

**IN THE HIGH COURT OF MALAWI  
MZUZU REGISTRY CRIMINAL DIVISION  
SITTING AT RUMPHI  
HOMICIDE CASE NO. 4 OF 2020**

**REPUBLIC  
VERSUS  
KUMBUKANI CHIRAMBO  
FISKANI CHIRAMBO**

**CORAM: HON. JUSTICE T.R. LIGOWE**  
W. Nkosi of Counsel for the State  
C. Mandala of counsel for the Accused  
F. Mwakhwawa, Official Interpreter  
J.N. Chirwa, Court Reporter

**JUDGMENT**

Ligowe J

- 1 Kumbukani Chirambo and Fiskani Chirambo are here charged with murder contrary to section 209 of the Penal Code, alleged to have caused the death of Albert Chirambo with malice aforethought, on or about 13<sup>th</sup> September 2019 at Kamphenda Trading Centre in Rumphu District.
  
- 2 They both pleaded not guilty and this court heard evidence from Dickson Chirambo, Jack Chisale, Joseph Chirambo, Mathews Chirambo and Detective Sub Inspector Phiri, for the prosecution, upon which I found a case sufficiently made out against them requiring them to defend. And then I heard both of them in their defence.

3 There are two opposing stories I have to deal with. One given by the prosecution and the other by the defence. In dealing with them, it has to be remembered that the burden of proving that a person who is accused of an offence guilty of that offence lies upon the prosecution (section 187 (1) of the Criminal Procedure and Evidence Code) and that the burden of the accused person, in accordance with section 188 (1) of the Criminal Procedure and Evidence Code, is to prove the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within his knowledge; but so however that—

- (a) such burden shall be deemed to be discharged if the court or jury, as the case may be, is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist; and
- (b) the accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused in respect of that offence.

4 This means the accused person will be convicted only if the evidence given by the prosecution proves the case beyond reasonable doubt. Regarding this, Justice Mwaungulu in *Republic v Suleman and another* [2004] MLR 283 (HC) stated: -

“[T]he court must be certain that it is sure that the defendant is guilty of the offence charged.”

5 About the same, Lord Denning in *Miller v Minister of Pensions* [1947] 2 All ER 372 said: -

“Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice.”

6 Let us now see the story as given by the prosecution. It is that in there was a fight in the evening on or about 13<sup>th</sup> September 2019, Fiskani Chirambo blocked the way for

Dickson Chirambo, Albert Chirambo, Mathews Chirambo, Wellings Kumwenda, Kumbukani Kumwenda and Jack Chisale as they came from Holy Cross Church at Kamphenda Trading Centre. Behind them was Kumbukani Chirambo. Fiskani Chirambo then called for his brother Grant. Grant came with a sharp metal rod about a meter long and gave it to Fiskani. Fiskani struck Albert with the metal. At first Albert blocked it with his hand, but Fiskani struck him again and Albert lost balance, held his hand down to the ground and started running away. Fiskani and Kumbukani Chirambo chased him and caught him behind a maize mill nearby. There, it happened that Kumbukani had the metal rod and continued to strike Albert with it and stabbed him on the cheeks and neck. Albert died on the spot. All the other boys who were together with Albert were unable to rescue him because Fiskani and Kumbukani were being supported by two young ones, Junior Chirambo and Wisdom Chirambo, who were throwing stones.

- 7 Joseph Chirambo further stated in his evidence that the issue of Albert Chirambo having been stabbed was reported to him by Charles Chirambo and then he rushed to the scene. He found some women around who told him that the people responsible were the sons of Kuwumbu Chirambo who were then going towards the nearby stream. He followed them on his motor bike. When he caught up with them he found there were Kumbukani, Fiskani and Grant. Kumbukani had a metal rod in his hand and he raised it up as to strike him. That is when he stopped and told them to go back to see what they had done to his son, but they refused and threatened they would do the same to him.
- 8 Joseph Chirambo also testified as to the appearance of the body of the deceased at the scene, that it was bleeding from a deep wound on the forehead and the chest.
- 9 Detective Sub Inspector Phiri exhibited a post-mortem examination report which shows that Albert Chirambo died due to severe bleeding secondary to a stab wound. The body had a stab wound on the cheek of about 3 cm and on the forehead of about

1 cm. The Detective also confirmed that after the death of Albert, the home of the accused person's and their father was razed down by an angry mob in the village.

10 Let me say a word on mob justice before I proceed with the judgment. I notice that mob justice is becoming the order of the day throughout the country. It so common these days to hear about a thief having been burnt by an angry mob, some old person having been killed or their house burnt by an angry mob for being suspected of practising witchcraft, a family rendered destitute after an angry mob razed down their home and property following an incident of death or grievous harm apparently caused by a member of that family, and many others. This is sad. It is bad and uncalled for. In Malawi we have institutions to help with resolving whatever disputes we have according to law. With such in place, no one should handle disputes in a barbaric manner as we are doing.

11 The Government should therefore ensure that all case handling institutions are properly funded, equipped and staffed, in order to meet the growing demand for their services, as the population is growing. The staff also need to be committed and diligent in their service. Some of this barbarity could be as a result of lack of trust on the part of the public that the case handling institutions will help with their situation.

12 Let us now continue with the story as given by the defence. The accused persons attempted to raise their defence to the case in their cross examination of Dickson Chirambo and Jack Chisale by referring them to their statements recorded at Police which appeared to Counsel to be different from what they testified in court. Dickson Chirambo was referred to where his statement states that Charles Chirambo hit Fiskani Chirambo with a stone and Fiskani fell down, and asked if Albert was still breathing at this moment. His response was that Albert was already dead. Jack Chisale admitted that some time had passed since he gave the statement at Police and he had forgotten some details, but he emphatically said he was not lying in his testimony in court.

13 The defence is that Kumbukani Chirambo was at Fiskani Chirambo's shop at Kamphenda Trading Centre around 7 pm on the material day. While Fiskani was closing the shop Kumbukani went outside to answer a phone call. There came Albert Chirambo, Charles Chirambo and Abel looking for Kumbukani's elder brother Gadabu. Kumbakani Chirambo in his testimony gives the impression that there was controversy between the three visitors and Gadabu, because they accused Kumbukani and Fiskani of closing the shop to hide him. When he said he knows nothing, they started beating him and he fell down. He shouted that he was dying and Fiskani came to see what was happening. As he approached he was hit in the stomach with a brick and beaten on the head with a stick and collapsed. Charles Chirambo and his brother ran away thinking Fiskani had died but Albert remained. Kumbukani then took a sizable stick with which he struck Albert and Albert also ran away. Together with Grant Chirambo they then took Fiskani to Mwazisi Health Centre.

14 In cross examination Kumbukani stated that it was him and Fiskani who got injured in the fight and not Albert. And, when they were taking Fiskani to the Health Centre Albert had run away.

15 There is however clear evidence that Albert Chirambo died on or about 13<sup>th</sup> September 2019. The post-mortem examination report shows, the examination commenced at 3:15 AM, and the examiner formed the opinion that death occurred six hours prior to the examination. Death was due to severe bleeding secondary to a stab wound. The body had a stab wound on the cheek of about 3 cm and on the forehead of about 1 cm. The prosecution and the defence have both given evidence regarding what happened the same day. It cannot be true that Albert Chirambo ran away and was not injured during the fight.

16 The same day when Joseph Chirambo followed the Kawumbu Chirambo brothers after being to the scene, he found Kumbukani Chirambo with a metal rod. Dickson Chirambo's evidence in cross examination is telling. Fiskani was hit and fell down after Albert had already died.

17 My judgment is that the defence tried to raise some doubt on the evidence given by the State but the same is not reasonable. Like Lord Denning in *Miller v Minister of Pensions* [1947] 2 All ER 372,

“Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice.”

18 I am certain that I am sure that Kumbukani Chirambo and Fiskani Chirambo caused the death of the deceased.

19 Defence counsel filed written submissions in which he argues that the accused either acted in self-defence or out of provocation. He takes it from the defence, that Kumbukani Chirambo struck Albert Chirambo with a stick after Fiskani fell unconscious. I have already said that I believe Dickson Chirambo on this point.

20 It appears to me it was an ordinary fight before the weapon was used. And, it has been established it was not a stick but a metal rod that was used. A reading of the *Attorney General of Nyasaland v. Jackson*, 1923-60 ALR Mal 488 as well as *Rep v. Lufazema*, 1966-68 ALR Mal 355, shows that the deliberate killing of a person in self-defence can only be justified if the conduct of the person killed led the killer to believe that he was immediately threatened with death or grievous harm. A reading of *Ngozo v. Rep*, [1997] 1 MLR 192, *Nyirenda v. Rep* [2004] MLR 250 and *Joseph Nomale and others v. Rep*, Criminal Appeal Case No. 178 of 2008 (Principal Registry) (unreported) further indicates that use of greater force than is necessary in the circumstances may lead to loss of the defence of self-defence.

21 As for provocation, Defence Counsel is also taking it from the defence. He argues that Kumbukani struck Albert Chirambo with the stick upon seeing his brother Fiskani Chirambo severely stoned down and after Kumbukani himself was also severely

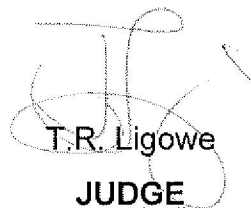
beaten. Like earlier said, I believe Dickson Chirambo on this point. If at all Fiskani Chirambo fell unconscious, it was after Albert had already died.

22 It does not come out so explicitly, but Defence Counsel also argues that it was Kumbukani and not Fiskani who caused the death. This also is from the case as told by the defence, that Fiskani was unconscious when Kumbukani struck Albert with the stick. The story I have no doubt about is that, both accused persons used the metal rod on Albert. At first, Fiskani, before Albert ran behind the maize mill where they caught him and Kumbukani used it at him.

23 I detect malice aforethought in the whole scheme. According to section 212 of the Penal Code both accused persons intended to cause grievous harm on Albert or, they knew striking him and stabbing him with the metal rod would cause death or grievous harm.

24 I find the accused persons guilty and convict them of murder as charged.

25 Delivered in open court this 19<sup>th</sup> day of February 2021.

  
T.R. Ligowe  
JUDGE