IN THE SUBORDINATE COURT **2SPN-024-2022**

OF THE FIRST CLASS FOR

THE LUSAKA DISTRICT

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

BETWEEN:

THE PEOPLE

V.

MAXWELL CHONGU

BEFORE: MAGISTRATE K.MWAMFULI (RESIDENT MAGISTRATE)

FOR THE PEOPLE: J.Mauka.P.P

FOR THE ACCUSED: Mr. Francis William Daka from Makebi Zulu &Advocates and B. Mengo from Legal Aid Board

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RULING

CASE LAW REFERRED TO:

1. Abbot v. Regina (1955) 39 Cr App R 141
2. Lengwe v. The People (1976) Z.R. 127 (S.C.)
3. Mwewa Murono v. The People (2004) Z.R. 207 (S.C.)
4. Penias Tembo v. The People (1980) Z.R. 218 (S.C)
5. The People v. Winter Makowela and Robby Tayanunga [1979] Z.R.290

LEGISLATION REFERRED TO:

1. The Criminal Procedure Code Chapter 88 of the Laws of Zambia.
2. The Penal Code Chapter 87 of the laws of Zambia

OTHER WORKS REFERRED TO:

1. Blacks Law Dictionary (5th edition) (1979) West Publishing Company

This is a ruling on case to answer. At the close of the prosecution case, I am enjoined by the mandatory provisions of **section 206** of the **Criminal Procedure Code Chapter 88** of the **Laws of Zambia** to determine whether or not a prima facie case has been established to require the accused to make his defense. The state called five witnesses and produced an exhibit to support the charge. The court will not at this stage labor to reproduce seriatim a summary of the witness testimonies.

I am indebted to Defense Counsels concise submissions for no case to answer.

In this case, the accused person stands charged with the offense of unlawful wounding contrary to **section 232 (a)** of the **Penal Code Chapter 87 of the Laws of Zambia.**

The particulars of the offense are that on the 04th of March 2017 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, the accused person unlawfully did wound Richard Sinonge Nyambe.

According to **section 232 (a)** of the **Penal Code** which states:

> *"Any person who unlawfully wounds another is guilty of a felony and is liable to imprisonment for three years"*

A "wound" is defined under **section 4** of the **Penal Code** as;

> *"..any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane..."*

Furthermore, in the case of **Lengwe v. The People (1976) Z.R. 127 (S.C.),** it was held that;

> *"...The meanings of the words "incision" and "puncture" make it clear that such a wound can be indicted only by weapon with cutting edge or point. Of course this cutting edge or point need not be that of metal object such as a knife or spear, or indeed a bullet; a wound can equally be inflicted by a sharpened stone or stick..."*

The ingredients of the offence are therefore that;

1. The accused person unlawfully wounded the complainant by using a sharp object;
2. That the accused person had no authority to wound the complainant; and
3. That the accused person's action of wounding the complainant was unjustifiable.

The law relating to "no case to answer" is found in **section 206** of the **Criminal Procedure Code Chapter 88 of the Laws of Zambia.** It is expressed in these words;

> *"...If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case, and shall forthwith acquit him...'*

The test to be applied in determining whether or not there is a case to answer is set out in a number of cases that include the case of **The People v. Winter Makowela and Robby Tayanunga [1979] Z.R.290** were it was held;

> *"A submission of no case to answer may be properly made and upheld where there has been no evidence to prove an essential element in the alleged offence and when the evidence of the prosecution has been do discredited as a result of cross-examination or so manifestly unreliable that no reasonable tribunal could safely convict on it."*

Furthermore, in the case of **Mwewa Murono v. The People (2004) Z.R. 207 (S.C.)** it was held that;

> *'...A submission of no case to answer may properly be made and upheld when there has been no evidence to prove the essential element of the alleged offence and when evidence adduced by the prosecution has been so discredited that no reasonable tribunal could safely convict on it...'*

From the foregoing, the court will consider whether there has been no evidence to prove the essential element of the alleged offence and whether the evidence adduced by the prosecution has been so discredited that no reasonable tribunal could safely convict on it.

At this stage, the court is not required to delve into the strict merits of the case, but need only ascertain whether the prosecution has established a *prima facie* case against the accused person, that is if the prosecution evidence is such that a reasonable tribunal might convict upon it should the defense offer no explanation.

In the **Black's Law Dictionary (5th edition) (1979) West Publishing Company** at page 1353 it is stated that;

> *'...Prima facie is said to be a latin word that means 'at first sight'. It is used for first, in the presentation of sufficient evidence to support a legal claim and second refers to specific evidence that if believed supports a case or an element that needs to be proved in a case...'*

I now turn to consider whether there has been no evidence to prove the essential element of the alleged offense.

The essential element of the offense of unlawful wounding is that the accused person unlawfully wounded the complainant by using a sharp object.

I have very carefully perused through the evidence of all five witnesses and I find that the evidence reveals that on the night of the 04th day of March 2017, PW1 was attacked by the accused person and eight to ten people who beat him. He thus sustained an injury on his left leg and lost a tooth.

PW3, the Doctor who signed the medical report form marked as 'P1' told court that he did not see the injuries he was signing for in 2021. He told court that he signed for injuries indicated in a file from 2017. He further told court that he does not know if the open fracture was due to a Road Traffic Accident or a fracture.

PW4, the Doctor who examined PW1 in 2017 told court that he saw PW1 for an open ankle dislocation in 2017. He explained that PW1 had an injury on the ankle which was secondary to a road traffic accident. He told court that the wound was as a result of a road traffic accident and the patient he saw was for a road traffic accident. He further told court that no machete can cause an open fracture dislocation.

PW5, the arresting officer told court that he could not tell what caused the scar and he did not see the machete as it was not recovered. He said that in the medical report form marked as 'P1', the Doctor did not indicate if the injury was consistent or not consistent with the findings.

Having very carefully analyzed the evidence of all five witnesses, I find that the essential element which is that the accused person unlawfully wounded the complainant by using a sharp object has not been proven to this court. The evidence on the record has only proven that PW1 was attacked by the accused person and eight to ten people on the night in question .The evidence further reveals that he was seen by PW4 in 2017 for an injury on the ankle which was secondary to a road traffic accident. According to PW4 who is a Doctor, a machete cannot cause an open fracture dislocation on the ankle.

I now turn to consider whether the evidence adduced by the prosecution has been so discredited that no reasonable tribunal could safely convict on it.

The evidence of the prosecution centers on the medical report form marked as 'P1', produced before this court by PW5. In cross-examination, PW5 told court that on the medical report form, the Doctor did not indicate whether the injury was consistent or not consistent with the findings. He also told court in cross-examination, that after four years he only saw a scar on PW1 but that the medical report form does not speak of a scar. Further, in cross-examination of PW4, the Doctor who examined PW1 in 2017 he told court that the said medical report form is incomplete. PW3, the Doctor who signed the medical report form also told court in cross-examination that he did not see the injuries he was signing for in 2021.

From the above, I find that the material evidence in this case which includes the medical report form has been discredited during cross-examination. The court further finds that the medical report form has been shown to be so manifestly unreliable that no reasonable tribunal could safely convict on it

In the case of **Penias Tembo v. The People (1980) Z.R. 218 (S.C)** it was stated that:-

> *'..It is mandatory for a court to acquit an accused at the close of the prosecution case if the facts do not support the case against him...'*

In the same vein, in the case of **Abbot v. Regina (1955) 39 Cr App R 141** at page 156 Lord Chief Justice Goddard said:-

> *"...A man against whom there is no prima facie case at the close of the case for the prosecution is entitled to an acquittal..."*

From the foregoing, I find that as a *prima facie* case has not been made out against the accused person sufficiently to require him to make out a defence, the case against him is hereby dismissed and he is acquitted in accordance with **section 206** of the **Criminal Procedure Code Chapter 88 of the Laws of Zambia**. May he be set at liberty forthwith.

So I order accordingly.

Dated the 31st day of May, 2023

KAWAMA MWAMFULI
RESIDENT MAGISTRATE