

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



HP/166/2016

THE PEOPLE

V

CHANDA MULENGA

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 24th DAY OF
 APRIL, 2017**

For the State : Ms P. Nyangu, State Advocate, NPA

For the Accused Person : Mrs M.K. Liswaniso, Legal Aid Counsel,
 Legal Aid Board

J U D G M E N T

CASES REFERRED TO:

1. *David Zulu V The People* 1977 ZR 151
2. *Jeans Shichampwa V The People* 1981 ZR 283
3. *Kaposa Muke and Anor V The People* 1983 ZR 94

LEGISLATION REFERRED TO:

1. *The Penal Code, Chapter 87 of the Laws of Zambia*

The accused person in this matter stands charged with one count of murder contrary to Section 200 of the Penal Code, Chapter 87 of the Laws of Zambia.

The particulars of the offence allege that Chanda Mulenga on a date unknown but between 3rd October 2015 and 4th October 2015 at

Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia did murder Jack Chishiba.

The accused person denied the charge and the matter proceeded to trial. The state called five witnesses and the accused person gave his defence on oath, and called no witnesses. PW1 was Pathias Simfukwe a taxi driver. He testified that on 3rd October 2015 around 16:00 hours he moved from town where he was working to Break Point in Kabwata. Sometime later he gave the car keys for the grey Toyota Sprinter registration number ALZ 7741 that he was driving to Jack Chishiba his friend so that he could work with it and make K100.00 for him.

After he watched a match at Zero Degrees he went home to sleep. When he went to the car park the next day he did not find the vehicle and he phoned Richard who told him that he had seen Jack in the night. That PW1 went to Break Point and there Pilato confirmed having seen Jack in the night. It was his testimony that he went to look for Jack with Pilato at Kabwata, Chilenje, Woodlands and Central police stations but did not find him.

The next day Richard joined the two of them in the search and they went to the University Teaching Hospital (UTH) wards and did not find him, and when they went to the UTH police post mortuary where they were led to a body that was taken there by officers from Simon Mwansa Kapwepwe police post. They identified the body as Jack's, and they thereafter went to Simon Mwansa Kapwepwe police post and found the vehicle there. He told the Court that Junior's mother was the owner of the vehicle.

In cross examination PW1 told the court that Jack was a taxi driver but he had no vehicle at the time. He stated that he pirates in the evening but that he does not do with another person, as people refuse to get into taxi's where a taxi driver has carried someone.

The second witness was Oscar Kabwe. His evidence was that on 4th October 2015 around 02:00 hours he was asleep when he heard a big bang on the door and a voice shout "*big brother you can hear someone being killed outside*". When PW2 went to the sitting room and peeped outside he saw the accused person outside and he opened the door. He then asked the accused person where he was coming from at that time, and he had responded stating that he had gone to Intercity to collect money from his sister.

That he had booked a taxi from Intercity which had two people and he had told them that he was dropping off at Chainda Market but when they reached there they had accelerated and increased the volume on the radio in the vehicle, and they had driven him to Meanwood, and had taken his money.

PW2 testified that he used to sell at the market with the accused person. He also testified that he saw that the accused person had wounds on his hands, and he told him that they go the police. They picked up Kelvin Chola and then proceeded to the police and reported the matter.

There the police had asked the accused person if he could identify the vehicle of the attackers, but the accused person had denied. The police said that they had no man power and the officer at the Reception gave them his phone number and asked them to call him

if there was anything. They left and the accused person told them that he had left a bag at the crime scene, and that he wanted to get it. They then asked the taxi driver that they had booked to go to the police, to take them to the scene.

PW2 further in his testimony told the court that before reaching the scene they saw a vehicle at a distance. They phoned the officer who had given them his number and the officer asked them to take the vehicle to the police. He testified that when they reached the vehicle, they found that it was in the sand, and had to push it out.

That Kelvin Chola had driven the taxi and the accused person was with him, and PW2 was in the taxi that they had booked. After they drove a short distance, the police officer had called, asking them not to touch the vehicle. He however told him that they were already on their way to the police post, and they took it there. That there the police had searched the vehicle and found a knife there, and a wallet.

He told the court that the police then said they proceed to the crime scene, and there the accused person was asked to explain where he had been attacked from. That the accused person had stated that upon seeing the knife he had held it, and had bitten the person who wanted to stab him, and the person had ran away. That thereafter the taxi driver had tried to stab him and they had struggled for the knife, and he had managed to get away as they got out of the vehicle.

PW2 further in his evidence stated that the police had asked them to look for blood at the scene or any evidence of struggle, but they

did not see any. As it got light the police officers saw a shoe and they began to look for shoe prints, but there were none. Then they saw a yellow plastic on top of the grass and it had blood on top. They then saw a person under the grass. The police officer phoned the Criminal Investigations Officer (CIO) who went the scene around 05:00 hours.

That photographs were taken of the corpse and the accused person, and the corpse was taken to the police station. As to how PW2 knew the accused person, he told the court that when he used to visit his parents at Kelvin Chola's house he had befriended the accused person's elder brother Chiti, and through him he came to know the accused person who was also selling at the market. In conclusion PW2 testified that the accused person did not tell him the name of his elder sister that he had gone to see at Intercity bus terminus. He also identified the knife and it was marked 'ID1', and the wallet was marked 'ID2'.

When cross examined PW2 stated that the accused person lived in Chainda not very far Chainda market. That the most convenient place for one to drop off from when in a bus is at the road, and then proceed to the market. He stated that the accused person had injuries on his palms, and he was bleeding.

PW2 further in cross examination testified that the accused person had told him that he had booked a taxi with two people in it and that he had sat at the front in the passenger's seat, and the other person had sat at the back. His evidence was that the knife was found in the back seat of the car. He denied knowing a person

called Lesa Mulenga as the accused person's sister, but that he knew Bana Muma as his sister. He denied knowing the accused person's siblings in Kitwe.

He also stated that the accused person was issued a medical report to take to the hospital, and that he desperately wanted to get his hoodie and back pack, which he said was given to him by his sister from the scene before going to the hospital. However they were not found there. He agreed that by day time there were many prints at the scene as they were looking for clues there. He also agreed that the crime scene was in a residential area.

PW2 stated that he did not ask where the person who was in the company of deceased in the taxi went. That the officer who had told them to move the vehicle was Mpolomoka, and he is the one who went with them to the scene.

PW3 was Richard Bwalya a taxi driver. He operates from East Point in Kabwata. He confirmed that at the time the deceased did not have a taxi that he was working with, and that PW1 had given him the taxi that he was driving to work with that night. He stated that he had worked with the deceased, and at 02:00 hours he had taken a customer to Makeni and thereafter went home to sleep.

That the next day when he was in church PW1 had phoned him but he had told him that he was in church, and would call him back. That after church he had called PW1 who informed him that the deceased had not shown up. He confirmed that they later started looking for the deceased and they found him among five

unidentified bodies at the UTH mortuary. That he had known the deceased two years prior to his death.

In cross examination it was stated that he knew that the deceased had lived with his wife prior to them separating, and that thereafter the deceased had lived with some boys who were not taxi drivers in Kamwala South. PW3 did not know what the boys the deceased was living with did for a living.

He stated that he had told PW1 that it was not like the deceased to go off with someone's vehicle based on previous experiences where the deceased got taxis to drive. That the deceased had not had a taxi to drive for three months prior to the incident. PW3 agreed that it was not uncommon to pick clients from points other than East Point where they operated from, but he denied that when working a taxi driver would work with another person. He did however agree that for security reasons, a taxi driver could carry another person especially when there was more than one client in the taxi, or if the place where the client was going was dangerous.

Shabangamba Chompo was PW4. He is a Crimes Scene Officer. He gave his qualifications as having been trained at Lilayi in crimes scene investigations and picking evidence, taking photographs of evidence where necessary. He also stated that he has a certificate in crimes scene investigations, and that he is trained in criminal investigations. He has been working in crimes scene investigations since 2001.

With regard to this matter PW4 testified that on 4th October 2015 a Sunday he was at home when Detective Sergeant Mpolomoka

phoned him and told him that there was a murder in Meanwood in Ibex Hill. PW4 had rushed to the scene and found Sergeant Mpolomoka with a male person he came to know as Chanda Mulenga. That Chanda had alleged that he was attacked and stabbed on the right hand with a sharp object, and PW4 had taken photographs of him and the injuries.

PW4 was then led to the scene where there was a body covered with grass and he had photographed the body before uncovering it. That it was a body was of a male wearing a red t-shirt and blue jeans. He saw two stab wounds on the left side of the chest and a wound at the back of the neck. That the body was thereafter taken to the mortuary and PW4 went to the police station.

There he found a grey Toyota Corolla vehicle, registration number ALZ 7741, which was allegedly booked by Chanda Mulenga. On inspection of the said vehicle, PW4 noted that it had blood on the driver's seat and there was a knife on the back seat which had blood stains, and the blade of the knife was slightly bent. He also found a wallet on the front seat which contained a national registration card for Jack Chishiba, as well as a voter's card. The knife and wallet were handed over to Sergeant Mpolomoka. He identified the photographic album that contains the photographs that he took and it was marked 'ID3'. On production it was marked 'P3'.

He explained that the first and second pictures are of the body covered by grass, while the third one was taken after the grass was removed, and the fourth is a closer picture of the face. The fifth one

shows the wounds on the left side of the chest while the sixth one is a clearer view of the said wounds. The seventh shows the wound at the back, and the eighth one is of the accused and the ninth one showing the wounds on his hands. That the tenth one is a closer view of the wounds on the accused person's hands.

In cross examination PW4 stated that both Sergeant Mpolomoka and himself were part of the investigations. He stated that the knife was in the back seat of the car, and it was not possible to say where it came from. He also stated that he saw sharp wounds on the body. He agreed that the scene was tampered with when he got there, and that the vehicle had been moved from there.

He expressed ignorance that the accused person had gone to the scene to get his backpack which had money at the scene. PW4 confirmed that the scene was in a residential area, and that he had interviewed the person who had said that the scene was next to Mr Kasote's house.

He stated that he did take note of the prints on the deceased's shoes or the accused's, but that he had found different prints at the scene so it was difficult to isolate any. That he did not uplift fingerprints from the knife as it had a rough surface, and that no identification parade was conducted with respect to the third person who was in the vehicle.

David Lupiya Mpolomoka was PW5. He was the arresting officer in this matter. His evidence was that he was the detective on call on 3rd October 2015 from 18:00 hours to 06:00 hours the next day. That the accused person who was in the company of Oscar and

Chola went to the police station, and explained that he met his sister whom he had been in constant communication with as she travelled from Kitwe to Intercity bus terminus, around midnight. That after his sister gave him the money, he had booked a taxi to Chainda where he lived.

That there was another person in the taxi and he sat in the passenger's seat, and the other person sat at the back. That when they reached Chainda the car sped off and they headed towards Meanwood Ibex with the windows closed, and his screams could not be heard. That the accused person had also told him that the person at the back had produced a knife, and he wanted to stab him.

However the accused person had held the knife and it dropped in front and the person at the back ran out and the accused person had started struggling with the driver for the knife. That as they struggled the car had lost control, and the vehicle had lodged in a heap of sand. The accused person had also stated that they had continued struggling until they came out of the vehicle and he had overpowered the driver, and had stabbed him twice in the chest, and then at the back of the neck.

PW5 had testified that the accused person had shown him the stab wounds on his left hand, and he told the court that the accused person thereafter left the driver unconscious near the car, and he rushed to Chainda to alert those close to him about what had happened. That the accused person did not know the registration number of the vehicle, but he could identify his attackers. That

PW5 had issued him a medical report so that he could access medical treatment.

PW5 further in his testimony stated that after thirty minutes the accused person had gone back to the police station stating that they had gone to the scene, as the accused person had dropped a few things there and they had found the car still there. PW5 noted blood stains on the driver's seat, as well as a wallet on the floor, and a blood stained knife at the back seat.

PW5 told them that they should go the scene, and there the accused person had demonstrated what had happened. However PW5 had observed that there was no evidence of struggle there. PW5 had interviewed a person who was staying near the scene, Gift Foloko, who told him that he only heard the dogs bark, and no voices for people.

He further stated that he had noticed a heap of grass three metres from the car, and there was a foot sticking out of the grass. He drew near with the accused and shone the lights of the police car there, and the accused person identified the body, as that of the driver whom he had struggled with.

He confirmed that the body was photographed by PW4, and he saw two wounds on the chest and one at the back of the neck. That the vehicle was also photographed and the contents of the wallet were a national registration card and a voter's card in the names of Jack Chishiba as well as some business cards.

That the body was taken to UTH mortuary and the next day PW5 was approached by some people who had identified the body at

UTH, and statements were recorded from them, and the deceased's relatives. He also testified that a post mortem was conducted on the body and a report was prepared indicating that the deceased died from stab wounds.

When PW5 went to the taxi rank at Kabwata with a view of identifying the third person alleged to have been in the taxi, he was told that the deceased had worked alone that day. He also did not find anyone with bite marks alleged to have been made by the accused person on the third person, and no one was missing from work. That he had obtained the call records for the accused person's phone, after he went to MTN with a search warrant, and the said call records did not reveal any calls from his line to his sister.

The medical report was identified and marked as 'ID4', while the search warrant was marked 'ID5', and the activity report was marked 'ID6'. The postmortem report was marked ID7'. Only 'ID4', 'ID5' and 'ID7' were produced and accordingly marked, as the defence objection to the production of 'ID6' was sustained as it had not been authenticated. The vehicle was marked 'ID8'. ID1' and 'ID2' were also produced and marked 'P1' and 'P2'.

PW5 in cross examination stated that he had conducted investigations into the deceased's life. That he was aware that the deceased and his wife were on separation, but he did not know that the deceased was living in Kamwala South with boys who were not taxi drivers.

That he did not know why the vehicle he used to drive was taken away from him, but that on the material day his friend gave him the vehicle to drive. PW5 also testified that he did not interview the boys said to have been staying with the deceased, but the girlfriend he was living with.

He agreed that the crime scene was tampered with, and that he did not go there when the report was made as there was no man power at the station, and he had given the accused person and his friends his phone number as they were going to the hospital. PW5 stated that crime scene was a mushrooming area, and not fully developed.

He observed that the scene was near a house that was under construction, and Foloko lived there alone as a caretaker at the time. That he had interviewed the man that the accused person lived with in Chainda, and he had revealed that they did not have such a knife. That fingerprints were not lifted from the knife, wallet or the car.

He stated that the accused person wore canvasses that day while the deceased wore sneakers, but he did not take note of the prints that they made. That the scene was on a road with garbage so it was difficult to see the shoe marks. He stated that all the drivers at the taxi rank were summoned to the police to check for bite marks but no identification parade was conducted.

He confirmed that the accused person went to the crime scene after he left the police. He denied that the accused person had said that he had left the deceased in the car, and that the accused was a trader at Chainda at Chainda market, but that his brother is the

person who traded there. That the accused person was calm with a wound on his palm when he went to report the matter.

He stated that the crime scene was far away from the accused's home. While noting the scene had no struggle marks, PW5 testified that the terrain there did not allow for such marks to be found. That the accused had said they had fought outside so the knife and the body would have been found outside the car. Further the body should have been found at the scene not hidden in the grass. That the call report shows that between 2nd October 2015 and 4th October 2015 there were no call records so the accused person did not call his sister.

The accused person in his defence told the court that he used to sell clothes and shoes. That on 3rd October 2015 his sister Mulenga Lesa had called him and told him to go and collect money at Intercity bus terminus, stating that she had bought a ticket for a bus that would arrive in the night. Around 19:00 hours he had gone to intercity bus terminus to wait for his sister who arrived around midnight.

That after she gave him the money he had booked a taxi around 01:00 hours, and he negotiated the charge at K100.00.

The accused person testified that he had sat in the passengers' seat in from and he was alone with the taxi driver. They proceeded and at Bwinjimfumu road they found a person who stopped the taxi, and he said he was also going to Chainda. That the driver had opened for him to enter the back seat, and that when they almost

reached the accused person had asked that he be dropped at Chainda market, as it was near his home.

That then he saw the person at the back produce a knife as he was about to get out of the car and he struggled with him and the vehicle started moving and they passed the market going to Meanwood. His testimony was that as they struggled the driver stopped the vehicle and went outside. He opened the back door and pulled out the accused person and threw him outside.

Then the driver struggled with the other man, and he heard the driver scream that he had been stabbed and he fell down. That the accused person had ran away and he went to his friend's house and informed him of the attack. That he went to the police with his friend Oscar and his father and that upon reporting he was asked if he knew the crime scene and they went there.

That the police had called them to say they should not touch anything at the scene as they were moving the vehicle but his friends they were already moving the vehicle. That when they went back to police and the police said they go back to the scene and they searched until they found a body there covered with grass and photographs were taken of the body.

That after the body was removed the accused person was taken to the police station and detained and he asked to be taken to the hospital as his hand was paining. That he was taken after a week when he was issued a medical report. He denied having told the police that he had struggled with the deceased and killed him. That

he had told them that he had come out of the taxi, and the taxi driver had struggled with the other man.

In cross examination the accused person stated that the other person was picked from Bwinjimfumu road as a client, and the driver, and that other person did not know each other. He stated that the person who was picked from Bwinjimfumu road is the person that had attacked him, and not the driver. That it was during the struggle with the person at the back that he cut himself.

He also maintained that when the driver removed him from the car he ran away after the driver screamed that he had been stabbed. He left the man and the driver there. He denied having narrated to Oscar what had happened and that neither did he explain what had happened to the police in Oscar's presence. He stated that Oscar had lied, as he had not told him anything.

The accused person agreed that Oscar was his friend. He also stated that did not tell his lawyer what he had told the court in his defence, and that he did not know he was supposed to do so to enable his lawyer assist him.

Further in cross examination the accused person stated that when he went to the scene with his friends it was dark, and they just saw the car with the knife inside and they took them to the police post. That it was only when they went back to the scene around 05:30 hours that he was able to see the person. He denied that the police did not tell them not to move the vehicle. He also stated that there were blood stains at the back seat of the taxi.

While maintaining that he did speak with his sister that day, the accused person stated that he did not give police his sister's number. He also stated that Oscar Kabwe met his sister twice, and he therefore lied when he said he did not know her.

I have considered the evidence. It is a fact that on the material day the accused person had gone to PW2's house in the early hours of the morning, and they went to the police to report that the accused person was attacked. It is a fact that after reporting the matter to the police the accused person had gone to the scene with PW2 and a person called Chola where they found the Toyota Corolla registration number ALZ 7741 which had blood stains in it as well as a knife, and they drove the vehicle to the police station.

It is also a fact the body of the late Jack Chishiba was found three metres from the car hidden under a pile of grass, and it had two stab wounds to the chest, and one at the back. It is a fact that the postmortem report shows that the late Jack Chishiba died from stab wounds on his chest. It is a fact that the accused person also had a wound on his right palm which the medical report 'P4' shows was inflicted by a knife. The question is whether it has been proved beyond all reasonable doubt that the accused person is the person that murdered Jack Chishiba?

Murder is defined in Section 200 of the Penal Code, Chapter 87 of the Laws of Zambia as;

“Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder”.

Section 204 of the Penal code deems malice aforethought in the following instances;

“Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

- (a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;***
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;***
- (c) an intent to commit a felony;***
- (d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.***

There is no direct evidence in this matter showing that the accused person is the person who stabbed the late Jack Chishiba and caused his death. What is before court is that the accused person went and woke up PW2 and they went and reported the matter to the police, and thereafter the accused person went with PW2 and Chola to the scene where the vehicle driven by the late Jack

Chishiba was found. It had blood stains and a knife, and they drove it to the police.

It was only when they went back to the scene with PW5 that the body of the late Jack Chishiba was found hidden under the grass. The evidence against the accused person is merely circumstantial and in the case of **DAVID ZULU V THE PEOPLE 1977 ZR 151** it was held that;

“(1) it is a weakness peculiar to circumstantial evidence that by its very nature it is not direct proof of a matter at issue but rather is proof of facts not in issue but relevant to the fact in issue and from which an inference of the fact in issue may be drawn

(2) 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 a degree of cogency which can permit only an inference of guilt”.

Thus the question that arises in this matter is whether the inference of guilt on the part of the accused person is the only inference that can be drawn from the facts of this case?

The evidence as adduced by PW2, PW4 and PW5 is that the accused person had told them that he had sat in the front seat of the taxi, while the third person sat at the back. That the third person had attacked him with the knife, and during the process of that struggle

the third person had ran out the vehicle and the knife had fallen in front.

That the accused person and the taxi driver had struggled for the knife and they came out of the vehicle, and the accused person had managed to overpower the taxi driver and had stabbed him twice on the chest, and once on the back of his neck. That he had left the taxi driver and had ran away.

In his defence the accused person denied having stabbed the driver, stating that after the person at the back of the taxi produced a knife, and the accused person had struggled with him, the late taxi driver had come out of the vehicle and removed the accused person. That the taxi driver had then struggled with the third person, and the accused person had ran away after the late taxi driver shouted that he had been stabbed.

The evidence of PW2, PW4 and PW5 was that the blood in the vehicle was on the driver's seat, while the accused person stated that it was on the back seat. The vehicle 'ID7' was not produced in evidence. In the case of **KAPOSA MUKE AND ANOR V THE PEOPLE 1983 ZR 94** it was held that;

“there is no rule of law that an allegedly stolen article must be an exhibit in a trial unless the question of its identity or owner ship arises”.

Similarly the production of the vehicle in this matter was not mandatory as its identity is not issue. There is however a dispute on where the blood in the vehicle was found. The state witnesses stated that it was in the driver's seat, while the accused person

stated that the blood was in the back seat, and the question is which story is more credible.

It has been seen that the accused person is alleged to have changed his story regarding how the events leading to the attack were in his defence, as he is alleged to have told PW1 and PW4 separately that he had stabbed the deceased in self defence.

In the case of **JEANS SHICHAMPWA V THE PEOPLE 1981 ZR 283** it was held that;

“while the co-accused's explanation to the complainant and the police would ultimately have to be taken into account in considering his explanation in court, nonetheless, such extra judicial explanation could not, in the face of prima facie evidence in any way prevent an evidential burden from falling upon the co-accused at his trial”.

Therefore the story that the accused person gave to PW2 and the police does have a bearing on the veracity of his defence. Thus the question that arises is why the accused person told a different story in his defence, compared to what he stated when he reported the matter? While PW5 stated that the scene was made of rough terrain and it was difficult for him to see evidence of struggle there, he PW2, and PW4 had noted that there was no blood outside the car where the accused person stated that the late taxi driver and the third person struggled at, and the later Jack had screamed that he had been stabbed.

PW2 was an independent witness in this matter and he had no reason to lie to that court. His evidence was that the blood was on the driver's seat. If the accused person had struggled with the person at the back of the car, this does not explain why the car went and lodged itself in the heap of sand, as the driver was not the assailant. He would have just been driving.

The fact that the vehicle went and stopped in the sand suggests that the driver was disturbed as he was driving, and he left the lane he was driving in. The deceased was stabbed twice in the left side of his chest and once on the back of his neck. The left side of his chest was nearest to the passenger in the front seat and the person sitting there would have better opportunity to stab the driver than the one at the back, as he would have to position himself more appropriately to be able to stab the driver.

Taking into account the fact that the accused person gave an inconsistent statement when the incident happened to what he said in his defence, and looking at the fact that there was no blood outside the car to support his defence that the late Jack and the third person struggled outside and he was stabbed from there, and there being blood in the driver's seat, my finding is that the late Jack was stabbed from the car, and his body was then moved from the car and concealed under the grass.

The accused person had the guilty knowledge of where the body was, as he was able to lead PW2 and a person called Chola there after they reported the matter to the police. The wound on the

accused person's right palm could have been inflicted as he struggled with the late Jack to stab him.

I also wish to comment on the callous attitude by PW5 who allowed PW1 to remove the vehicle from the scene thereby tampering with evidence, and it is my hope that such acts are never repeated as they undermine the integrity of investigations.

Having found that the late Jack was stabbed from the car, I find that the defence raised by the accused person is without merit and is merely an afterthought by the accused person to exonerate himself in this matter. It is therefore my finding that the only inference that can be drawn from this matter is that the accused person is the one who stabbed the late Jack Chishiba to death.

Stabbing a person twice in the chest is evidence that grievous bodily harm or death was intended, and the state has proved the case beyond all reasonable doubt, and I find the accused person **GUILTY** as charged and I **CONVICT** him accordingly.

DATED THE 24th DAY OF APRIL, 2017.

S. Kaunda
S. KAUNDA NEWA
HIGH COURT JUDGE