or used any other means whatever, or permitted any such thing or means to be administered or used to abort the foetus.
- 4.52 From her plea, Violet Zulu admitted that she drank herbs, but she was not asked whether the drinking of the said herbs was with intent to procure abortion of the child. She stated that the child came out, and the father of the child denied responsibility for the child.
- 4.53 It can be seen that the plea was equivocal as all the elements of abortion as defined in the Section were not admitted. This was conceded by the State who stated that the father refusing responsibility and the age of foetus were irrelevant to proving the elements of the charge.

- 4.54 The fact that Violet Zulu admitted the facts which established commission of the offence, as seen from the case of *The People v John Kapalu Kanguya* ⁽⁵⁾ did not validate the unequivocal plea.
- 4.55 I have stated that Violet Zulu, according to the indictment was aged Twenty-Four years. She was not a child and the provisions of **Subsection (2) of Section 152 of the Penal Code** could not come into play, which contains a proviso that provided that where a female child is raped or defiled and becomes pregnant, the pregnancy may be terminated in accordance with the **Termination of Pregnancy Act**.
- 4.56 **Section 3 of the Termination of Pregnancy Act** is as follows in provision:

“3. (1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if he and two other registered medical practitioners, one of whom has specialised in the branch of medicine in which the patient is specifically required to be examined before a conclusion could be reached that the abortion should be recommended, are of the opinion, formed in good faith-

(a) that the continuance of the pregnancy would involve-

(i) risk to the life of the pregnant woman; or

(ii) risk of injury to the physical or mental health of the pregnant woman; or

(iii) risk of injury to the physical or mental health of any existing children of the pregnant woman; greater than if the pregnancy were terminated; or

(b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of a pregnancy would involve such risk as is mentioned in paragraph (a) of subsection (1), account may be taken of the pregnant woman's actual or reasonably foreseeable environment or of her age."

(3) Except as provided by subsection (4), any treatment for the termination of pregnancy must be carried out in a hospital.

(4) Subsection (3) and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good

faith, that the termination of pregnancy is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.”

- 4.57 My understanding of this provision, is that when a child who was raped or defiled and became pregnant, and the pregnancy was terminated in the accordance with the above provisions, they could plead the said provision as a defence, if they are charged with the offence of abortion.
- 4.58 I have said that Violet Zulu was not a child, as she was above the age of eighteen years when she appeared for plea. Therefore, the Magistrate was under no obligation to explain the defence as provided in the proviso to **Section 152 (2) of the Penal Code**. No prejudice was occasioned therefore to Violet Zulu by the failure to do so. As a consequence, ground five of the appeal fails.
- 4.59 Having found that the plea of guilty was equivocal, it follows that the conviction cannot stand, and it is accordingly set aside. Grounds one to four and six of the appeal succeed.
- 4.60 The conviction having been set aside, grounds seven and eight which relate to the sentence which was imposed fall away.
- 4.61 It was however argued, relying on the case of **Like Silishebo v The People** ⁽⁷⁾ that this Court should acquit Violet Zulu as she has spent two years in custody as at December 2025, and sending the matter back to the Subordinate Court for rehearing, would result in her being behind bars through no

fault of her own, and she would be subjected to the very system that misconducted itself.

4.62 Indeed, the record shows that Violet Zulu has been in custody since her apprehension before 27th December, 2023.

4.63 The Supreme Court in the case of ***Like Silishebo v The People*** ⁽⁷⁾ stated that:

“Bearing in mind that this is an old case instituted in 2013 and the appellant has all along been in custody in remand facility, we feel that the interests of justice will be better served by acquitting the appellant and we accordingly order.”

4.64 In the case of ***Mwaba v The People*** ⁽³⁾, it was stated that:

“In the ordinary course of events we would order a retrial in this case but we are of the opinion that, having regard to the circumstances under which the offence was committed and the sexual antecedents of the complainant, the sentence imposed by the trial magistrate was excessive. Had the conviction been sustained we would have reduced that sentence to one of six months' imprisonment with hard labour. Since the appellant has already served nearly a year of the sentence imposed it would not be in the interests of justice to order a retrial at this stage.”

4.65 Violet Zulu intended to plead guilty to the charge. However, the plea was unequivocal through no fault of her own. Two years in custody is sufficient lesson.

5. CONCLUSION

5.1 I accordingly order that the plea of guilty having been set aside for being unequivocal, the appeal succeeds, but looking at the period that she has spent in custody, Violet Zulu is hereby set forth at liberty.

DATED AT LUSAKA THE 16th DAY OF JANUARY, 2026

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE

