**IN THE SUPREME COURT FOR ZAMBIA APPEAL NO. 258/2011**

**HOLDEN AT NDOLA/KABWE/LUSAKA**

(*Civil Jurisdiction*)

**BETWEEN:**

**ALFRED NJAMBA APPELLANT**

**AND**

**THE PEOPLE RESPONDENT**

**Coram: Chibesakunda, Mwanamwambwa and Phiri JJS.**

 **6th December, 2011 and on 21st March 2012**

For the Appellant : Mr. K. Muzenga, Acting Principle Legal Aid Counsel

For the People : Mrs. M. B. Nawa, Acting Principle State Advocate

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**JUDGMENT**

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**Chibesakunda, JS., delivered the Judgment of the Court.**

**Case referred to**

(1) David Zulu vs The People (1977) Z.R. 151

When we heard this Appeal, we acquitted the Appellant and promised to give a detailed Judgment, we now do so.

In this appeal, the Appellant was charged and convicted of the offence of murder contrary to Section 200 of the Penal Code, Cap 87. The particulars allege that he, **ALFRED NJAMBA,** on the 20th day of April, 2003 at Chingola in the Chingola District of the Copperbelt Province of the Republic of Zambia, did murder one **DERRICK NGANDU.** He was sentenced to the mandatory sentence of death. He then appealed against both conviction and sentence.

The evidence for the prosecution, given by three witnesses, was that on 20th April, 2003, around 01:00 hours in the morning, PW1 and his two colleagues visited a drinking place known as Florida Night Club. When they got there, one of the patrons drinking “chibuku” offered PW1 a cup of opague beer. PW1 innocently drunk this beer and straight away after drinking this beer, he begun to vomit. He went to the back of the building to vomit and found another man lying hopelessly. At that point in time, two men came to this man lying down and took him to the table where others were drinking opaque beer. They grabbed another person who they alleged had given poisoned opaque beer to this other man. They grabbed this other man and took him to the neighbourhood watch members. These neighbourhood watch members collected both the man who was lying hopelessly down and the man they alleged gave poisoned beer to this other man. They collected a bottle which was an empty bottle and took it to the Police Station. PW1 followed these people. Subsequently, the following day, he heard that the man who was found lying on the ground hopelessly, had passed away. The other man was detained. He testified that he could not identify the man who was apprehended. PW3’s evidence is that he was a member of the neighbourhood watch. He was on patrol around 01:30 hours in the morning. He and his colleagues saw some men struggling outside Florida Night Club. He discovered that these people were trying to apprehend the person they alleged to have given poisoned opaque beer to one or two patrons. PW3 also saw another person lying on the ground vomiting and rolling. He and his colleagues collected both the man who was rolling on the ground and the person who was alleged to have given poisoned opague beer to PW1 and the man who was rolling on the ground hopelessly.

 The arresting officer PW4 found the Appellant already in custody. Under warn and caution, the Appellant denied the charge. PW4 testified that some specimen had been sent to an analyst from the bottle which was alleged to have been in possession of the Appellant. The report of the analyst confirmed that the deceased died due to cardio-respiratory arrest due to organophosphorus poisoning.

When the Appellant was put on his defence, he testified that on the 19th April, 2003, when he knocked off from Nchanga South Hospital, he went through Chiwempala market. He went to a film show, after watching some films, he passed through a restaurant within the market. He then bought cooking oil and decided to pass through Florida Night Club. On his way behind Florida Night Club he met three men who wanted to know why he was walking that late around 23:00 hours. An argument ensued. They accused him of having poisoned the other patrons of the night Club. They started struggling with him and they beat him. In the course of this scuffle, his bottle of cooking oil got broken. These same people over powered him and took him to Chiwempala Police Station. At the station, he was then charged with the offence of murder. He denied the offence.

On this evidence, the learned trial Judge convicted the Appellant of the offence of murder as according to him although the evidence was circumstantial, it was very cogent.

The Appellant then appealed to this court advancing one ground of appeal namely that the learned trial Judge erred in law and in fact when he convicted him on circumstantial evidence when the inference of guilty was not the only reasonable inference which could reasonably be drawn from the facts.

As a court, we found that there was no evidence which connected the Appellant to the commission of the offence as there was no evidence even from the other patrons who claimed that they saw the deceased being given opaque beer by the Appellant. The investigations were very poorly done. There should have been evidence from the patrons who witnessed the administering of poisonous beer to the deceased by the Appellant.

The learned trial Judge relied on circumstantial evidence. Although it is trite law that a court can convict on circumstantial evidence, however, the celebrated case of **David Zulu v the People** has laid down guidelines. In this case of Zulu, this court held inter alia;

**“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 degree of cogency which can permit only an inference of guilt”**

Bearing in mind this guidance, we have looked at the evidence in the case before this court. Our view is that the evidence before the court did not take the case out of the realm of conjecture. On the evidence before the court, it is possible to have several inferences drawn. Therefore, it was not safe to convict the Appellant on this evidence. We therefore, hold as we pronounced in open court that the learned trail Judge misdirected himself. We thus confirm our pronouncement that the Appellant was not guilty of the offence of murder contrary to Section 200 of the Penal code. The Appellant was thus acquitted.

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 L. P. CHIBESAKUNDA

 **SUPREME COURT JUDGE**

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 M. S. MWANAMWAMBWA G.S. PHIRI

 **SUPREME COURT JUDGE SUPREME COURT JUDGE**