

IN THE COURT OF APPEAL FOR ZAMBIA
HOLDEN AT KABWE
(Civil Jurisdiction)

APPEAL NO. 60/2018



BETWEEN:

ALEX MWEWA

APPELLANT

AND

THE PEOPLE

RESPONDENT

Coram: **Makungu, Kondolo and Majula JJA**
On 23rd August, 2018 and 20th November, 2018

For the Appellant: Mr. H.M. Mweemba – Legal Aid Board

For the Respondent: Mrs. C. Soko – National Prosecution Authority

JUDGMENT

MAKUNGU, JA delivered the Judgment of the Court.

Cases referred to:

1. *The People v. Chimbala* (1973) ZR 118
2. *Mugula v. The People* (1975) ZR 282
3. *Phiri Charles v. The People* (1973) ZR 168

Legislation referred to:

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

Other Authorities referred to:

1. *Achbold, Criminal Pleading, Evidence and Practice, Fortieth Edition, Editor S.G. Michell 1962 – 1979 Sweet and Maxwell*

This is an appeal against conviction and sentence. The appellant was convicted of Aggravated Robbery contrary to Section 294 (1) of the Penal Code and sentenced to 18 years imprisonment with hard labour. It was alleged that on 6th March, 2017 at Ndola, in the Ndola District of the Copperbelt Province jointly and whilst acting together with other persons unknown and being armed with an offensive instrument namely a screw driver, they stole a television set valued at K450.00 the property of Royd Chola and immediately before or immediately after the time of such robbery, did use or threaten to use actual violence to the said Royd Chola in order to obtain or retain the said property.

The prosecution case was based on the evidence of three witnesses. The first and second witnesses (PW1 and PW2) were a married couple namely Lloyd Chola and Regina Chola respectively. The third witness (PW3) was Mukuka Mwansa a Police Constable stationed at Chipulukusu Police Post, Ndola. The prosecution evidence was as summarised below:

On 5th March, 2017 around 01:00 hours PW1 and PW2 were in their bedroom. PW1 was asleep while PW2 was breastfeeding their child when the appellant entered the bedroom and took a 14-inch

television set (TV). The appellant was seen by PW1 who shouted "thief.!" She held the appellant by the leg but he freed himself and proceeded to the sitting room. By then, PW2 had woken up and pursued the appellant. The appellant dropped the TV as soon as PW2 started struggling with him. PW1 then picked up the TV and secured it in the bedroom. In an attempt to flee, the appellant stabbed PW1 with a screw driver in the shoulder and it remained lodged there. However, PW2 apprehended him and later took him to the police to whom he handed over the screw driver. PW3 visited the crime scene during her investigations and established that the padlock to the main door was damaged although the padlock could not be found. She also discovered that PW2 was stabbed with a screw driver during the robbery. The TV that was stolen, the said screw driver and PW1's medical report were all produced in evidence.

In his defence, the appellant stated that he used to be a businessman. On 4th March, 2017 he went to PW1's house to collect a debt that arose from two pairs of sneakers and six metres of chitenge material that he sold to PW2 on credit on 5th February, 2017. Then PW1 informed him that he would pay at the month end but he insisted that he be paid forthwith. Consequently, a scuffle ensued

between him and PW1 who kicked him in the abdomen and in retaliation, he pushed PW1 who started shouting: "Thief...!" Thereafter he was beaten by unknown people until he collapsed and in the morning, when he came to, he found himself in a police cell. The appellant's further evidence was that he was not in possession of the screw driver at the material time.

The learned trial Judge found that the appellant had stolen the TV and that the theft was accompanied by violence as the appellant assaulted PW2 using an offensive weapon. It was also the trial court's finding that the appellant was not a credible witness and he failed to disclose any reasonable explanation of what transpired. He was of the view that the appellant's defence of having a business relationship with PW1 was an afterthought. That there was overwhelming evidence against the appellant proving that the appellant was guilty as charged.

This appeal is based on one ground of appeal which is framed as follows:

"The learned Judge erred in law and fact when he convicted the appellant on insufficient evidence as the prosecution had not proved the required ingredients of the offence."

