

IN THE COURT OF APPEAL OF ZAMBIA APPEALS No. 17-23/2019
HOLDEN AT KABWE/LUSAKA/NDOLA
(Appellate Jurisdiction)

BETWEEN:

RAPHAEL CHIPAMPE TAFUNA SIKAZWE	1 ST APPELLANT
CLEMENT YAMBAYAMBA	2 ND APPELLANT
ISRAEL SIKAZWE	3 RD APPELLANT
ONISHA NAMWINGA	4 TH APPELLANT
ARNOLD KAITE	5 TH APPELLANT
MAUREEN NAMWINGA	6 TH APPELLANT
MATTHEWS CHABALA	7 TH APPELLANT



AND

THE PEOPLE

RESPONDENT

CORAM: Mchenga DJP, Kondolo and Lengalenga, JJA

On 21st May 2019, 23rd May 2019, 25th June 2019, 28th
August 2019 and 25th October 2019.

For the Appellants: In person

For the Respondent: M. K. Chitundu, Deputy Chief State
Advocate, National Prosecutions
Authority.

J U D G M E N T

Mchenga DJP, delivered the judgment of the court.

Cases referred to:

1. Kambarange Mpundu Kaunda v The People [1990-1992]
Z.R. 215
2. Sipalo Chibozu and Chibozu v The People [1981] Z.R.
32
3. Abedinegal Kapeshi and Best Kanyakula v The People
SCZ No. 35 of 2017
4. Boniface Chanda Chola, Christopher Nyamande and
Nelson Sichula v The People [1988-1989] Z.R. 163
5. Director of Public Prosecutions v Ngandu and
Others [1975] Z.R. 253
6. Webster Kayi Lumbwe v The People [1986] Z.R. 93
7. Situna v The People [1982] Z.R. 115
8. Love Chipulu v The People [1986] Z.R. 73
9. Chimbini v The People [1973] Z.R. 191
10. Philip Mungala Mwanamubi v The People
11. Molley Zulu, Abraham Masenga And Smiling Banda v
The People [1978] Z.R. 227
12. Robertson Kalonga v The People [1988-1989] Z.R. 90

Legislation referred to:

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

Introduction

1. This is an appeal, from a judgment of the High Court (Chembe J.), delivered on 29th March 2018. By that judgement, the appellants, who were jointly charged with 11 others, and were each facing two counts of murder and a count of attempted murder, were all convicted of the three offences. They were each condemned to suffer capital punishment for the murders, and sentenced to 20 years imprisonment, for the attempted murder.
2. The appellants, have all appealed against both their convictions and the sentences, imposed on them.

Charges before the trial court

3. In the first and second counts, the appellants were charged with the offences of murder, contrary to **sections 200 of the Penal Code**. The allegations were that, on 2nd June 2016, while acting together with others, they murdered Benson Mukupa Kaoma and Raibos Chifunda.

4. The charge in the third count, was that of attempted murder contrary to **section 251(a) of the Penal Code**. It was alleged that on the same day, they attempted to murder Peter Sinyangwe.

Evidence in support of charges

5. On 24th June 2013, Senior Chief Tafuna, of the Lungu of Mpulungu died. Following his death, his son, Cosmas Tafuna, was appointed to act as chief. He did not act for long, because the succession rules of the Lungu, did not allow him to succeed his father. Consequently, sometime in November 2013, the 1st appellant was appointed to act as chief.
6. On 24th March 2016, at a meeting organized by the member of parliament for Mpulungu, Christine Muselu, a journalist, recorded the 1st appellant, telling the attendees that, if Benson Mukupa Kaoma, the chief in waiting, turned up at Isoko Village, there would be bloodshed. Notwithstanding, on 29th March 2016, Benson Mukupa Kaoma, was recognized as Senior Chief Tafuna by the Government.

7. Following the conclusion of the traditional rites, initiating him as the new chief, on 2nd June 2016, Benson Mukupa Kaoma travelled to Isoko Village for his installation. He was in a convoy of about four motor vehicles carrying persons including Zambia Police Officers, his wife, Raibos Chifunda and Cosmas Tafuna Sikazwe.
8. The others travelling with them were, Kanafred K. Sinyangwe, Winston Henry Sikazwe, Yamwela Moriland Sikazwe, Enock Chisabi, Peter Sinyangwe, Gaston Chisha Yambala, Christopher Mazimba and Margaret Chisha.
9. As they approached the village, they found the roads blocked with logs, fire and stones, at various points. The police officers cleared the obstructions and they proceeded with their journey, until they reached Isoko Village, around 17:00 hours.
10. At the village, they found a group of unruly people

