

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

**HP/43/2018**

**THE PEOPLE**  
**V**  
**JACKSON CHOLA**



**BEFORE HON MRS JUSTICE S. KAUNDA NEWA IN OPEN COURT THIS 18th  
DAY OF APRIL, 2018**

*For the State* : *Mrs M.H. Kayombo, State Advocate, NPA*

*For the Accused person* : *Mrs M. Marabesa Mwenya and Mr C. Siatwinda,  
Legal Aid Counsel, Legal Aid Board*

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## **J U D G M E N T**

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CASES REFERRED TO:

1. *Machobane V The People 1972 ZR 101*
2. *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 two counts of aggravated robbery contrary to Section 294 (1) of the Penal Code, Chapter 87 of the Laws of Zambia. The particulars of the offence in count one allege that the accused person on 21<sup>st</sup> October, 2016, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia,

jointly and whilst acting together with other persons unknown did steal a Blackberry cellphone valued at K1, 500.00, the property of Goodwell Shamenda, and at or immediately before or immediately after the time of such stealing did use actual violence to the said Goodwell Shamenda in order to obtain or retain or prevent or overcome resistance to its' being stolen or retained.

The particulars of the second count allege that the accused person on 21<sup>st</sup> October, 2016, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together with other persons unknown did steal K4, 600.00 from Mable Shamenda, and at or immediately before or immediately after the time of such stealing did use actual violence to the said Goodwell Shamenda in order to obtain or retain or prevent or overcome resistance from its being stolen or retained.

The accused person denied both counts and the matter proceeded to trial. The State called three witnesses, while the accused person gave his defence on oath and called two witnesses.

PW1 was Goodwell Shamenda. He testified that on 21<sup>st</sup> October, 2016 he knocked off from work and when he reached home he found that his wife was not at home, and he followed her to the shop that they were renting from Mr Jere, and which was near his home. There he stood outside as he was wearing his combat uniform and they sold beer there. It was PW1's evidence that his wife went to him and informed him that his brother had not ordered beer despite her having left him the money, and she went back inside the shop to attend to customers.

That PW1 then called his brother Levy Shamenda who had come, and asked him why he had been drinking beer starting early in the morning, and that as he faced his brother he saw a bottle hit the wall. He went on to testify that he turned and saw the accused person who told him that he was just a ZNS officer who just cultivated cabbage and that he had been looking for him. PW1 explained that he started following the accused person and saw four people with screw drivers, and his wife pulled him into the shop saying that he would be killed.

It was further his testimony that he pulled his brother into the shop and locked it, and that it was around 19:00 hours. PW1 stated that he knew the accused person who had been his neighbor since 2014, but that he just knew the other four people facially. Still in his testimony, PW1 told the court that the accused person and the others started throwing stones at the shop, but that it had no windows but just air vents, and when the noise died down around 21:00 to 22:00 hours, they decided to go home.

That when they came out, PW1 and his wife were stoned but they proceed home where they found a group of people near their neighbour's yard. He testified that as he was opening the door of the house, the accused person and his young brother Mumba approached them, and Mumba held PW1's wife while the accused person held him. PW1 further testified that the other people also joined in the struggle, and the accused person got an iron bar and threw it at PW1, but it missed and hit the door. He stated that in the midst of the confusion his son Emmanuel Shamenda got the keys from his mother and opened the door of the house and they entered including his brother who was drunk.

It was stated that the windows of the house were broken by the stones that the people threw, and he took photographs of the damage. PW1 also

testified that the group that was outside stoning the house said they would go and get petrol and burn him, and that is how PW1 and his wife went to the police after leaving their son with a neighbor, and his brother at the shop. That at Kanyama police the matter was reported, and about seven police officers were mobilized and they went back to the house with them. He stated that police officers knocked at the accused person's house and his parents came out and the accused person also went there. PW1 then pointed the accused person to the police and he was apprehended.

Still in evidence, PW1 testified that the next day he went back to the police, and his wife was issued a medical report and he gave police the combat uniform that he had worn at the time of the attack stating that it was torn as the accused person grabbed him. PW1 identified the torn combat uniform and it was produced and marked 'P1'. He testified that after he entered the house after the attack, he realized that his Blackberry cell phone was missing.

In cross examination, PW1 told the court that the incident was serious as violence was used, and that for two months thereafter the violence continued. He agreed that the violence that he had narrated did not make sense, but denied that he was making up what he had said. He agreed that he was neighbour's with the accused person from 2014 to 2016, and that the accused person's house was about ten metres from his, and that the accused person was living there with his mother and brother Mumba.

PW1 denied ever having quarreled with the accused person. He stated that the shop he was renting was located along the road with about three other shops, and not at the market, and that beer was sold there. He

agreed that when the shop was being stoned, business was going on at the other shops nearby and people were moving around. He further testified in cross examination that people saw them being attacked at the shop, but did not go to their rescue, and he agreed that this was strange. He told the court that Kanyama police was about six kilometres away.

PW1 explained that they could not go to Kanyama Police to report the matter after they left the shop as they were being stoned, and they decided to go home. He agreed that going to the police would have been a safer option, and that when they reached home, there was a lot of confusion as there were a lot of people. PW1's evidence was that he did not know why they were attacked, and stated that even at their home no one came to their rescue or called the police. He however denied that he was exaggerating the facts. That when he went out so that he could go to the police to report, the commotion had ended as the mob had said that they were going to get petrol so that they could burn PW1 and his family.

He agreed that on their way to the police station it was calm and they met no one. PW1 testified that he gave a statement to the police around 02:00 hours on 22<sup>nd</sup> October, 2016, but that he signed it on 27<sup>th</sup> October, 2016, as the arresting officer was not there on 22<sup>nd</sup> October, 2016. Whilst maintaining that he informed police that the mob wanted to burn his house on 22<sup>nd</sup> October, 2016, PW1 could not say if police had recorded it as part of his statement. He however stated that he had not see the same in his statement, but did not ask the police why it was not recorded. He denied that it was not because it did not happen. PW1 could not state at what point the phone was taken from him, adding that he only realized that it was missing when he was in the house.

He stated that he gave police the phone number that he was using, but that the phone had not been recovered. In conclusion, the accused person said that the photographs of the damaged house were not before the court.

In re-examination, PW1 stated that they decided to go home on leaving the shop as it was nearer than the police station, as the people had iron bars. That in compounds people fear rescuing people being attacked, as they might be attacked too.

The second witness was Mable Shamenda, the wife to PW1. She testified that she was at the shop on the material day after she knocked off from work, and that she had found that her brother in law Levy Shamenda had not ordered the beer that she had asked him to order. That Levy gave her the K1, 600.00 that she had given him to order the beer, and that a short while later PW1 went to the shop. Her evidence like PW1, was that PW1 stood outside the shop as he was dressed in uniform, and PW2 went to him to explain that his brother had not ordered the beer.

PW2 stated that she went back into the shop and heard a bottle hit the wall, and when she went outside, PW1 told her that a man had thrown the bottle, and she asked him to enter the shop. That when they had entered the shop a group of people assembled at the door and started hurling insults at PW1 and PW2. She stated that she knew Mumba among those people. When PW2 saw that the mob had screw drivers and knives, they closed the door of the shop and locked themselves in. That the shop had no windows but air vents, and the mob started stoning at the door, and said they would get petrol bombs and burn them. She further testified like PW1 that they stayed in the shop from around 19:00

hours until about 22:00 hours after the noise died down, and they proceeded home.

She also confirmed that as they walked home they were stoned, and that at home they found a group of men who were earlier at the shop, and Mumba came out of the group as the others were insulting and said that they would burn them, as PW1 and his family had troubled them. The mob also told PW2 that they would stab her and remove her intestines so that she learns a lesson. PW2 also confirmed that the accused person and Mumba were their neighbours at the time, and her evidence like PW1 was that the accused person held PW1 and beat him. PW2 further in her testimony stated that Mumba held her and he stabbed her with a screw driver in the process on her upper lip and chest. She also stated that she had K4, 600.00 in her bra and she fell down. When she looked up, she saw that the door was open, and she ran inside the house.

There she found that the money was missing and her shirt was blood stained. That they locked the grill door as the door was damaged, and the mob started stoning and broke the windows of the house up to about 24:00 hours, and PW2 asked PW1 to phone his workplace for help. When he did he was told that help would go his way, but that did not happen. PW2 confirmed that they went and reported the matter to Kanyama police when the noise died down, and they went back home with police officers who apprehended the accused person. She gave a statement in the morning and was issued a medical report which she identified and it was marked 'ID2', and she also identified a long sleeved green and white shirt which had blood stains, stating that she wore it on the material day, and it was marked 'ID3'.

When cross examined, PW2 told the court that from the time she knew the accused person in 2014, she had not quarreled with him. She agreed that she had discussed the ordeal with PW1, and that her evidence was similar to that given by PW1. She however denied that they had fabricated the story against the accused person. PW2 also testified that she did not know why the mob wanted to kill them, and that it had surprised her that no one went to their rescue or called police to go and rescue them. Her evidence was further that none of the onlookers could come to court to testify on their behalf as they were scared.

That when they came out of the shop it was calm, and that as they were confused, they just thought of going home, as they thought they would not be followed. She agreed that they found a lot of people when they arrived at home, and that the neighbours watched from their windows. PW2 testified that they lived well with their neighbours, as she and her husband were hardly home as they worked, and she would greet her neighbours as she passed. Still in cross examination, PW2 testified that she saw about eight attackers at her house, and that Mumba had attacked her as the others stood inciting him, and ensuring that no one went to their rescue. It was stated that even as PW2 ran into the house, the mob was stoning and broke the windows.

She had asked her husband once inside the house to call his workmates for help, even though PW1 had said nothing about it. That they had used her phone to call her husband's workmates, after PW1 gave her the number. She agreed that other than her word, there was nothing to show that she had money on that day.

The last State witness was Richard Chisasa, the arresting officer. His evidence was that on 23<sup>rd</sup> October, 2016 he was assigned the docket for



the case, and that when he interviewed PW1, he was informed that PW1 and PW2 were attacked by group of unknown people, among them the accused person and his brother Mumba who were armed with knives and screw drivers, and stole PW1's Blackberry cell phone valued at K1, 500.00 in the process. That PW1's military combat was torn in the process. PW2 on the other hand told him that she was stabbed with a screw driver and that K4, 600.00 was stolen from her during the attack. PW2 had availed the medical report that had been signed and he identified it and produced it and it was marked 'P2'. Further that PW2 had also availed her blood stained blouse and it was produced and marked 'P3', while the combat uniform for PW1 was produced and marked 'P1'.

PW3 still in evidence told the court that he visited the crime scene and found that the windows of the house had been broken and at the police station, he interviewed the accused person in connection with the offence, and he did not give a satisfactory response. He charged and arrested him for the subject offences, and under warn and caution in Nyanja language, which he understood better, he gave a free and voluntary reply, denying the charges.

PW3's evidence in cross examination was that 'P3' was stained with blood, but he did not subject it to forensic examination to ascertain if it was indeed blood. That apart from himself, no one could confirm that the windows of PW1's house were broken. He stated that PW1's cell phone was not recovered although he had been given the phone number, after PW1 had replaced the sim card. That PW3 did not subject the phone to any searches at the mobile service providers. When referred to the statement that PW1 gave, PW3 told the court that it did not contain

PW1's mobile number. That he relied on PW1 and PW3's word to establish that the cell phone and K4, 600.00 was stolen during the attack.

The accused person in his defence stated that on 21<sup>st</sup> October, 2016 around 20:00 hours he was at home with his mother, when he heard noise outside, and the voice of his young brother Mumba Ian Chola. That when he went outside with his mother he found Mumba fighting with their neighbour, and the accused person went and held Mumba, and PW2 got her husband PW1 and took him into the house. It was his evidence that he found PW1 fighting with Mumba and the neighbours had gone outside. He explained that he did not see anyone with knives or screw drivers, and that after the noise stopped they went back inside.

The accused person further testified that around 24:00 hours, he heard a knock at the door, and when it was opened, he found PW1 with some police officers, and he was apprehended and taken to Kanyama Police, on the basis that he had been fighting with PW1. He denied having fought with PW1 stating that he had just separated his brother Mumba from the fight. He stated that he did not know why PW1 and Mumba were fighting, and he denied having gone to PW1's shop, stating that he had been at home. It was also his evidence that his family did not have a good relationship with PW1 and his wife PW2, as they had a disagreement over the boundary of their plots. That PW1's plot was initially theirs and it was sold to a person who in turn sold it to PW1.

That after PW1 built his house, he wanted to encroach on to the property belonging to the accused person's mother, and that brought about confusion, and his mother sued PW1 in court and they were not on talking terms. He denied having beaten PW1 over the plot, and his

defence was that PW1 and PW2 had just fabricated the story against him. Further that he did not see the cell phone and the money alleged to have been stolen.

In cross examination, the accused person testified that he had been neighbours with PW1 and PW2 from 2014 until 2016. He agreed that it was easy to identify someone that a person knew. He also agreed that on 21<sup>st</sup> October, 2016 he was in Makeni Villa in the evening, and that he was present at the crime scene, but that he was only stopping the fight between PW1 and Mumba, his brother. The accused person agreed that he did not challenge PW3' evidence that he was involved in the fight or indeed PW1 and PW2. He however denied that his defence was just an afterthought. That the dispute over the plot was between his mother and PW1 and PW2, and he stated that it was logical to implicate a person one had differed with.

The accused person agreed that he was not happy about the dispute over the plot, and maintained that PW1 and PW2 had fabricated the case against him.

DW2 was Emelda Chisala Chama, the mother to the accused person. Her evidence was that on the material night between 21:00 and 22:00 hours she had heard some noise outside, and her sixth born son Mumba Ian Chola was screaming, as PW1 and his relatives were beating him. That when she went outside with the accused person, she found a lot of people, and the accused person went to rescue Mumba, who was thereafter taken by his friends as he was bleeding. She went on to state that the crowd dispersed and she went back to sleep, and was only awakened by police officers who went to her house with PW1.

That police told her that they would take the accused person and only release him when Mumba appeared, and that PW1 had told police that it was the accused person that had been fighting, but DW2 told them that it was Mumba. She confirmed that the plot on which PW1 had built his house used to be hers, and that she had sold it to a person who had in turn sold it to PW1. That her house was very near PW1's, and that she was not on good terms with him as after she had planted cassava to demarcate their properties, PW1 had uprooted it, and had tried to encroach on her land.

Her evidence was that when she had asked him why he had done so, he had insulted her, and she went to the chairman to report. However PW1 had sued her in the local court for insulting him, and she identified the said summons and produced them and they were marked 'D1'. Still in evidence, DW2 testified that she had been with the accused person when he knocked off from school, being Arakan Secondary School around 19:00 hours, and they only went outside when they heard the noise.

DW2 in cross examination stated that the accused person is her fifth born son. That she loved him dearly, and was sad that he was in custody, and would do anything to have him released. She however stated that if he had done something wrong, he should be punished. DW2 agreed that when she went outside, she had found a lot of neighbours, but she did not see everything that had happened. It was stated that Mumba was bleeding heavily from the nose, even though DW2 had no medical report or police report to prove so. She also stated that from the date that Mumba was beaten he only returned home after a week, and that he was there. When referred to 'D1', she stated that the

complainant was PW1 on the document, complaining about her behaviour. She denied that that was the position.

DW2 agreed that PW1 vacated his house during the time that the accused person was incarcerated, but denied that the windows of the house had been broken, stating that it was in good shape. She further agreed that when PW1 and the police went to her house, Mumba was not there, and that she had never taken Mumba to the police to explain what had happened. DW2 stated that this was on account of the fact that Mumba was nowhere to be seen, and she agreed that Mumba was the offender, as he was the one who was beaten.

In re-examination, DW2 told the court that PW1 was moved from the house by his workmates. That she did not sue PW1 as the Chairman told her that PW1 was her son and she should forgive him, but PW1 went ahead and sued.

The last defence witness was Margaret Munsa. She is DW2's neighbour. Like DW2, she testified that she heard noise outside around 21:00 to 22:00 hours on the material day. She stated that when she peeped outside the window, she saw PW1, his wife PW2 and PW1's brother beating Mumba as they took him to their house. That at PW1's house Mumba had screamed and his brother the accused had gone to his rescue.

She also testified that a neighbour went there and rescued Mumba who was bleeding, and he was taken to the neighbour's house. That thereafter people dispersed, and around 24:00 hours she saw police officers go to DW2's house but she did not go out, but just peeped through the window. DW3 told the court that she saw DW2 and the accused person

go outside, as her house is just about ten metres from DW2's, and she heard PW1 say that the accused person was Mumba but DW2 denied that. However PW1 had insisted that he was the one, and the accused person was apprehended.

DW3 stated that she had no relationship with PW1 as he was rude and the whole neighbourhood feared him. That PW1 did not have a good relationship with DW2 as they had a disagreement over the boundary of their plots, and DW2 had asked her sons to erect a toilet at the place that PW1 wanted to get.

When cross examined, DW3 testified that after Mumba was rescued, he spent a night at the neighbour's house, which was a bit far from his house. From there he would sporadically return home, as he was afraid, and that the day after the incident he had gone to his home, but could not confirm if he returned there. She told the court that their homes were numbered sequentially, but when asked why her house number did not follow DW2's, she clarified that the plots were farms that had recently been given house numbers, and DW2 was still using the old house number.

DW3 told that she did not know where Mumba currently is, and that he was not at home. That he only began appearing after PW1 moved from his house. She agreed that she gets along well with DW2 and her family, but that she did not know what had happened when she went outside on the material day, but that there were a lot of people. She also stated that after the incident, people damaged PW1's house.

I have considered the evidence. It is a fact that PW1 and his wife PW2 reported that the accused person, his brother Mumba and a mob had

attacked them at their shop and at their house. Further that PW1's Blackberry cell phone and money in the amount of K4, 600.00 was stolen from PW2 in the process. The question is whether it has been proved beyond all reasonable doubt that the accused person committed the offences. He stands charged with two counts of aggravated robbery. Aggravated robbery is defined in Section 294 (1) of the Penal Code, Chapter 87 of the Laws of Zambia as;

***“Any person who, being armed 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 twenty-six, shall be sentenced to imprisonment for a period of not less than fifteen years.*”**

Therefore, in order to prove the charges against the accused person, it must be established in count 1 that he was armed with an offensive weapon or instrument, or was in the company of one or more persons when he stole the Blackberry cell phone from PW1, and the K4, 600.00 in count two, and that at or immediately before, or immediately after the time of such stealing did use or threaten to use actual violence to PW1 and PW2 in order to retain or obtain or prevent or overcome resistance to the cell phone and money being stolen.

PW1 testified that as he was at the shop talking to his brother he just heard a bottle hit the wall, and when he turned he saw the accused person who told him that he was just a ZNS officer who cultivated cabbage and he had been looking for him. That as PW1 started following the accused person, he saw four people armed with screw drivers advancing towards him, and his wife PW2 had pulled him into the shop, stating that he would be killed. That the people stoned the shop, and that it was only when it was calm around 21:00 to 22:00 hours that they left the shop for home.

That as they were proceeding home, they were stoned, and once at their yard they found a mob, and that the accused person and his young brother Mumba went to him, as he opened the door of the house. He stated that there, the accused person got an iron bar and tried to hit him, but he managed to elude it, and went inside where he discovered that his Blackberry cell phone was missing.

PW2 on the other hand in narrating the events of the material day confirmed that a bottle was thrown at the wall of the shop as PW1 talked to his brother, and she had asked PW1 to enter the shop, as a group of people had assembled at the shop and were insulting. That she had identified Mumba among the people. She stated that they had knives and screw drivers, and they threatened to stab them. On the events at the house, PW2 testified that she saw the same group of men that had been at the shop and they told PW1 and PW2 that they would burn them, as they had troubled them for a long time. That she struggled with Mumba who stabbed her with a screw driver on her upper lip and chest.

The accused person denied committing the offences, stating that he was at home, and that he only went outside with mother when they heard the



noise and found PW1 beating Mumba, and he went to rescue Mumba. The accused person denied having gone to PW1's shop and insulting him and stoning the shop.

The first question that arises is whether PW1 and PW2 were attacked and the items stolen from them. From the accused person's defence it can be seen that he alleges that he was not involved in the attack, and he only went to rescue his brother Mumba from PW1's beatings. The medical report 'P2' shows that PW2 sustained a mild tender swollen right knee with bruises on her left chest. None of the items allegedly stolen were recovered, and 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 ownership arises."***

In this case the allegation that the cell phone and the money were stolen has been disputed on the basis that PW1 and PW2 had just falsely implicated the accused person. The accused person told the court that a dispute had erupted between his mother DW2 and PW1 over the boundary of their plots, and DW2 produced 'D1' the summons that PW1 had taken out in the Local Court at Chawama for compensation for insults.

DW2 told the court that she had initially reported PW1 to the Chairman but the Chairman had asked her to forgive PW1 as he was like a son. From the evidence, it is clear that PW1 and his family was at logger heads with DW2 and her family, including the accused person. It is not clear what led to the events of 21<sup>st</sup> October, 2016, as the only evidence tendered by the State to this effect came from PW1 and PW2 whom the accused person alleges falsely accused him as it was his brother Mumba

who was fighting with PW1. As there is on record evidence of a sour relationship between PW1 and PW2 on the one hand, and DW2 and her children including the accused person on the other hand, PW1 and PW2 are witnesses with an interest to serve, as they would want to have the accused person implicated.

The case of ***MACHOBANE V THE PEOPLE 1972 ZR 101*** held that ***“an accused should not be convicted on the uncorroborated testimony of a witness with a possible interest unless there are some special and compelling grounds”***. I have already noted that the medical report ‘P2’ shows that PW2 sustained injury. However there is need to establish whether the injuries were as a result of her being attacked and robbed in the process, or they were sustained as she was involved in the fracas. DW3 is a neighbour to DW2 and she testified that when she peeped through the window she saw PW1, PW2 and PW1’s brother beating Mumba, and that the accused person went to Mumba’s rescue.

This witness in evidence told the court that she did not have a good relationship with PW1 as he was rude, and the whole neighbourhood feared him. DW3 is a person who indicated her dislike for PW1, and she was therefore not a credible witness as she would want to taint PW1’s image, and she could therefore not independently confirm the events of the material day. A perusal of the evidence however shows that PW1 and PW2 contradicted themselves on who assailed them at the shop. PW1 said that the accused person had approached him saying that he was a just a ZNS officer who just cultivated cabbage, while PW2 said that she recognised Mumba among the people who approached PW1 at the shop.

Mumba and the accused person were neighbours to PW1 and PW2, and it was not expected that PW1 and PW2 would confuse the accused

person and Mumba. DW2 like the accused person stated that the accused person was at home when Mumba and PW1 were engaged in a scuffle. The evidence also shows that from the time of the incident Mumba has not been living at home, or just passes through there. The evidence of PW1 and PW2 being contradictory as to who initially assailed PW1 at the shop goes to show lack of credibility, and because of the relationship that the two had with DW2 and her family, may be evidence of false implication, especially that Mumba has been at large.

Therefore, in this matter there is need for corroborative evidence of PW1 and PW2's testimony, so that the dangers of false implication can be ruled out. PW3 the arresting officer testified that he did not bother to conduct a search with the mobile service providers to establish who could have been in possession of PW1's phone after it was allegedly stolen. Surely had the phone been stolen, PW3 would have made efforts to trace it. The evidence on record shows that there is no independent evidence from PW1 and PW2's evidence confirming the allegations. Furthermore, the evidence of PW1 was that other people joined in the fracas and anyone apart from the accused person could have stolen the phone, if at all it was stolen.

The evidence before the court is also that Mumba and PW2 were involved in a scuffle from which PW2 was possibly injured. There is nothing on record to corroborate the allegation that money was stolen from her by the accused person. She was involved in a fight with Mumba and I do not understand how the accused person is alleged to have stolen money from her if he was attacking PW1. There are no special and compelling reasons that would warrant the conviction of the accused person in the

absence of corroborative evidence, and I find that the State has failed to prove both counts beyond all reasonable doubt, and I find the accused person **NOT GUILTY** on both counts one and two and I **ACQUIT** him, and set him at liberty forthwith.

**Delivered in Open Court at Lusaka this 18<sup>th</sup> day of April, 2018**

                    *Kaunda*                      
**S. KAUNDA NEWA**  
**HIGH COURT JUDGE**