



**IN THE HIGH COURT OF MALAWI
SITTING AT CHIKWAWA**

HOMICIDE CASE NO 124 OF 2010

THE REPUBLIC

and

MILLION CHAMBAKATA

Coram:

Hon. Justice R. Mbvundula

Maele, Counsel for the State

Chakhwantha, Banda, Domasi, Counsel for the Accused

Mnthunzi, Official Interpreter

Chingota, Court Reporter

RULING

The accused, Million Chamabakata, faces one count of murder in connection with the death of one Feston Bonzo. The state rested its case and this court now pronounces itself on whether the evidence is sufficient to require the accused to enter a defence. If not, the accused must be acquitted.

The deceased's body was found partially buried in a field, in a decomposed state. None of the witnesses witnessed his killing. The accused is linked to the death because, according to PW1, whose house was not far from that of the accused, and a sister to the accused, heard sounds which she interpreted as coming from the accused's house and of someone being beaten. She did not see the person who was allegedly being beaten, and in this regard she is in no position to attest as to the

identity of that person, let alone that it was the deceased. Hers could only be mere speculation.

The incident is said to have happened during the night, and according to the evidence on record, including that of PW1, there were several other houses around.

The rest of the prosecution witnesses have largely towed PW1's belief surrounding the death.

PW1 stated that once she formed the view that the accused was beating someone she immediately went to inform one of her brothers, PW2, with whom she proceeded to the village headman's house where they reported that the accused had been beating someone. According to PW2, after informing the village headman about what PW1 had told him, they went to the accused's house where they found nobody. He said that they searched around under torchlight but found nothing and went back. The following morning, so he said, they went again to the accused's house and found him there, and when they inquired, so said PW2, he angrily confirmed that he had beaten a drunkard who was knocking on his door thereby causing him to retreat. To the specific question if he saw any blood PW2 said he did not. This was in clear daylight.

This far there is no evidence pointing to the accused having killed anyone, let alone Festone Bonzo.

PW3 was another of the accused's brothers to whom the story was narrated by PW2. He too spoke about visiting the accused's house and not finding him, and that later the police went to accused's house and took a bicycle and a bag of maize. He said that the bicycle did not belong to the accused, but did not state whose owner it was. Thereafter, he said, the police went to a brick kiln, where there was reportedly a reed mat and some blood stained clothes. The police, he said, told him that the accused had killed Feston Bonzo. Why the police alleged that the accused had killed Feston Bonzo did not come out of the evidence of PW3. In any event it is merely reported speech and hearsay, which cannot be used against the accused. Again there is nothing in the evidence of PW3 connecting the accused to the death of the deceased.

PW4 was the village headman who said that he was appearing before this court because PW1 had told him that the accused had killed someone, that accused had been beating someone in his house. He said he asked PW1 to go and find out from the accused the identity of the person he had beaten and the feedback he got was that

it was someone who was giving him problems. PW4 went on to tell this court that they started searching and ended up at a brick kiln where they found blood stained clothes, and at another kiln they found a reed mat which was also blood stained. Additionally, he said that they also found a letter which bore the name of someone from another village. He said they called the police who collected the items and arrested the accused. The police, he said, had asked the villagers to search for the person the accused had assaulted. He said it was the local policing community who found the deceased. It was in the evidence of PW4 that amongst the items the police took from the accused's house was a panga knife, and when asked if there was anything surprising about it he said there was nothing surprising about it. As will be shown later other prosecution witnesses claimed that the panga knife was blood-stained, but in the view of this court, if that was so PW4 would have attested that the panga was blood-stained. PW4 stated that the police also collected a bicycle from the accused's house. The bicycle brand, he said, was common in the surrounding areas.

In this court's assessment there is nothing in the evidence of PW4, direct or circumstantial, that links the accused to the death Feston Bonzo.

PW5 was the accused's cousin and chairperson of the local policing group. He stated that he heard that some blood stains had been spotted in the village (not at the accused's house) and later that the accused had been beating someone in his house. He then went to accused's house and asked him where that person had gone, then they started searching but were unsuccessful. He said the village headman called the police, and the police told PW5 that the accused had killed someone so they wanted him identified, and PW5 showed them the accused who was under a mango tree, whereupon the police arrested accused. PW5 alleged that when the police took the accused to his house where they found blood stains and collected a bicycle, maize and a panga knife. Later, he said, Feston's body was found half buried in the accused's garden. He claimed that he was the one who found the body. In relation to access into the accused's house he said that the accused handed over the key to the lock that was on his house door.

PW5 conceded that in his caution statement he did not mention a blood stained knife or that there was blood in the accused's house, though in his testimony he alleged that the panga knife had blood on one side.

It is also my finding that the evidence of PW5 is inadequate to attribute the death of Festo Bonzo to the accused. Among other considerations, PW5 is an unreliable

witness in so far as he alleged in his testimony that he saw blood in the accused's house after having not said the same in his statement to the police when his recollection of facts was still fresh. His statement the police is to be preferred against his testimony for that reason. However, even if he had seen blood in the accused's house it does not follow that it was Feston Bonzo's as there is no evidence that the said drunkard was Bonzo. If indeed there had been blood anywhere around the accused's house it could only have been outside his house given the undisputed evidence that the person he had beaten up was only knocking at his door and retreated therefrom.

This court therefore finds the evidence of PW5 hollow in so far as it aims to link accused to the death of Feston Bonzo.

PW6 was the deceased's wife. Her account was that the deceased was a maize trader who imported maize from Mozambique on his bicycle. She said that he had in the past few days gone to Mozambique but had not returned on the day he was expected back. One evening, so she said, a certain boy approached her and informed her that a dead body had been found in a nearby village and described the clothes that person had been wearing. She said around 3am she and her in-law went to the village headman's house and later to the police where she identified a blanket and a bicycle belonging to the deceased. She said that her husband used to take the blanket on his trips. She also said that the police took her into a room where there were two bags of maize, shoes and clothes which she said belonged to her husband. Later the police delivered her husband's body on which she noticed cuts on the head, face and above the upper lip. There is, again, nothing in her evidence linking the accused to the death of her husband.

PW7, the last prosecution witness, was one of the police investigators. According to him he received a report that the accused had killed someone. This is in contrast to the other prosecution evidence that it was the police who told them that the accused had killed someone. PW7 did not identify the reporter, nor when such report was received. He said that he and other persons went to the accused's house which they found locked and together with the village headman and the accused's relatives they opened the house and took therefrom a bicycle and a bag of maize which he said were identified by the deceased's wife. This again is in contrast to the evidence of the wife who said she identified some such items at the police station and that the items were two bags of maize, a blanket, a bicycle, shoes and some clothes. Regarding the bags of maize, whilst the wife said they were green in colour, PW7 said they were white. Further, contrary to the evidence of PW5 who said that they

gained access to the accused's house using keys handed to them by the accused, PW7 said that the accused was not available as he was in hiding and that they gained access by breaking a lock. PW7 also stated that after finding the accused where he was hiding they started looking for the dead body, then they found blood stained pieces of a blanket, some slippers (not shoes per the testimony of the wife) and a mat hidden in an oven, and that the slippers were identified by the deceased's wife as belonging to the deceased. PW7 went on to state that some five days later he received a phone call informing him that a dead body had been found buried in a field.

Later in his evidence PW7 added a panga knife to the list of items collected from the accused's house. He also said that there were blood stains on the walls of the accused's house and that there was a trail of blood from the house to where the body was found. He could not, however, explain why, if this was the case, it should have taken days to find the body if it was moved, bleeding, from the accused's house to where it was found, which, according to the evidence, was a mere forty metres away. When asked why he arrested the accused PW7 said that it was firstly because people heard some shouting from the accused's house, secondly because there were blood stains from the accused's house to where the items (this time not the body) were found and thirdly because the accused was in hiding. On further probing as to where the accused was hiding PW7 said that he was found in a garden where there were some mango trees.

It is also pertinent to point out that the exhibits which PW7 tendered in court as being connected to accused and, consequently, to the accused and the crime were unmarked to show that they were linked to this case (or the case file). When queried about this lacuna PW7 said that after the case was recorded he was transferred to another police station where he came from on the day of his appearance in court, and that the items were brought to court by another officer. It is not clear whether that officer was also an investigator in this case. PW7 further stated that the exhibits at the police station were often mixed up such that it was possible that the panga knife put in evidence herein may not have been the one allegedly taken from the accused's house. It was further clear that PW7 was not able to establish whether the panga knife was blood-stained or just rusty.

In the finding of this court the evidence of PW7 was utterly unreliable for being inconsistent, not only of itself, but also as against that of the other prosecution witnesses. It falls short of implicating the accused by far.

At this stage of the accused's trial this court is required to consider whether or not the prosecution has established, by its evidence, that the case against the accused is strong enough to require the accused to enter a defence. The court may hold that there is no case for the accused to answer when (1) there has been no evidence to prove an essential element of the alleged offence; or (2) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could convict on it. See *D.P.P v Chimphonda & MLR 94*.

In the present case there appears nothing, in all honesty, to connect the accused to the death of the deceased. The accused may indeed have assaulted someone at his house, to his own admission, but granted that the deceased's body had open wounds, the persons who first visited his house would be the first to state the fact that there were blood stains leading from his house to where the deceased's body was found. It would not have taken days of searching for the body in the circumstances. This fact is specifically highlighted because it would be the only fact in the evidence that would connect the accused to the death, if it was true. That said this court finds nothing in the rest of the evidence that might connect the accused to Feston Bonzo's death. The prosecution evidence is largely speculative, hearsay, contradictory, preposterous and unconvincing. In consequence this court finds the accused, Million Chambakata, with no case to answer and accordingly acquits him of the crime of murder herein.

Pronounced in open court at Chikwawa this 16th day of November 2022.


R Mbvundula
JUDGE