

IN THE COURT OF APPEAL  
HOLDEN AT NDOLA/KABWE  
(Criminal Jurisdiction)

APPEAL NOs 30, 31, 32/2018

BETWEEN:

**AARON NGOSA**

1<sup>st</sup> Appellant

**KELVIN MWEWA**

2<sup>nd</sup> Appellant

**LYSON KUNDA**

3<sup>rd</sup> Appellant

VS

**THE PEOPLE**

Respondent



CORAM: **Chashi, Lengalenga and Siavwapa, JJA**  
on 21<sup>st</sup> and 23<sup>rd</sup> August, 2018 and 20<sup>th</sup> October, 2018

For the Appellants: Mr. H. M. Mweemba – Principal Legal Aid Counsel  
(standing in for Mr. A. Ngulube – Director of Legal  
Aid Board)

For the Respondent: Miss C. Soko – Deputy Chief State Advocate

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## J U D G M E N T

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**LENGALENGA, JA delivered the Judgment of the Court.**

Cases referred to:

- 1. MBOMENA MOOLA v THE PEOPLE (2000) ZR 148**
- 2. ABEDINEGO KAPESHI & ANOR v THE PEOPLE (SCZ SELECTED JUDGMENT NO. 35 OF 2017)**
- 3. CHISHIMBA v THE PEOPLE – APPEAL NO. 17 OF 1999 (unreported)**
- 4. BWALYA v THE PEOPLE (SCZ JUDGMENT NO. 29 OF 2010)**
- 5. MWIBA MUKELA v THE PEOPLE (2012) 2 ZR 387**

Legislation referred to:

- 1. The Penal Code, Chapter 87 of the Laws of Zambia – Section 200.**

This is an appeal against sentence only. On 8<sup>th</sup> January, 2018 the appellants were convicted on one count of murder contrary to section 200 of the Penal Code, Chapter 87 of the Laws of Zambia and sentenced to death.

The particulars of offence are that the appellants on the 6<sup>th</sup> day of April, 2017 at Serenje in the Serenje District of the Central Province of the Republic of Zambia, jointly and whilst acting together, did murder Jean Bangwe.

The case for the prosecution was based on the evidence of PW1, Charles Kunda, PW2, Oscar Musanda, PW3 Maxwell Mpundu Chisenga and PW4, Godfrey Katoka.

The brief facts of the case are that the deceased, Jean Bangwe was suspected of being a witch who caused the deaths of her brothers and the illness of PW2, Oscar Musanda. This was according to the evidence of PW1, Charles Kunda and PW2, Oscar Musanda, both of Nakalengule village, Chief Maila's area in Serenje District.

PW1's testimony was to the effect that on 2<sup>nd</sup> April, 2017 after the church service, he was approached by PW2, Oscar Musanda who asked him to go to his house so that he could tell him what happened when he went to a witch finder. After church, PW1 went to PW2's house where they gathered with about seven other family members including PW2. According to PW1's evidence, PW2 told them that he had been bewitched by Jean Bangwe, who was PW1's mother, according to what he was told by the witch finder. Jean Bangwe who was present at the meeting denied the allegation and it was agreed that they would go back to the witch finder.

PW1 testified further that, however, after a day passed when he went to visit his mother at her house, he found that she had been taken to PW2's house. He, thereafter, proceeded to PW2's house where he heard PW2 telling her to find the charm so that he could recover. PW1 further testified that even on that day, she denied the allegation and still insisted

on being taken to a witch finder. After that, PW2 told her that she would not leave his house that day until they were able to see the way forward. Thereafter, they dispersed and went back to their homes and left the deceased there.

It was PW1's further testimony that on 5<sup>th</sup> April, 2017 he went to see his sister, Esinele Bangwe and he asked her to go and see their mother at PW2's house. On 6<sup>th</sup> April, 2017, his sister went to PW2's house and picked up their mother and took her back to her house but she was later dragged back to PW2's house by the appellants who were drunk. They threatened to kill her if she did not cure PW2.

PW1's evidence was further to the effect that from his mother's house where he stood watching, he was able to see and actually saw the appellants leading his mother into the bush. He observed that A1, Aaron Ngosa and A2, Kelvin Mwewa were armed with a hoe and an axe whilst A3, Lyson Kunda held and led PW1's mother to the bush. PW1 did not follow them because the appellants had weapons and after about two hours, he saw the appellants return with his mother. According to PW1's evidence, as the appellants were passing, A2 announced to the people who were present at the deceased house that they had killed their mother and that

they could start mourning. Thereafter, PW1 went and informed the other family members and the headman what had transpired. The neighbourhood watch members made a follow up of the report by going to the bush. PW1's mother was found buried in a grave and she was dead.

PW2 testified that he fell sick in March and that after he was treated at the clinics and Serenje Hospital without success, he sought help from traditional methods by going to a witch finder in Samfya. She told him that he had been bewitched by his aunt, Jean Bangwe. From there, he consulted another witch finder from Congo and a third one who all told him the same thing.

PW2 testified further that it was only after that, that he confronted his aunt, Jean Bangwe who he claimed, admitted being responsible for his illness. He also stated that she promised to provide the healing. He further testified that on 6<sup>th</sup> April, 2017 around 14:00 hours, the appellants approached him and asked him where his mother, Jean Bangwe was and he told them that she had gone back to her house. He said that they went to pick her up but he was not with them and he later learnt from Lovemore that she was buried and she died.

