

REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
HOMICIDE CASE NUMBER 8 OF 2021
BETWEEN
THE REPUBLIC

AND

PATRICK THOMSON MUHEVURE, ZIONE MUKHALA, FELIX JAFARI (KILIMANI),
FELIX STONE, FRANK NAKUPETHE AND LISTON MAPONDO KACHOCHOLA

Coram: Honourable Justice Violet Palikena-Chipao

Mr. A. Salamba/Mr. A. Mphepo, Counsel for the State

*Mr. N. Mdazizira/Mr. R. Makanje/Ms. K. Chingeni, Counsel for the
Accused Persons*

Accused persons Present

Ms. A. Kazembe, Official Interpreter and Court Clerk

Ms. L. Mboga, Court Reporter

RULING ON CASE OR NO CASE TO ANSWER

1. Patrick Thomson Muhevure, Ziona Mukhala (deceased), Felix Jafari (Kilimani), Felix Stone, Frank Nakupethe and Liston Mapondo Kachochola stand charged of three all in relation to a person with albinism. The first count is one of murder. It is alleged that the 6 Accused persons together with James Namauzongo and Grace Katunga both at large in the period between the

month of May 2020 and 17th August 2020 in Chiondo village, T/A Nazombe in the district of Phalombe in the Republic of Malawi, with Malice aforethought caused the death of Yosefe Muyaya.

2. The second count is one of extracting human tissue contrary to section 224A (a)(ii) of the Penal Code. The particulars allege that the 6 Accused persons together with James Namauzongo and Grace Katunga both at large in the period between the month of May 2020 and 17th August 2020 in Chiondo village, T/A Nazombe in the district of Phalombe in the Republic of Malawi, unlawfully and without good or justifiable reason, extracted tissue from a corpse of Yosefe Muyaya.
3. The third count is one of trafficking in persons contrary to section 14(1) as read with section 2 of the Trafficking in Persons Act. The particulars of the third count allege that the 6 Accused persons together with James Namauzongo and Grace Katunga both at large in the period between the month of May 2020 and 17th August 2020 in Liphala village, T/A Nazombe in the district of Phalombe in the Republic of Malawi, by means of deception for purposes of exploitation obtained Yosefe Muyaya, being a person with a disability, namely albinism.
4. All the six Accused persons entered a plea of not guilty in respect of all the three counts necessitating the calling of witnesses by the State in proof of the allegations against the Accused persons. Eleven witnesses were thus called by the State. The witnesses were McDonald Namauzongo, Margret Namauzongo, Margret Mukoko, Gadama Beula, Peter Gomani, Alick Muma, Harold Mwaleya, Detective S/Inspector Silvester Gondwe, Detective Sub Inspector Amos Mdzinga and Detective Inspector James Gondwe.
5. McDonald Namauzongo was First Prosecution's Witness (PW1). He is an Uncle to Yosefe Muyaya being a sister to Yosefe Muyaya's mother. His evidence was that he first heard from 5th Accused that his brother James Namauzongo had gone to Lilongwe to cheer up Yosefe Muyaya who was sick. PW1 told the 5th Accused that he was not aware of this development and PW1 proceeded to the house of his in-law, Margret Namauzongo to confirm the news. Margret Namauzongo confirmed that her husband, James Namauzongo, went to Lilongwe to see Yosefe Muyaya who was reported sick. PW1 said he tried calling his brother but could not get through.
6. PW1 went further to say that later he managed to speak with James Namauzongo who said that the child was out of hospital and he would be travelling back to Phalombe once the Organisation gives him transport money. James Namauzongo later called him and said he was in Limbe but he did not have sufficient transport to reach home. And later James Namauzongo told him that he had dropped at Misesu 4 and was walking. He advised James Namauzongo to go to the village headman for help. In the morning, he followed up but there was no trace of his brother. He then met Peter Gomani, his cousin who expressed ignorance of the issue. Then relatives from PW1's side and from the side of James Namauzongo's wife met and resolved to go to the T/A. The T/A said that he had information that a person with albinism was seen at the house of Mai Gogoda and following this information, a report was made to Police.

7. PW1 further told the court that he was invited by the police to identify clothes. In court PW1 was shown clothes which he identified and said they belong to Yosefe Muyaya. PW1 explained that he recognized a short as belonging to Yosefe Muyaya because he saw him wearing it as a boxer. He also identified a shirt. The two items were marked as IDP1 and IDP2.
8. PW1 further said that during one occasion when he went to the house of James Namauzongo and his wife was reporting of family issues, Muhevure came and told the wife to tell her husband (James) that the Lilongwe program was ready and they should go to conclude the same.
9. In cross examination, PW1 said that he has known the first accused since they were kids. He also said that he does not have evidence that the Accused killed Yosefe Muyaya or that Yosefe Muyaya went to Lilongwe and how.
10. PW1 also said that he does not know why First Accused said James should go to Lilongwe but he said on the evidence of his inlaw, believed that James went to Lilongwe.
11. PW1 denied knowledge that one Silence Stone from Chiringa trading centre went missing after a report of the missing of Yosefe Muyaya. He also said that there were more than one child with albinism in Chiringa.
12. On the clothes, PW1 said that the short and shirt were not unique to Yosefe as they could easily be found in Phalombe.
13. He acknowledged that 5th Accused accompanied him to the TA to report on the missing of Yosefe because, 5th Accused did not know what had happened to Yosefe. PW1 also said that there is evidence of recorded conversation between James and 6th Accused showing that 6th Accused was involved in the killing of Yosefe.
14. In reexamination, PW1 said that they did not report to Social Welfare of the missing of Yosefe because they did not know what had happened to Yosefe. He also said that when he met 6th Accused, 6th Accused said that James had gone to Lilongwe.
15. PW2 was Margret Namauzongo, mother to Yosefe Muyaya. Her evidence was that her son Yosefe Muyaya was staying with her brother James Namauzongo.
16. PW3 was Margret Mukoko, wife to James Namauzongo and Aunt to Yosefe Muyaya. She confirmed that her family was staying with Yosefe Muyaya and that one day her husband told her that Yosefe was wanted by a mabungwe to Lilongwe for studies. One day her husband went out with Yosefe only to return with him in the evening said that amabungwe did not turn up on that day. Two days later her husband informed her that the amabungwe have come and he together with Yosefe left for Phalombe and returned the following day morning with a report that Yosefe had been taken to Lilongwe. PW3 further said that she queried her husband why he did not take transfer letter, clothes and medicines for Yosefe. The following day her husband left with clothes, notebooks and medication for Yosefe saying that he would drop the same at Social Welfare.
17. Later James told her that he had received a call from Lilongwe that Yosefe was in hospital and he left for Lilongwe to see him. James later told him that he had arrived in Lilongwe and the child was better. Later as James was not returning and after getting in touch with her inlaw, a

report was made to the chief of the missing of Yosefe. The TA informed them that his son had seen a child with albinism at the house of Mai Gogoda.

18. PW3 identified a shirt, trousers, shoes and a hat. She said that she bought the shoes; that the hat was given at school and used to wear the shirt and the trousers. The items were identified as IDP3 for the hat; IDP4 for the shoes and IDP5 for the trousers
19. In cross examination, PW3 said that her husband told her that Yosefe was taken by a Mabungwe to go to school in Lilongwe but she said she knows that Yosefe was killed. She also said that the TA told them that his nephew had seen a person with albinism at the house of Mai Gogoda. She acknowledged that her husband took clothes to give to Yosefe but she did not see which clothes were taken.
20. PW4 was Gadama Beula. His business is extraction of septic tanks and toilets when they are full. He told the court that he was engaged by the police in Phalombe to empty a toilet which was full for purposes of recovering some items from the toilet. He said he was told that he needed to retrieve human body parts which were thrown into the toilet.
21. PW4 said that he went to Chiringa close to the market into a fence where the work was to be done. He said he was working with his two colleagues. He PW4 further said that they found a lot of soil in the pit and emptied the same. In the process they came across a jumbo which had items. Some items were hard and others were not. They took out item by item. They found some skinlike item with hair but the officers told them to leave that inside the toilet. In addition, they found clothes which were folded in one place. The clothes were trousers, shirt, shoes, baleta(hat). He went further to say that since the clothes had faeces, they had to wash the same. In court PW4 identified shirt, trousers, hat and shoes which he said were together. He also identified bones of various shapes which he said were also found in the toilet.
22. In cross examination, PW4 said that he was not told the name of the owner of the compound where the exercise was carried out. He also said that during the exercise only four people entered the compound and the rest were outside. He said none of the community members saw him removing the items from the toilet but saw the items outside.
23. PW4 acknowledged that when he arrived at the compound there was nobody. He however said the village headman was present at the compound during the exercise but was not at the toilet site. He also said the compound was secure as there was a fence but he said people could get in to draw water.
24. PW5 was Peter Gomani. PW5 accompanied PW1 when he went to PW3's house to confirm the news which Nakuphethe told him that Yosefe had been taken to Lilongwe by James Namauzongo. He said that James's wife confirmed the news but said she did not know if the village headman was aware. They together went to the village headman who referred them to the TA. The TA told them that his nephew had seen a person with albinism at the house of Zione Mukhala. Zione Mukhala was called but she was reported to be in Lilongwe. Then the TA referred them to police.

25. In the course of making follow-ups, the ex-wife of James was taken for questioning as her brother said tell them the truth that James came to your house and that he would not ran away but for Nakuphethe.
26. PW5 said he went to the compound of Zione Mukhala where there were many people, police officers and a person who was emptying a toilet. A volunteer was invited for identification of items and he presented himself for the same. PW5 identified the following items;
- a. Hat which Yosefe received from school
 - b. Trousers which Yosefe was wearing
 - c. Tshirt bought by the mother
 - d. Long sleeve shirt bought by PW5
 - e. Sleepers (mbaula) bought with money from the teacher at school
 - f. Pack of bones
27. PW5 said it was the police who showed out the items. He also said the whereabouts of James are not known but at one point he spoke on phone with 6th Accused and this was known through a phone recording. Phone recording was identified as IDP8.
28. PW6 was Alick Muma, Village headman Chiondo. His evidence is that he was called by Senior Chief Nazombe and was asked about Zione Mukhala. This followed the missing of Yosefe Muyaya, a boy with albinism. He said the Chief said that his son had seen a child with albinism at the house of Zione Mukhala. He went further to say that later he was called by Police at the house of Zione Mukhala where clothes were found a Peter Gomani a relative of the concerned person identified the clothes. PW6 identified the clothes which he said were retrieved from a toilet at the house of Mukhala.
29. In cross examination PW6 said that he does not have evidence that the child seen at the house of Mukhala was Yosefe. He also said that he arrived at the scene after the toilet had already been dug. He also said that the clothes she saw are not unique.
30. PW7 was Detective Sub Inspector Dalili of Chiringa Police Unit. His evidence was that he received a report of a missing child from McDonald Namauzongo and Peter Gomani. He said the report was that the child was taken by his Uncle James Namauzongo on the pretext that he was being taken to Lilongwe through Social Welfare department. Social Welfare denied knowledge of the issue and suspicion arose that the child was murdered by his Uncle and other accomplices. He also received information that the Uncle was hiding at his ex-wife's house .i.e at the house of Alice Kambale. He went to the house of Alice Kambale with his colleagues and there initially Alice denied knowledge of the issue but upon her brothers intervention, Alice acknowledged that James visited her to seek refuge but Alice refused due to the news about the missing of Yosefe. PW7 further said that Nakuphethe told Alice to warn her husband to ran away. He went further to say that Alice took James to her sister to hide him but her sister also refused to hide James upon hearing of his involvement in the offence.
31. PW7 said he went back to Nakuphethe upon hearing that he warned James to run away. For this reason, PW7 considered Nakuphethe as an accomplice but when questioned, Nakuphethe denied involvement in the same.

32. PW7 also heard that Muhevure was saying that he was going to buy a motor cycle using money which were proceeds of work done at the house of Mayi Gogoda. He further said that Muhevure at one point went to the house of James's wife to tell her that she should tell her husband that the trip to Lilongwe to correct money was ripe. PW7 said that he interviewed Muhevure and Nakuphethe and concluded that there was something tangible and so he reported to Phalombe Police Station. Phalombe Police informed him that Yosefe was murdered and that bones were recovered from a toilet together with clothes at the house of Mai Gogoda. He went further to say that there was also a recorded phone conversation between James, Kachochola 6th Accused and his father Mr. Kachochola. The recording was identified as IDP9.
33. PW7 played the audio in court. The Audio is in lomwe and an interpreter was brought to be translating the audio as it played. His translation was poor as such the court directed that the state should engage a translator who would produce a transcript for service on both parties before the date of hearing. The witness was allowed to proceed with his other evidence to be recalled latter for purposes of tendering the audio once the translation is done.
34. PW7 further said that the police engaged some men to dig the toilet at Mai Gogoda's house and the dug the toilet in the presence of the police, the village headman. PW7 identified the items that he said were retrieved from the toilet.
35. In cross examination, PW7 said that Matevure said he was going to buy rifo motor cycle with money from work performed at Mai Gogoda's house and that at one time, he told James' wife to tell James that the trip to Lilongwe was ripe and that that's why he arrested. After he arrested the suspects, he referred them to Phalombe Police for further investigations.
36. PW7 further said that when the toilet was dug, there were many people present including himself, the village headman and Peter Gomani but that the police, Peter Gomani and the village headman were the ones who were inside and the rest were outside.
37. PW7 said Nakuphethe was an accomplice because he warned James through his wife to ran away and that he knew that James had committed an offence. He also said that Kachochola went to Lilongwe and was arrested in Lilongwe.
38. PW8 was Harold Mwaleya, an Orthopedic Clinician at Phalombe District Hospital. His evidence was that on 4th September, he was requested to examine some bones. He said that the bones upon examination were found to be human bones. This conclusion he said was arrived at having considered the shape, colour, appearance and atomic attachments. The bones were described as color bone, tarsal bone, pharyanges, attachments to colar bone and metartasals. He said the bones appeared to have been disconnected from the body for about two weeks. These were marked as Exhibit P8.
39. In cross examination, PW8 said that he cannot tell whose bones they are by just looking at the bones. PW8 said in his report he did not include teras. PW8 further said that the estimation of the period as to how long the bones have been detached from the human body was based on the appearance of the bones.
40. PW9 was Detective Sub Inspector Nenani of Luchenza Police Station. At the time of the alleged commission of the offence, PW9 was based at Phalombe Police Station. His evidence

- was that as a crime officer, he went to the house of Zione Mukhala on 1st September upon getting information that Muhevure and his friends killed Yosefe Muyaya, chopped off his legs and arms, peeled off his skin and threw them in a toilet of Zione Mukhala. He went further to say that they identified some men to dig the toilet and upon digging, the following items were retrieved; shirt, trousers, cap (hat), plastic slippers, t-shirt and human bones and invited the village headman to witness the process. He said the chief was invited after the extraction of the items from the toilet to see what had been gotten out of the toilet
41. PW9 took photos of all the recovered items and also photos of the toilet. He said the bones were confirmed by a doctor to be human bones and the clothes were identified by relatives to be clothes of Yosefe Muyaya. The items were marked as follows;
- a. Photos from the scene of crime as Exhibit P2
 - b. Shirt which was IDP1 as Exhibit P3
 - c. Hat (cap) which was IDP3 as Exhibit P4
 - d. Shoes (slippers) which were IDP4 as Exhibit P5
 - e. Trousers which was IDP5 as Exhibit P6
 - f. T-shirt which was IDP7 as Exhibit P7
 - g. IDP6 as Exhibit P8
42. In cross examination, PW9 said that the village headman came after the digging had already been done. He said there were a lot of people at the house during the time the digging was done. Among the accused, he said only 1st accused was present but the owner of the house was not present.
43. PW9 further said that the accused said they had thrown feet, palms and fresh. He said the recovered bones are for Yosefe but he said he had no expertise to tell that the bones were those of Muyaya.
44. PW10 was Detective Sub Inspector Mzinga of Karonga Police Station. He was at the time of the alleged offence based at Phalombe Police. He was involved in the investigation of the matter. He said Muhevure was interviewed and he admitted committing the offence and mentioned his colleagues. He said that Muhevure said that they took Yosefe to Nyambwe river where they killed him, chopped his hands and legs, peeled off his skin and took the items to the house of Zione Mukhala where they threw the same into the toilet after burying the deceased at the river. Muhevure led the police to the place of death but they did not find the body. They only found the paper which was used to wrap the body. Some clothes were also found at this place and were identified by Macdonald Namauzongo as belonging to Yosefe Muyaya. The clothes were marked as Exhibit P9 and the paper as Exhibit P10.
45. PW10 went further to say that he instructed his team to dig the toilet at the house of Zione Mukhala and a number of items were found including clothes and bones. He said the suspects were charged with the offence of murder and they denied the charge but Muhevure admitted the offence. The caution statements and formal charges of the five accused persons and those of Zione Mukhala were read in court and tendered in evidence. They were marked as follows;

- a. For Muhevure Exhibit P11A and 11b for caution statement and formal charge respectively;
 - b. For Zione Mukhala, Exhibit P12A and 12B for caution statement and formal charge respectively;
 - c. For Felix Jafari, Exhibit P13A and 13B for caution statement and formal charge respectively
 - d. For Felix Stone, Exhibit P14A and 14B for caution statement and formal charge respectively
 - e. For Frank Nakuphethe, Exhibit P15A and 15B for caution statement and formal charge respectively
 - f. For Liston Kachochola, Exhibit P16A and 16B for caution statement and formal charge respectively
46. Patrick Thomas Muhevure and Zione Mukhala admitted committing the offence and also mentioned the other suspects in their caution statements. The rest of the suspects denied knowledge and involvement in the commission of the alleged offences.
 47. In cross examination, PW10 said that Muhevure and Zione Mukhala admitted committing the offences and mentioned the other suspects. PW10 said he does not know if there was another Stone who disappeared when the child went missing. He also said that it was Muhevure who led the police to Felix Stone, Felix Jafari and to the house of Zione. He also said the circumstances of the case namely the admission of Muhevure and Mukhala, the information that they threw clothes and body parts in the toilet, the finding of the same in the toilet are also proof that Yosefe was killed.
 48. In reexamination, PW10 said that with the confession of the suspects and the missing of the child, the retrieved clothes and bones it can be concluded that he was murdered.
 49. PW11 was Alice Kambale. Her evidence was that she was approached by Nakuphethe who was looking for James Namauzongo. Nakuphethe told her that he had a message for James to tell him that the police were probing him for the missing of Yosefe a child with albinism. Two days after the visit from Nakuphethe, James came to her house asking for lodging but she refused. She went to inform her brother about the visit. Later she was picked by the police upon information that she was keeping James.
 50. In cross examination, she said that when the police asked her about James, she said she knew nothing but later explained what she knew. She said she did not lie but she was afraid.
 51. PW7 was recalled as a witness for purposes of tendering the audio as at the time of his evidence there was no translation from Elomwe to English or Chichewa. The audio was played to the end and then PW7 tendered a transcript translating the audio. The audio was translated by who presented the transcript in court and read it out.
 52. With the evidence of the 11 witnesses, the prosecution closed its case. Upon the closure of the prosecution's case, the Defence indicated that they would make oral submissions on whether or not the accused persons have a case to answer.
 53. The Defence have submitted under section 254 of the CP & EC that the Accused Persons have

no case to answer and should be acquitted. The State has on the other hand submitted that the prosecution have produced sufficient evidence for a finding of a case to answer and that all the five accused persons should be invited to enter their defence.

54. Both the Defence and the State agree as to the standard of proof required at this stage of trial and as to when a submission of no case to answer can be upheld. The standard applicable at this stage a *prima facie* case. In the case of *Republic v Mkandawire* [2002–2003] MLR 379 (HC) the court had this to say on what amounts to a *prima facie* case;

I have always understood a prima facie case to be one where the evidence before the tribunal is such that it makes him itch for an explanation from the accused before he can finally make up his mind on the case. The evidence before him must in other words be such that he could, as opposed to would, convict if he did not hear an explanation from the accused.

55. Where a submission of no case to answer has been made as in the present case, a case to answer will be upheld when;

1. There has been no evidence to prove an essential element in the alleged offence; or
2. When the evidence adduced by the prosecutor has been so discredited as a result of cross examination or is manifestly unreliable that no reasonable tribunal could safely convict on it... (see *R v. Dzaipa* [19975-77] 8 MLR 307)

56. This In the instant case we have now reached this middle stage of trial and it is thus open for the case to end now with the immediate acquittal of the Accused or alternatively to proceed to the presentation of defence testimony, depending on how I view the case as so far presented. It is, I think, important at this stage to emphasise that there is a test the law has settled for use at this stage of the case, which is clearly different from the one Courts of law have to employ when pronouncing their final judgment in any criminal matter. I am obliged by the law to apply the correct test at the correct time and so at this stage I am not required to check whether or not the prosecution have proved their case beyond a reasonable doubt as would be the case if the case were at a more advanced stage.

57. Both parties have at length addressed the court on the issue of admissibility of confessions. Apparently, the record contains confessions of the First Accused Person and Zione Mukhala. It has been submitted by the Defence that on the authority of the case of *Chisanga v. Republic* [1993] 16 the confessions ought to be disregarded and not used in evidence because the accused persons pleaded not guilty arguing that the cited case holds that a confession must be disregarded once a plea of not guilty is entered. The cited case of *Chisanga v. Republic* was referred to in the case of *Banda and Another v. Republic Criminal Appeal No. 9/2018(PR)* where the court held as follows;

The spirit of section 176 (2) of the Criminal Procedure and Evidence Code is that a confession authored by an accused person which is materially true, however obtained, will be taken into consideration by court as relevant and admissible. In the event that it has

been retracted by a not guilty plea, corroborative evidence shall be required to prove not only that the offence was committed but that it was committed by the alleged offender.

58. The court agrees with the Appellants that a not guilty plea puts every element of the offence to strict proof. However it is not correct that when there is a not guilty plea, then the confession must be regarded. As was held in ***Banda and Another v. Republic (above)***, a not guilty plea means that the confession is retracted. Once retracted, then there would be need for corroboration of the confession. Section 176 of the Criminal Procedure and Evidence Code, governs the use of or admissibility of confessions. The law regarding confession statements in this country is well-settled. This section states:

176(1) Evidence of a confession by the accused shall if otherwise relevant and admissible be admitted by the court notwithstanding any objection to such admission upon any one or more of the following grounds that such confession was not made by the accused or, if made by him, was not freely and voluntarily made and without having been unduly influenced thereto.

(3) Evidence of a confession admitted under subsection (1) may be taken into account by a court, or a jury, as the case may be if such court or jury is satisfied beyond reasonable doubt that the confession was made by the accused and that its contents are materially true. If not so satisfied the court or the jury shall give no weight whatsoever to such evidence. It shall be the duty of the judge summing up the case specifically to direct the jury as to the weight to be given to any such confession."

59. Again as was argued by the State, the MSCA discussed the Chisenga case in the case of ***Yamikani Letasi v. Republic MSCA*** Criminal Appeal No.11 of 2017 where whilst agreeing that a plea of not guilty puts every element in issue, disagreed with the position that once there is a plea of not guilty then a confession must be disregarded. The MSCA held that such an approach was applicable in the ***Chisenga case*** because of the peculiar nature of the offence with which the Appellant was charged and convicted of. It is this court's view therefore that the position advanced by the Defence is erroneous and cannot stand in view of the ***Yamikani Letasi v. Republic MSCA*** case. It is therefore our view that the confessions of First Accused and Zione Mukhala are admissible as evidence and their applicability to the maker and the other suspects is subject to provisions of section 176(2), (3) of the CP & EC.
60. The offences under charge are murder, extraction of human tissue and trafficking in persons. The elements of the offences are as have been ably put by both the Defence and the State. The standard of proof required at this stage of trial has been agreed by both parties and what remains for the court is as to the application of the law to the facts.
61. The arguments of the Defence largely centres on an issue of proof of death of Yosefe Muyaya whom they argue the evidence simply shows that he went missing and not that he was killed.
62. There is sufficient evidence to show that Yosefe Muyaya was taken by his Uncle on the pretext that he was being taken to Lilongwe to school through Social welfare office but the Social Welfare Office denied having made any such arrangement regarding Yosefe Muyaya. His Uncle who took him is at large and cannot be traced. I have considered the totality of the

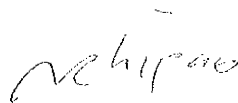
evidence before the court including the evidence of the confessions, the discovery of the clothes in the toilet of Zione Mukhala, The identification of the clothes as belonging to the missing Yosefe Muyaya, the confirmation that bones found in the toilet are human bones and have come to the conclusion that the alleged offences were committed.

63. On the involvement of the Accused persons, it is noted that none of the witnesses mentioned Felix Stone and Felix Jafali as having been involved in the commission of the offences. The only place the two are mentioned is in the confessions of Zione Mukhala and Patrick Thomas Muhevure. Under section 176(2) of the CP & EC, the position of the law is that a confession can only be used against another person when that other person adopts it as his own. It does not matter whether it is corroborated or not but as long as the other person does not adopt it, it cannot be used against him. As such, the confessions of Zione Mukhala and First Accused cannot be used as evidence against Felix Jafali and Felix Stone. There being no other evidence implicating the two except the confessions which are inadmissible against them, the court finds that there is no evidence to justify calling the two accused persons to enter their defence. They are therefore found with no case to answer and are accordingly acquitted of the offences charged. They are to set at liberty and are to be released from custody unless if held for other lawful causes.

64. On the totality of the evidence however, and taking the approach in the *Republic v Mkandawire Case*, it is this court's finding that there is sufficient evidence for a finding of a case to answer in respect of Patrick Thomas Muhevure, Frank Nakuphethe and Liston Mapondo Kachochola. The three are found with a case to answer on the three counts charged and are invited to enter their defence.

It is so ordered.

Pronounced in Open Court this 12th Day of **January, 2022** at **Phalombe**.



Violet Palikena-Chipao

JUDGE