

**IN THE COURT OF APPEAL FOR ZAMBIA  
AT THE APPEAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Criminal Jurisdiction)*

**Appeal No.39/2018**

**BETWEEN:**

**EMELDA MWANZA**



**APPELLANT**

**AND**

**THE PEOPLE**

**RESPONDENT**

**Coram: Mulongoti, Sichinga and Ngulube, JJA**  
**On 21<sup>st</sup> day of August 2018 and 20<sup>th</sup> day of November, 2018**

*For the Appellant: Mr. H.M. Mweemba – Principal Legal Aid Counsel.*

*For the Respondent: Mrs. R.N Khuzwayo – Chief State Advocate of  
National Prosecutions Authority*

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## **JUDGMENT**

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**Sichinga, JA**, delivered the Judgment of the Court

**Cases referred to:**

1. *David Zulu v The People* (1977) ZR 151 (SC)
2. *Chimbini v The People* (1973) ZR 192 (SC)
3. *Kenious Sialuzi v The People* (2006) ZR 87(SC)
4. *Saluwema v The People* (1964) ZR 4 (CA)
5. *Phiri and Others v The People* (1973) ZR 47(CA)

6. *Mbinga Nyambe v The People SCZ Judgment No. 5 of 2011(SC)*
7. *Khupe Kafunda v The People (2005) ZR 31 (SC)*
8. *Ezious Munkombwe and Others v The People CAZ No.7,8,9,of 2017 (CA)*
9. *Saidi Banda v The People SCZ Judgment No. 30 of 2015 (SC)*
10. *Rosemary Chilufya v The People (1986) ZR 32 (SC)*
11. *Lumangwe Wakilaba v The People (1979) ZR 74 (SC)*
12. *Hamfuti v The People (1972) ZR 240 (SC)*
13. *Morgan Ngosa v The People (2010) ZR 191 Vol 3 (SC)*
14. *Chileshe v The People (1972) ZR 48 (HC)*

**Legislation referred to:**

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

This is an appeal against conviction and sentence. The appellant stood charged with the offence of murder contrary to section 200 of the Penal Code, Chapter 87 of the Laws of Zambia. The particulars of the offence were that the appellant, Emelda Mwanza, on the 10<sup>th</sup> day of November, 2017 at Petauke in the Petauke District of the Eastern Province of the Republic of Zambia did murder one unnamed baby girl.

The summary of the evidence in support of the charge came from four (4) witnesses, namely PW1, the appellant's landlord, PW2, a headman in the appellant's village, PW3, a fire brigade officer, and PW4, the arresting officer. The prosecution's evidence was that sometime in 2016, the appellant who was pregnant at the time, rented a room from PW1. She stayed with PW1 for three months when her pregnancy became due. PW1 helped her along for the

remainder of her pregnancy including taking her to the clinic where she delivered a baby girl. The appellant returned to her rented home with the baby after her discharge and remained there for a week and two days. She informed PW1 that she would take the baby to her village for her mother to see the child. She was gone for a week. PW1 did not see her on the day she returned from the village. She saw the appellant the following morning and the appellant informed her that the baby was well and asleep. For the next two days when PW1 checked on the appellant and her baby she found that they were not home. On the 3<sup>rd</sup> day three women went to PW1's home and they inquired about the appellant and her baby. The women informed PW1 that a baby had been retrieved from a well in Mwase area, where the appellant had gone to visit her mother.

It was in evidence that PW2, a peasant farmer and headman at Mwase Village was informed by people in the village of a figure in the well that looked like a doll. Upon investigations he confirmed the figure in the well was a dead baby. The matter was reported to the police and the fire brigade who retrieved the baby from the well and ordered that the baby be buried due to its state of decomposition. PW3, a fire brigade officer, was part of the rescue team, confirmed that the deceased baby was female.

PW4, the police officer who investigated the case, also attended to the retrieval of the baby's body from the well. He observed that the

female baby had a deep cut on the right side of the head and that the baby was in a state of decomposition, which prompted the decision to bury the body immediately and marking the site for exhumation later. His evidence was that three days after the discovery of the body, the appellant appeared at the Police station and reported that her boyfriend had killed the baby for a ritual practice and that she had not received her share of the money. PW4 warned and cautioned her before charging her with the offence of murder. He produced a medical examination report dated 15<sup>th</sup> November, 2016, **P1**, showing that the appellant had recently given birth. PW4 also produced a post mortem report, **P2**, dated 22<sup>nd</sup> March, 2017 which indicates that the forensic examination was conducted on 17<sup>th</sup> March, 2017 at 15:30 hours at Mlawa area in Petauke. The cause of death was brain hemorrhage due to fracture of skull bones which was due to fatal traumatic injuries of the head.

PW4 said the appellant informed him that she had met her boyfriend in a field, some 2 kilometers away from where the baby's body was retrieved. He said beside the report he received from the appellant, there were no other cases reported of a missing baby in Petauke district. Under cross-examination PW4 said Petauke district had two police posts and only one station.

Upon being found with a case to answer, the appellant elected to remain silent and did not call any witness to her defence.

