

**IN THE SUPREME COURT OF ZAMBIA**

**HOLDEN AT NDOLA**

(Criminal Jurisdiction)

**BETWEEN:**

**JOSEPH BANDA  
ASHANTI TONGA**

**1<sup>ST</sup> APPELLANT  
2<sup>ND</sup> APPELLANT**

**AND**

**THE PEOPLE**

**RESPONDENT**

**Coram: Phiri, Muyovwe and Chinyama, JJJS  
On the 5<sup>th</sup> December, 2017 and 11<sup>th</sup> December, 2017**

For the Appellant: Mr. P. Chavula, Senior Legal Aid Counsel,  
Legal Aid Board

For the Respondent: Ms. M. H. Kayombo, Senior State Advocate,  
National Prosecutions Authority

---

**JUDGMENT**

---

**Phiri, JS, delivered the Judgment of the Court**

**Cases referred to:**

1. **Chimbini vs. The People (1973) Z.R. 191**
2. **Dorothy Mutale and Richard Phiri vs. The People (1995/1997) Z.R. 227**
3. **Chimbo and Others vs. The People (1982) Z.R. 20**
4. **Mwansa Mushala and Others vs. The People (1978) Z.R. 58**

5. **Muvuma Kambanja Situna vs. The People (1982) Z.R. 115**
6. **Khupe Kafunda vs. The People (2005) Z.R. 31).**
7. **George Nswana vs. The People (1988/89) Z.R. 174**
8. **Robertson Kalonga vs. The People (1988/89) Z.R. 90**

The appellants were jointly tried and convicted on a charge of **Murder contrary to Section 200 of the Penal Code Chapter 87 of the Laws of Zambia.** The particulars alleged that on 13<sup>th</sup> January, 2015 at Lundazi they murdered Armstrong Nyirongo. They were sentenced to death. They both appealed against conviction and sentenced.

The facts that were not in contention were that the deceased was a Director of Mugwazo Mine from which a semi-precious mineral (stones) known as aquamarine was extracted. The two appellants were part of the deceased's workforce. They all lived in camps within the area of the mine pit located in a mine area which covered 200 hectares of remote land within Lundazi District.

On the material day all the workers completed their work schedule under the supervision of the deceased around 12.00 hours. After preparations, the deceased carried the stones and proceeded to the local market known as Chanyalugwe to sell the stones. He promised to pay the workers after selling the stones.

