IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

APPEAL NO. 06, 07,08, 09/2017

BETWEEN:

ABEL MKANDAWIRE **1ST APPELLANT**

ZUBA MKANDAWIRE **2ND APPELLANT**

PASSWELL MKANDAWIRE **3RD APPELLANT**

AND

THE PEOPLE **RESPONDENT**

Coram: Phiri, Muyovwe and Chinyama, JJS,
on 11th July, 2017 and 10th April, 2018

For the Appellants: Mr. K. Muzenga, Deputy Director, Legal Aid Board and Mr. M. Hamachila, Messrs Iven Mulenga and Company

For the Respondent: Mrs. A. Sitali, Deputy Chief State Advocate, National Prosecutions Authority

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JUDGMENT

MUYOVWE, JS, delivered the Judgment of the Court

Cases and referred to:

1. **Muvuma Kamanja Situna vs. The People (1982) Z.R. 115**
2. **Mwansa Mushala and Others vs. The People (1978) Z.R. 355**
3. **George Musupi vs. The People (1978) Z.R. 271**

4. **Katebe vs. The People (1975) Z.R. 13**
5. **Bwalya vs. The People (1975) Z.R. 125**
6. **Benson Phiri and Sanny Mwanza vs. The People (2002) Z.R. 107**
7. **Kenneth Mtonga and Another vs. The People (2000) Z.R. 33**
8. **Wilson Mwenya vs. The People (1990/1992) Z.R. 24**
9. **Emmanuel Phiri and Others vs. The People (1978) Z.R. 79**
10. **Machipisha Kombe vs. The People (2009) Z.R. 282**
11. **Illunga Kabala and John Masefu vs. The People (1981) Z.R. 102**

This is an appeal against conviction. The appellants were convicted for the murder of Henry Kampamba, a teacher at Katuba Primary School in Chibombo district. The appellants were initially charged jointly with one Friday Chibale Mwendalubi. Unfortunately, Friday passed away before the hearing of the appeal and his appeal abated.

The facts established by the prosecution were that on the 22nd February, 2014 Henry Kampamba (hereinafter referred to as "the deceased") picked up PW2 his girlfriend from Kabwe and together they travelled back to Katuba. The deceased narrated to PW2 the threats that he was receiving from the appellants owing to the fact that he had saved PW1, an Environmental Health Technologist, from serious assault at the hands of the first appellant. According to PW1, the first appellant assaulted him because he had signed a

medical report form for someone who had been assaulted by the first appellant's brother. During the assault on PW1, the deceased kept advising the first appellant to settle whatever grievance amicably and this angered the first appellant who threatened the deceased with death in the hearing of PW1. Apparently, PW1 did not report the assault to the police because he received a delegation from the first appellant's relatives begging him not to press charges.

There was evidence from PW2 and PW4 that the deceased kept receiving text messages on his mobile phone to the effect that he was 'being watched'. PW2's evidence was that the deceased told her that he was on a hit list and that it was the appellants who were threatening to kill him. She first saw the appellants on the 23rd February, 2014 when the deceased took her for a drink at the shops along Great North Road. This was in the afternoon. On the 27th February, 2014, the day of the murder, PW2 saw the appellants (including late Friday) twice: first around 14:00 hours and then again around 17:00 hours when she returned to the shops with the deceased as he had forgotten to buy bread and other groceries. It was her evidence that she was only taking soft drinks. In fact, on

the material day, PW4 stated that he saw the text message threatening the deceased on his phone and advised the deceased to report the matter to the police but he said he needed to consult his fellow teachers. PW4 left PW2 and the deceased at the shops. PW2 observed that the appellants left before them. Around 19:00 hours, PW2 and the deceased left the shops. As they proceeded home and on reaching a small bridge she stated that the appellants sprung up, two from each side, to attack her and the deceased. Two attacked her while the other two attacked the deceased. According to PW2, her attackers were wearing black coats and gloves in their hands, the deceased told her to run for her life and she managed to flee from the scene and in the process, one shoe remained behind. She appeared at the house of PW3 in a distressed state clad in soiled clothes and she was taken to the headman's home where she took refuge.

Meanwhile, the body of the deceased was discovered by PW7 a sales lady who found a trail of blood as she reached near the scene at a small bridge and alerted PW5 a neighbourhood watch officer. It was PW5's evidence that as he rushed to the scene, he saw the

second and third appellants running from the direction of the scene. He gave way and observed that each one was wearing a black coat and gloves. On reaching the scene of crime, he found the deceased's body in a pool of blood and contacted the police at Kabangwe Police Station who advised him to transport the body to the police station which he did and finally conveyed it to the University Teaching Hospital mortuary.

A post-mortem examination was conducted by the State Forensic Pathologist Dr. Musakhanov and the cause of death was found to be asphyxia due to respiratory truck obstruction by blood caused by three stab wounds which penetrated into the trachea.

Investigations were carried out leading to the apprehension of the appellants. Suffice to note that although there was evidence that the deceased received threatening text messages from the first appellant, the phone number that sent the message was unknown. It is noteworthy that the deceased did not report the matter to the police. On his part, the arresting officer (PW10) stated that he approached the mobile phone service providers (MTN and Airtel) to trace the origin of the text messages but he was informed that they

could only trace messages from Uganda. This was the evidence from the prosecution.

The appellants were found with a case to answer and gave evidence on oath and called witnesses.

The first appellant, in his defence denied any involvement in the murder of the deceased. In sum, he stated that from the 17th February to 28th February, 2014 he was out on a campaign trail for the Katuba by-election. He was apprehended on 10th October, 2014. After apprehension, on 29th October, 2014 he was taken to an office within the Police station where he found PW2 and another lady. He stated that this was the reason that PW2 was able to identify him on the identification parade as she saw him prior to the mounting of the identification parade. He denied being involved in a fight with PW1 whom he had known since 2006.

Turning to the second appellant, his story was that on the day of the murder, he was suffering from a bout of diarrhoea which attacked him from the evening of 26th February, 2014 and was home all day of the 27th February, 2014. He did not go to the clinic

but was attended to by his sister Malango Mkandawire (DW7) who administered traditional medicine on him.

The third appellant stated that on the 27th February, 2014 he was in Chisamba at his brother (DW6) Azwell Mkandawire's residence. His brother worked for Zambeef. He was at Azwell's place from 26th February, 2014 to the 1st March, 2014. According to the third appellant, he was first charged with assault of one Shadreck Michelo which was allegedly committed in January 2014. The third appellant stated that PW5 the neighbourhood watch officer lied when he said he saw him at 15 miles as at that time he was in Chisamba. That PW2 was able to identify him because she had occasion to see him before the identification parade was conducted. He stated that he was arrested on 14th October, 2014.

In her judgment, the learned trial judge accepted that the deceased who was in the company of PW2 was attacked by the appellants near Kayosha Bridge. The learned trial judge found PW2 to be a reliable witness and accepted that she had earlier on during day time seen the appellants twice prior to the attack; that as the area of the attack was lit by lights from the nearby school PW2 was

able to identify the appellants that night; that PW2 was corroborated by PW7 who stated that there were lights from nearby shops and homes and that PW5 also saw the second and third appellants running from the scene of crime as there was light from a nearby bar. The learned judge accepted PW2's identification of the appellants at the identification parade and rejected the appellants' contention that the identification parade was unfair as the appellants did not raise the issue that PW2 allegedly saw the appellants before the identification parade was conducted. She rejected the appellants' alibis on the ground that they were an afterthought as they did not inform the police from the outset to enable them carry out investigations.

Regarding the first appellant, the learned trial judge accepted that on 21st February, 2014 he threatened the deceased at the time he (the deceased) intervened when the first appellant was assaulting PW1. The learned trial judge also accepted that the deceased continued receiving death threats and he was attacked a few days later on 27th February, 2014 and he died from the injuries he sustained from the attack.

As regards thc second and third appellants, the learned trial judge accepted the evidence of PW5 to the effect that while he was going to the scene and with the aid of the lights from the nearby bar, he saw them running from the direction of the scene.

She found that malice aforethought was established due to the nature of the injuries sustained by the deceased who died at the scene as a direct result of the injuries. She found all the appellants guilty and convicted them and sentenced each of them to the mandatory death sentence.

The appellants appealed to this court. The record shows that Messrs Iven Mulenga filed grounds of appeal and heads of argument on 15th June, 2017. The grounds of appeal are couched as follows:

1. **The learned court erred in law and in fact when she relied on the evidence of the second prosecution witness as to the identification of the appellants as having committed the offence in this matter.**
2. **The learned trial court erred in law and in fact when she admitted the evidence of the second prosecution witness as she is a witness with a possible interest to serve.**

3. **The learned court erred in law and in fact when she failed to properly address the evidence of alibis raised on the totality of the evidence on record.**

The Legal Aid Board also filed grounds of appeal and heads of argument on 5th July, 2017. The grounds of appeal read as follows:

1. **The learned trial judge misdirected herself in law when she delivered a judgment which fell short of the standard as it never showed that the trial court took into consideration all the relevant materials placed before it.**

2. **The learned trial judge misdirected herself in law and in fact when she accepted the evidence of PW1, PW2 and PW4 whose evidence is manifestly unreliable when the totality of evidence on the record is considered.**

3. **The learned trial judge misdirected herself in law when she rejected the alibi raised by the appellants without considering the evidence each appellant presented to establish the same.**

At the hearing of the appeal, Mr. Muzenga, the learned Deputy Director applied that ground one and two of the appeal filed by Messrs Iven Mulenga should be considered as one ground with ground two filed by Legal Aid. Further, that ground three filed by

Messrs Iven Mulenga should be considered as one ground with ground three filed by Legal Aid. Lastly, that ground one filed by Legal Aid should remain a stand alone ground. We granted the application which was not objected to by Mrs. Sitali. We must mention, however, from the outset, that the heads of argument filed by Mrs. Sitali specifically responded to the three grounds of appeal originally filed by Messrs Iven Mulenga.

For convenience, following upon Mr. Muzenga's application, we found it prudent to summarise all the grounds of appeal and we now have three consolidated grounds of appeal which raise the following issues: Ground one attacks the learned trial judge's acceptance of PW2's evidence of identification alleging that she was a witness with an interest to serve and also that the evidence of PW1 and PW4 was unreliable in the light of the totality of the evidence. The second ground is that the learned trial judge misdirected herself when she rejected the alibis raised by the appellants without giving proper consideration of the evidence before her. The third and final ground attacks the trial judge for allegedly delivering a judgment which fell short of the required

standard as she failed to consider all the relevant materials placed before her. These are the three grounds before us advanced on behalf of the appellants.

In arguing ground one, it was submitted, *inter alia,* that this is a case of a single identifying witness. The case of **Muvuma Kambanja Situna vs. The People**[1] was cited where we gave guidance to trial courts on how to handle such evidence. In that case we held that:

> **The evidence of a single identifying witness must be tested and evaluated with the greatest care to exclude the dangers of an honest mistake; the witness should be subjected to searching questions and careful note taken of all the prevailing conditions and the basis upon which the witness claims to recognise the accused.**

Counsel argued that the evidence of PW2 left much to be desired and did not exclude the dangers of an honest mistake. It was submitted that PW2 gave conflicting statements soon after the murder when she told Detective Sergeant Fwambo (DW8) that she could not identify the assailants and yet after being in custody for three months, she managed to identify the assailants. It was argued that the learned trial judge failed to address this conflict

and focused on looking for corroborative evidence. It was submitted that PW2 should not be relied on and her evidence cannot be cured by the so-called corroborative evidence of PW5 and PW7. Counsel submitted that there was a conflict between the evidence of PW2 and PW7 which was not resolved by the trial court. According to PW7 the place where the body was found was dark and the lighting in that place was coming from inside the houses while PW2 stated that there was lighting outside the houses which aided her to see her assailants. Further, PW5 stated that it was dark when he saw two people running from the direction of the scene of murder and he was scared, therefore, his evidence of identification of the second and third appellants was weak and did not exclude the danger of mistaken identity. That although PW5 said there were lights from a nearby bar, it was not clear the distance between the bar and where he was, the type of lighting and the duration or period of observation. On this argument Counsel relied on the case of **Mwansa Mushala and Others vs. The People**[2] in which we held that:

> **Although recognition may be more reliable than identification of a stranger, even when the witness is purporting to recognise someone**

whom he knows the trial judge should remind himself that mistakes in recognition of close relatives and friends are sometimes made, and of the need to exclude the possibility of honest mistake; the poorer the opportunity for observation the greater that possibility becomes. The momentary glance at the inmates of the Fiat car when the car was in motion cannot be described as good opportunity for observation.

It was contended that the evidence of PW1 and PW4 on the issue of death threats which the deceased allegedly received from the first appellant should be disregarded as the two witnesses did not report the issue to Detective Sergeant Fwambo at the onset of investigations.

It was further submitted that PW2 was a witness with a possible interest to serve as she gave conflicting statements and had been in custody for three months in connection with the murder of the deceased. Therefore, she had a motive to give false evidence to implicate the appellants. Counsel contended that the trial court ought not to have relied on PW2's evidence in arriving at its decision taking into account our holding in **George Musupi vs. The People**[3] in which we discussed the treatment by trial courts of the evidence of suspect witnesses and witnesses with an interest to serve.

Turning to ground two, the gist of counsel's argument is that the prosecution did not negative the *alibis* in line with the principles laid down in **Katebe vs. The People**[4] and **Bwalya vs. The People.**[5] Counsel's argument is that the defence of *alibi* cannot fail simply because the appellants did not give information to the police at an early stage. It was submitted that the learned trial judge fell into grave error when she failed to evaluate the evidence given in support of the *alibis* against the weight of evidence given by the prosecution. That, therefore, this ground must succeed.

In relation to ground three, Counsel accused the learned trial judge of paying greater attention to the prosecution evidence while totally ignoring the appellants' evidence in her analysis of the case. It was contended that the evidence of Detective Sergeant Fwambo (DW8), brought out serious questions as to the credibility and reliability of the evidence of PW1, PW2 and PW4 which was not evaluated by the trial court. That the failure to do so was a serious misdirection. Counsel relied on the case of **Muvuma Kambanja Situna vs. The People**[1] where we stated that:

"We repeat what we have said time and again, that the judgment of any trial court must show on its face that adequate consideration has been given to all the relevant material that has been placed before it, and if no or insufficient consideration has been given to evidence favourable to an accused person the verdict becomes assailable and an acquittal may result where none was otherwise merited."

It was submitted that had the learned trial judge given due consideration to the favourable evidence, the court would have reached a different verdict.

In conclusion, it was submitted that the offence of murder was not established as there is doubt as to the identity of the persons who murdered the deceased person. We were urged to allow the appeal, quash the conviction of murder, and set aside the sentences and acquit the appellants.

In her response, Mrs. Sitali filed heads of argument in response to the heads of argument filed by Messrs Iven Mulenga only. Although the appellants' grounds of appeal have been consolidated, the heads of arguments remain on point. In ground one, it was submitted, *inter alia,* that the learned trial judge was on firm ground when she relied on the evidence of PW2. It was

contended that prior to the fateful day, PW2 had seen the appellants and on the material day, PW2 saw them twice earlier in the day prior to the attack. It was submitted that PW2's evidence that the deceased received threatening messages on account of having intervened in the fight between PW1 and the first appellant was corroborated by PW1 and PW4. Counsel contended that the crime scene was lit by lights from the nearby Kayosha Basic School and PW2 was able to see the attackers and gave a fair description of their clothing adding that she stated that two of them wore coats and gloves. It was argued that PW2's evidence was tested in cross examination and properly evaluated thereby excluding the danger of an honest mistaken identification by a single identifying witness. Counsel referred us to the case of **Benson Phiri and Sanny Mwanza vs. The People.**[6]

Referring to the first appellant, it was pointed out that Detective Sergeant Fwambo confirmed that he was named as one of the suspects in the murder although he did not disclose the source of this vital information. It was argued that it is an odd coincidence

that the appellants could be placed at the scene of crime by the prosecution witnesses.

Addressing specifically the evidence connecting the second and third appellants, it was submitted that PW2's testimony was corroborated by PW5 who stated that with the aid of lights from the nearby bar, he saw the two running from the direction of the crime scene dressed in black coats and each was wearing gloves. Counsel further submitted that despite PW2 having been in custody for three months, she did not have an interest of her own to serve as her testimony was sufficiently corroborated by PW5.

In conclusion, it was submitted that PW2's evidence was reliable and it was corroborated by PW5 thereby eliminating any danger of mistaken identity. The State prayed that this ground be dismissed.

Turning to ground two, it was submitted that the appellants only raised the *alibis* during their defence and the police were not obliged to investigate and negative the alibis. Counsel argued that it is not the duty of the prosecution to investigate an *alibi* raised

during trial. Counsel submitted that the trial court did consider the *alibis* put forward by the appellants and concluded that they were an afterthought and fabricated.

In response to ground three, Counsel made oral submissions. It was submitted that the learned trial judge considered all the relevant evidence before her in arriving at her decision. Counsel contended that in her analysis of the evidence, the learned trial judge dismissed the appellant's evidence as an afterthought. It was submitted that Detective Sergeant Fwambo was not the main investigator of the case and the onus was on the trial court to consider relevant evidence which is what the learned trial judge did.

Counsel prayed that we uphold the convictions and sentence and dismiss the appeals for lack of merit.

We have considered the evidence in the court below, the judgment appealed against and the submissions by learned Counsel for the parties.

We intend to deal with all the three grounds of appeal together as they are inter-related. The first issue for our determination is

whether PW2's evidence of identification was reliable. It is not in dispute that PW2 was in the company of the deceased at the time of the attack. Her own account of the events of that day is that she saw the four people who attacked her and the deceased for the first time on the 23rd December, 2014 at the shops at a close range. PW2 again saw the four people in broad daylight twice on the 27th December, 2014 before the attack. Although the actual attack occurred at night, she stated that she was able to identify the four people she had earlier seen twice that day because of the lighting from the nearby houses. The two who attacked her were each wearing a coat and gloves. We are alive to our holding in the **Situna case**[1] cited herein by Counsel for the appellants. Clearly, in the case in *casu*, there was conflicting evidence on the state of lighting at the scene of crime. PW2 stated that she was able to see the assailants because of the security lights outside the houses at the nearby school but PW7 who hails from that area stated that the lighting was from inside the houses. This conflict should have been resolved in favour of the appellants. We are also mindful that in identifying the appellants, PW2 gave a general account of what the

appellants wore and was not able to state the role that each of the appellants took during the attack. She simply stated that two attacked the deceased and the other two attacked her. We agree that PW2's evidence of identification was weak and the question now is whether her evidence is sufficient to sustain a conviction. In the case of **Kenneth Mtonga and Another vs. The People**[7] we held, *inter alia*, that:

> **(iii) If the identification is weakened then, of course, all it would need is something more, some connecting link in order to remove any possibility of a mistaken identity.**

Therefore, in this case, there is need for supporting evidence or something more to support the weak identification evidence from PW2.

At this stage, we turn to address specifically the first appellant's case. We do recall that during the hearing of this appeal, Mrs. Sitali conceded that apart from PW2's evidence that the attackers were the very same people that the deceased had told her were threatening him, there is no evidence placing the first appellant at the scene of crime or linking him to the commission of the crime. In short, in relation to the first appellant, PW2's weak

evidence of identification lacked corroboration. We find that although the first appellant was mentioned by PW1 and PW4 as the person who was suspected of sending threatening messages to the deceased's mobile phone, this was not proved. The learned trial judge should have been alive to the missing link connecting the first appellant to the commission of this crime and ought not to have lumped all the appellants together when analysing the evidence. When dealing with more than one accused person, it is important for trial courts to look for the connecting link connecting each accused to the commission of the offence. Failure to do so may result in the innocent being convicted with the guilty thereby leading to grave injustice. In the case of the first appellant, there was strong suspicion that he was among those who attacked the deceased but strong suspicion is not the required standard of proof in criminal cases. In the circumstances, we find the first appellant's conviction unsafe and we set aside the conviction and sentence and he is hereby acquitted.

We now turn to address the plight of the second and third appellants. As stated earlier in this case, for a conviction to

stand there must be corroboration of PW2's weak evidence of identification. Further, the fact that PW2 was the last person in the company of the deceased and that she was detained for three months in connection with the murder of the deceased places her in the category of a witness with an interest to serve. In the case of **Wilson Mwenya vs. The People**[8] we held that any person detained in connection with an offence is a witness with an interest to serve whose evidence requires corroboration or something more in order to eliminate the danger of false implication.

Further, we have held in a plethora of cases including the celebrated case of **Emmanuel Phiri and Others vs. The People**[9] that:

> **(iv) The "something more" must be circumstances which, though not constituting corroboration as a matter of strict law, yet satisfy the court that the danger that the accused is being falsely implicated has been excluded...**

And in **Machipisha Kombe vs. The People**[10] we held, *inter alia*, that:

> **4. Law is not static; it is developing. There need not now be a technical approach to corroboration. Evidence of something more, which though not constituting corroboration as a matter of strict**

law, yet satisfies the Court that the danger of false implication has been excluded, and it is safe to rely on the evidence implicating the accused.

The question is whether there was any corroborative evidence available before the trial court to support PW2's weak evidence of identification. We believe that PW5 provided the necessary corroboration. According to PW5, as he proceeded to the crime scene, he saw the second and third appellants dressed in black coats and gloves running from the direction of the scene of crime. This was near the bar within the vicinity of the crime scene. There were lights emanating from the bar and this enabled PW5 to identify the second and third appellants. PW5 unlike PW2 had known the second and third appellants for sometime as he was part of the community. It is indeed an odd coincidence, and we agree with Mrs. Sitali, that the second and third appellants who were among the four people to whom the deceased alluded were "watching him" should be found running from the scene of crime. In the case of **Ilunga Kabala and John Masefu vs. The People**[11] we held, *inter alia*, that:

(vii) It is trite law that odd coincidences, if unexplained may be supporting evidence. An explanation which cannot reasonably be true is in this connection no explanation.

We affirmed our position in the latter case of **Machipisha Kombe vs. The People,**[10] in which we held, *inter alia*, that:

5. Odd coincidences constitute evidence of something more. They represent an additional piece of evidence which the Court is entitled to take into account. They provide a support of the evidence of a suspect witness or an accomplice or any other witness whose evidence requires corroboration. This is the less technical approach to what constitutes corroboration.

We are satisfied looking at the circumstances of the case that the learned judge was on firm ground when she found that PW5 saw and properly identified the second and third appellants running from the direction of the scene of crime. The danger of false implication or mistaken identity was therefore eliminated in this case.

We now turn to the legitimate concern raised by Mr. Muzenga that the learned trial judge ignored Detective Sergeant Fwambo's evidence in her analysis of the evidence before her. Detective Sergeant Fwambo's evidence was to the effect that PW2 had told him that she did not know who attacked her. This evidence

obviously highly favoured the appellants hence Mr. Muzenga's insistence that it should have been considered by the learned trial judge. While we totally agree with Mr. Muzenga that a trial court has an obligation to consider evidence placed before it, looking at the evidence in total, we note that Detective Sergeant Fwambo's role in this case was that of a co-investigator and his evidence was mainly hearsay evidence. We say so because he merely recounted to the court what PW1, PW2 and PW4 told him and it is trite law that the best evidence is that which is given by a witness in court as it is tested in cross-examination. In any case, although the initial investigations were carried out by officers from Kabangwe Police Station, officers from Lusaka Central Police carried out their own investigations culminating in the apprehension, arrest and prosecution of the appellants. Taking all the evidence into account, we take the view that although the learned trial judge erred in failing to consider Detective Sergeant Fwambo's evidence in her analysis of the evidence, this did not affect the prosecution case as the totality of evidence clearly pointed to the guilt of the second and third appellants.

Coming specifically to the issue of the appellants' *alibis*, Mr. Muzenga conceded that the *alibis* were only raised during the appellants' defence. Mr. Muzenga however attacked the trial court for considering the alibis in very general terms. Counsel's view is that while the police were absolved from investigating the *alibis* in this case, the court had a duty to consider the *alibis*. The question is, 'why should an accused person wait until the matter is in court to bring out his *alibi* which is tantamount to ambushing the prosecution and perhaps the court as well?' An accused person should lay his defence from the inception of trial and not wait until he is put on defence to "reveal his defence" which obviously would be without foundation at that stage and of little weight and value to his case. In this case, the learned judge believed the evidence of PW2 and PW5 who placed the two appellants at the scene of crime and in light of that evidence, the *alibis* raised could not save the two from conviction. We are satisfied that the learned trial judge considered the *alibis* against the totality of the evidence before her and rightly concluded that the *alibis* could not stand.

Having considered the evidence in totality, we do not agree with Mr. Muzenga that the learned trial judge did not consider all the material evidence before her.

All in all, we find the second and third appellants' conviction safe and sound. We find no merit in both appeals which we dismiss forthwith.

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G.S. PHIRI
SUPREME COURT JUDGE

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E.N.C. MUYOVWE
SUPREME COURT JUDGE

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J. CHINYAMA
SUPREME COURT JUDGE