



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION  
HOMICIDE CASE NO. 89 OF 2021**

**THE REPUBLIC  
V  
THOM KONDOWE  
FRANCIS BALUWA  
SOLOMON OSMAN KONDOWE  
MASAUTSO PADZUWA**

**Coram: Justice Vikochi Chima**

**Counsel Chisanga/ Kulesi, State Advocate, for the State**

**Counsel Maele, for the Accused**

**Ms Catherine Gangata, Law Clerk**

**JUDGMENT**

**I. INTRODUCTION**

1. Thom Kondowe, Francis Baluwa, Solomon Osman Kondowe and Masautso Padzuwa were charged with murder contrary to section 209 of the Penal Code; extraction of human tissue contrary to section 224 (a) of the Penal Code; and trafficking in persons contrary to section 14 (1) of the Trafficking in Persons Act. It was alleged that between the 8<sup>th</sup> and 13<sup>th</sup> August 2021, the four accused had abducted one Ian Muhama and caused, with malice aforethought, his

death. The four accused were also said to have extracted tissue from the corpse of the deceased. All the accused denied the charges. The prosecution had fourteen witnesses. At the closure of the prosecution case, the court found all the accused with cases to answer. The defence had eight witnesses.

## **II. THE PROSECUTION CASE**

### **A. PW1**

2. PW1 was Michael Muhama who stated that the deceased was his son and that the deceased was an albino. He stated that the deceased died at the age of 21. He stated that the deceased was living in Bangwe with his brother, Blessings Muhama. He stated that the deceased's body was found in Kachere in some grasses but his body was dismembered. He identified Exhibit 1 as the photograph of Ian Muhama's mutilated body.
3. His evidence was that the deceased had gone missing on a Tuesday in August 2021 and that he, himself, and also Blessings Muhama were part of the group of the family members who went to report about his disappearance; this was on Wednesday. His body was found two weeks later.
4. He testified that his sister-in-law, Nyozeni, was the one who called him on a Saturday telling him that the deceased had been found dead.
5. In cross examination, PW1 admitted that the deceased would drink a lot of alcohol. He denied that the deceased would disappear from home for several days at a time. He said he did not know any of the accused persons.

### **B. PW2**

6. PW2 was Blessings Muhama, a 23 year old man. He stated that the deceased was his younger brother and that he was an albino. He stated that the deceased used to stay with him in their grandfather's house in Bangwe and that he was engaged in businesses of selling samoosas in Limbe and also selling cassava at Bangwe. According to him, after the deceased would do his business for the day, he would go home. He also stated that the deceased used to drink alcohol a lot.
7. He testified that in August 2021, the deceased had gone away from home and never returned. PW2 stated that he (PW2) thus went to a relative, Maxwell, with whom the deceased used to do business with to ask about the deceased's disappearance. This relative advised PW2 that they were to report to the police

about it. They did report to Bangwe police. The police advised them to search for him and they too promised to look for him. PW2 stated that they searched for him in Bangwe and Limbe but did not find him. It was about three weeks and some days later that he heard that the deceased had been found dead. He said it was Ashraf Ishmael who went to see the dead body.

8. He said Ashraf reported to the family that the dead body had already been buried by police. At that time, PW2's father was in Thyolo. When he was shown some pictures, he said they showed two legs and an arm of a person with albinism. He stated that the police had invited him and other family members to Maone to go and see the body parts in the place they were allegedly found. This was on a Sunday. He stated that his aunt had told the family on a Saturday about the discovery of the deceased's body and that the following day was when the police invited them to Maone. He said he identified the arm as belonging to the deceased since it was hairy just as the deceased's body had been. He said there were seven people who went to Maone to look at the limbs: himself, his father, Ashraf, some two uncles from Bangwe, his brother-in-law and his friend. He said Ashraf told them that the torso had already been buried in Kachere. PW2 stated that Maone is just across the road from Kachere.

### C. PW3

9. PW3 was John Nakoma, a 32 year old man. He stated that he sells shoes around Limbe market. On 8 August 2021, he left Limbe around 5 p.m. and was in the company of his friend, Chisomo. He said that they decided to go and drink beer at Kondowe's Bar at Bangwe-Mvula. He said they came into the bar and sat down, and that they noticed that Ian, the deceased (whom they used to call Yellowman because he was an albino) was also in the bar. He said although there were a lot of people in the bar, they sat close to Ian since they used to chat with him. He said the deceased was drinking *kachasu* while he, himself, and Chisomo were drinking Chibuku.
10. He stated that around midnight, Thom, the first accused, said they were closing the bar. PW3 stated that Ian was drunk and was lying down in the bar but awake. He continued to state that the first accused went to Ian and spoke to him telling him not to go out of the bar but that he (the first accused) was going to escort him home for fear that people may harm him. PW3 said that

this was not the first time for Ian to have left the bar late at night; several times, he had done that before. According to PW3, Ian had ever told him that Mr Kondowe was the one who used to escort him home since they were neighbours.

11. PW3 stated that he and Chisomo were among those last to leave the bar and that after they did, they went opposite the bar about five metres away and stood on the verandah of a maize mill belonging to a Mr Machinjiri. He said that there is a small dusty street in between the bar and the maize mill. They stood there waiting for transport to take them home.
12. PW3 stated that within about five minutes, the two saw Thom and the two bar men, being the second and fourth accused, carrying Ian into a blue car that was by the bar. He stated that the time they were taking Ian into the car, the third accused was inside the bar. The third accused got onto the car and started the engine, reversed it and went into the tarmac road heading towards No. 1 and Mzedi. PW3 said that this same road goes up to Kachere and that the tarmac road is about ten metres away from where they had earlier stood at the maize mill. PW3 said Ian was staying near Seventh Day church and that this was not the direction that the car took. He stated that he thought that they wanted to take a different route since they were people who had picked Ian on several occasions before. He identified the car (with registration number TO2380) in the picture as the same one that was by the bar and that had carried all the accused as well as Ian. He said they were able to see clearly because there was light coming from a bulb at the maize mill as well from the next shop. He said even though they had been drinking alcohol, they were not drunk as they had limited funds and also that they ensure that they do not get drunk so as to be able to move back home.
13. He said they later got on a motorcycle and went home. He said about two days later after this and when he and Chisomo learnt that Ian had gone missing and also that an albino had been found at Kachere, they went to Limbe Police Station to report that they had seen Ian being picked by Mr Kondowe's car.
14. In cross examination, he said he had been to Kondowe's Bar several times before the night that he saw Ian being carried to Mr Kondowe's car. He said that he drinks Chibuku. He said Kondowe's Bar sells Chibuku, Carlsberg and *kachasu*. He said the bar sells *kachasu* as opposed to Malawi Gin. He said that he was not aware that those drinking Chibuku are not allowed where those

taking bottled beer sit. He admitted that there is a pool table at the bar and also that there is one entrance to the bar. He said he and his colleague had come to the bar around 5 or 6 p.m. and that they were there for about seven hours. He said he did not know where Ian was getting the *kachasu* which he was drinking. He also said Ian was drinking the *kachasu* with people he (PW3) did not know.

15. He also said that the first, second and fourth accused were at the counter of the bar on the material night and that the first accused was the one selling the bottled beer. He said all the three were at the same place, that is, behind the counter, which is after one just enters the bar. He said this is also the place from where they sell Chibuku and not just bottled beer. He said when you just enter the bar, on the right is where they sell Chibuku. He said when Thom was telling Ian not to leave the bar, Ian was next to the pool table.
16. He said he had been seeing the second and fourth accused at the bar for about a week. He said sometimes they were picking up bottles and sometimes they were the ones receiving money from those wanting to buy beer. He said he did not know that the second and fourth accused only came to Blantyre from their home in Neno on 11 August 2021. He said he did not even know that the two were only employed at the bar from 11 August 2021. He said he further did not know that the two came to Blantyre to meet their relation Nenani. He said when Ian was being carried out of the bar, Thom's friend Richard from Bangwe stood at the door of the bar.
17. He said Ian was a seller of groundnuts—he would have them in a winnower and would be measuring them out when selling. Sometimes he would sell bananas. He said he knew where Ian was staying but that he had never been to his home just as Ian had never been to his (PW3's) house. He said before 8 August 2021, he had met Ian on 30 July 2021, near Ian's house, as he (Ian) was coming from the border where he had gone to do pieceworks. He said when he met Ian then he (Ian) was all by himself standing by the road. He said he had never gone with Ian to drink beer but that they were just meeting in the bar and would chat when they met there.
18. He said on 8 August 2021, the one who was selling beer was not Mwayi. He said Mwayi is a prostitute. He said the previous days, Thom had not been coming to the bar but that on this day, he did come to the bar.

19. He confirmed that the period was a time of the covid 19 pandemic and that government had directed that bars were to close by 10 p.m. PW3 stated that Kondowe's bar by tradition does not close at 8 p.m. He said he did not know that the bar does not have a licence to operate all night.
20. He said that motorcycles pick up passengers at the maize mill and not at the bus stage. He also said motorcycles operate throughout the night.

**D. PW4**

21. PW4, Chisomo Manuel, stated that he came to know Ian Muhama through their drinking together in bars. He said on the evening of 8 August 2021, he and his friend John Nakoma went to Kondowe's bar to drink. He said they found some people there including Ian. He said they stayed there till midnight when the barman announced that they were closing the bar. He said the barman told Ian not to go out. He said he himself and the rest went out and that they left Ian in the bar. He and his friend went to the maize mill and were waiting for a motorcycle to take them home. He said that as they waited, they saw the first, second and fourth accused carrying Ian, who was drunk, and putting him in a blue car. He identified the car as the one in the picture and bearing the registration number TO2380. He said they stood about five to six metres away from the car. He said that the third accused came and started the car and went up the road to Mzedi, the road which goes up to Kachere.
22. He said they were drinking scuds of Chibuku. He said up to that point, he had gone to Kondowe's Bar on a number of times. He said that the motorcycle came and they rode away home.
23. He said after two days they heard Ian was missing and they went to the police to report what they had seen. He said they were able to see that it was the accused persons since there was a bulb at Kondowe Bar. He said that the one who usually sells beer is Thom. He said the other two, the second and fourth accused, also sell beer. He said he had been seeing the second and fourth accused for months prior to the occurrence of the events of 8 August 2021. He said these used to be together with Thom behind the counter. He said the bar usually does not close and would open all night. He said he and his friend John drank four bottles of Chibuku scuds of one litre each from 5 p.m. to 12 midnight.

24. He said they sat on the left after you enter the bar. He admitted that Chibuku is sold on the right side but that they did not sit where Chibuku is sold. He also admitted that they sell bottled beer near where the speakers are. He said the first accused was the one selling beer. He said the second and fourth accused were the ones handing out the beer to those buying the beers— whatever kind of beer a customer wanted.
25. He said he did not know that the second and fourth accused came from Neno and that they had asked for a place to lodge at Kondowe's Bar. As far as he was concerned, he said, he had been seeing the second and fourth accused at the bar for about four months or so.
26. He said he had never been to Ian's house; neither did he know his house nor his brothers. He said he knew that Ian was selling groundnuts in bars. He said Ian was drinking *kachasu* this night. He also said that they sell *kachasu* at Kondowe Bar. He said EX D12 was a picture of Ian who was known to him as Yellowman. He said Yellowman is a name used for the light skinned.
27. He said there is a bulb at the entrance of the bar in the corner. He said there was also Richard at the door when Ian was carried from the bar into the car. He said he did not know whether the bar has ever employed anyone by the name of Richard but that he used to find someone named Richard at the bar. He said on 8 August 2021, it was not Mwai selling Chibuku at the bar. He agreed that in August 2021, covid 19 restrictions were such that bars were to close by 10 p.m.. He denied that Kondowe Bar closes by 8 p.m. He said he did not know that Kondowe Bar did not have a licence to operate the whole of 24 hours of the day. He said they did not sit close to the pool table and that he does not play pool.

#### E. PW5

28. PW5 was Mercy Mwaipa. She testified that she stays at Kachere. She stated that she gathers sand from around people's houses and also around Lunzu River. She said on 13 August 2021, she went to collect sand in the river in a place where there were *bango/senjere* (reeds/ grass). She said after digging a bit, she smelt something. She said she thought it was one of her usual encounters of human faeces. She said, however, she was shocked when she discovered what looked like the carcass of a hybrid kind of pig. She said she was so filled with fear that she ran to tell Chairman Chawawa, who is in charge

of Kachere Township, to come and witness this strange sighting. She said she also reported the incident to Chairman Chilembwe who oversees the area where she stays. She stated that both of these these areal leaders came to the sight.

**F. PW6**

29. PW6 was James Thom Chilembwe. He said on 13 August 2021, Mayi a Maria (PW5) came to him and told him that as she and some other two ladies were mining some sand, they had come upon something which they were disputing as to its identity, as to whether it was a dog or a human. He said he went to the Group Leader to tell him of this and they together with PW5 went to the river. They found that the body was covered in *linthumbwi* (red army ants) and they confirmed that it was a human body. They called the police. The police brought chlorine and sprayed the body with it. It was discovered the body was that of an albino.

30. He stated that the police said that the state of the body was such that they needed to bury it right there. He said that the police then went to talk to the village headman of the area about their plan and that the village headman approved it.

**G. PW7**

31. PW7 was John Chawawa. He said he is Chairman of Kachere Community Policing. He testified that Mercy Mwaipa had come to him to tell him that she had come across a body of what appeared to be a pig but that she was not sure. He said he went out to see for himself and that he met Chilembwe there. He said he saw that it was a human torso with no legs nor arms—the head was in the river but the body was protruding. He said he thought the body was of a coloured person since it was fair-skinned. They called the police. The police came and confirmed that it was a human. He stated that the police said that the condition in which the body was necessitated that it be buried right there. He said he told the police to go to the village headman to inform him about their plan of burying the corpse in the river bed and that the police left with Chilembwe to go to the village headman.

32. He said he later heard that the village headman had no objection to the body being buried there and that he had assigned some young men to bury the body.



He said he later got a phone call from Limbe police asking him if the body had been buried and that he told the police that he would go and find out. He said when he went to the place again, he found the body still not buried.

#### **H. PW8**

33. PW8 was Ashraf Ishmael. He said Ian was his cousin, Ian having been born to the sister of his (Ashraf's) father. He said he, on 23 July 2021, got a call from Ian's father stating that he had got a call from his in law that there had been found a dead body at Kachere. He said he went to Kachere. He said when he got to Kachere he met the village headman's wife for the village headman was away. He explained to her that his relative had gone missing and that he had heard that a body of an albino had been found in the area. He said she advised him to meet the Chairman. He said when he met the Chairman, the Chairman told him that he (PW8) had missed the police who had buried the body by a whisker. He asked to see the burial site and the two went to place. PW8 said he produced a photograph of Ian and that the Chairman identified the one in it as the same one whose body had been buried.
34. PW8 said he reported back to the relations and that they went to Bangwe Police Station. He said that Bangwe police officers told them that they knew nothing about the discovery of an albino body and that they said it must have been Limbe police officers who were involved in that matter since Kachere Township is under Limbe Police Station.
35. He said they went back home and that later after Ian's father arrived, they went with him to Limbe Police Station. He said there they were told that those police officers who had been on duty had knocked off and that they were to come back to the station on Monday—this was a Saturday. He said that the party were not satisfied with what they had been told but since it was already dark, there was nothing they could do. He said the following day the relatives gathered again and decided they would go and exhume the body but that they decided to first go to Bangwe Police Station. He said that when they went there, Bangwe police officers told them the same thing that they had told them earlier on, that the area was under Limbe Police Station.
36. He said that they did not go to Limbe Police Station but went to the Chairman and told him that they intended to dig up the body. He said the Chairman told them to ask permission from the village headman. He said that when they told

the village headman about their plan, he responded that the police needed to be around when the exercise was being done. PW8 said that the party then went to Limbe Police Station. There they were shown pictures of the body that had been buried. He said, however, the said pictures looked like they had been captured some distance from the body and that they thus insisted on digging up the body.

37. While they waited at the police station, the police officers told them that they were rushing to Maone ground because it had been reported that some children had seen human bones there. PW8 said that after the officers had left, they phoned him stating that PW8 and the relatives were to follow them to Maone ground. He said when they got there, they saw two albino legs and two albino arms. The police asked them if these belonged to their relative and they identified them as belonging to Ian. He said the identifying features were the hairiness of the body; toes and fingers that resembled his mother's; and a scar from a burn on the left arm. Since it was dark, the police said they were not to go to the burial site even though it was just about a 100 metres away from the place where they were at in Maone ground; they said they were to go there on Monday, this day being a Sunday.
38. The following Monday, the medical people and the city officers were present and the body was exhumed. The medical officers wiped the body clean. The body was identified to be Ian's. His body had no arms or legs. He was identified by his Mohawk hairstyle, his youngish beard and the long nose like his mother's. The body was collected and taken to the mortuary where the other body parts had been stored. Later, the body and the other body parts found at Maone were placed in a coffin and buried in Mulanje.
39. In cross examination, he said that he knew about Ian's disappearance at a time when he was away to the border. He said Ian was staying at SDA church. He said Ian was staying with PW8's sister and also his (Ian's) elder sister. He said Ian was selling samosa, masks, cassava—he said he was doing different kinds of businesses depending on whatever he found profitable to him. He said he knew Ian could drink at Mvula and Bangwe markets but that he did not know the type of alcohol he was drinking. He said he could not remember how long it took from the missing of Ian to his body being found. When he was shown his witness statement, he said according to the statement, he (PW8) got a call from Blessings on 23 July 2021 that Ian had missed for about three days.

40.PW8 said that in his witness statement, he did not describe Ian's appearance nor his bodily parts. He admitted that he had not shown the toes or fingers or nose or mohawk of Ian as he had described. When he was shown three photographs including EX D12, he said there was no photograph of Ian. He said that he grew up with Ian in Thyolo, Bangwe and Mulanje and that he was meeting him on a daily basis. He said he would go to where Ian was staying and Ian would also visit him.

#### **I. PW9**

41.PW9 was Traffic Sub Inspector Fondo of Limbe Police Station. He testified that on 15 August 2021, around 2:50 p.m., there were traffic police officers doing traffic checks at Maone roundabout along John Chilembwe Highway, formerly known as Limbe-Zomba road. He said the place is near a football ground. PW9 stated that the officers were approached by some four young boys who said they had seen two legs and two arms belonging to a person with albinism on the football ground. PW9 testified that he and Sub Inspector Mankhwala visited the site and found the body parts scattered and in a decomposed state. He said there was also a plastic bag and a sack there which were producing a bad smell and had flies. He said that the officers concluded that the body tissues had been kept in the plastic bag and also in the sack. He said the body parts were found wrapped in newspapers. PW9 said the officers secured the scene from the crowd and also from the dogs who wanted to eat the tissue. PW9 further said that the officers informed the Station Officer of Limbe Police, Mrs Mercy Chirwa, Station Assistant Commissioner of police, and also the Station Criminal Investigation Officer, Assistant Superintendent Jaha. PW9 said that when Mrs Chirwa came with the CID team, the traffic officers handed over the scene to them.

#### **J. PW10**

42.PW10 was Mrs Mercy Chirwa, Assistant Commissioner of Police. She said that on 15 August 2021, she got a call from Traffic Sub Inspector Fondo that some children had told them that they saw human limbs scattered where they were playing. She said she and the CID-in-charge rushed to the place. She said they saw that the limbs were wrapped in newspapers and they identified them as belonging to someone born with albinism. She also said that Regional

Crimes Officer Mr Nkhoma also joined the officers and concluded the same thing that the parts were of someone born with albinism. She stated that she reported the matter to Bangwe police where there was a report that a person with albinism had gone missing. She said the relations of Ian Muhama appeared at the scene and confirmed that the limbs belonged to Ian Muhama. She further stated that the limbs were collected and taken to Queen Elizabeth Hospital mortuary.

43. PW10 stated that the following day they went to Kachere where the torso of the body (whose limbs were found at the ground) was believed to be buried in the river. She said the body was exhumed. She testified that looked fresh as blood was oozing out from some of the parts during the post mortem.

**K. PW11**

44. PW11 was Detective Sub Inspector Madeya of Southern Region Police Headquarters CID Photography. He said he is a CID photographer who visits scenes of crime and takes photographs. He said he took the photographs in Ex P1, 5, 6, 7, 8 and 9.

**L. PW12**

45. PW12 was Charles Patrick Dzamalala of Kamuzu University of Health Sciences (KUHEs) formerly College of Medicine. He said he also runs private medical clinics. He said he is a Forensic Pathologist and that his job entails that he works on cases of a medical legal nature and that he thus conducts autopsies.
46. He identified a document which he said was an autopsy he conducted on the dead body of Ian Muhama. He said having been informed by Limbe police that there was a body buried at Kachere, he accompanied the police. He said a trunk of a person was dug out--it did not have both legs and both arms. He said that the head was identifiable. He testified that the internal examination revealed injuries in the neck. He said there were haemorrhages into the muscles of the neck and there were two broken bones in the neck—the hyoid bone and thyroid cartilage—these were severed. He said these broken bones signified manual strangulation and that thus the cause of death was asphyxia. He defined asphyxia as a struggle to breathe due to blockage of airways.

47. PW12 stated that the body had been invaded by scavengers in the form of maggots. He said it was in a semi-decomposed state and showed that death had occurred some three to four days before. He said before his report came out, he heard that allegedly the limbs belonging to the body had been found. He said, however, the said limbs were never brought to him.
48. In cross examination, he said that there are guidelines of identification of dead bodies and that he does follow these international guidelines. He said the police took down the name of the relative who identified the body and that the type of recognition done by the relative was facial recognition. He said the facial recognition was considered adequate. He said he did not see the limbs. He said there was no DNA done on the limbs or the trunk to confirm they had been part of the same body.

**M. PW13**

49. PW13 was Sub Inspector Dosa Chimwendo based at Mzedi Police Unit in Chiradzulu. He said that on 15 August 2021, he was informed that Mrs Mercy Chirwa had received a report from a traffic officer that body parts had been found at Maone. He said at the time, there was already a report that Ian Muhama, a person with albinism was missing. He said he went to the scene with Ashraf Ishmael. He said that when the body parts were inspected, Ashraf Ishmael identified them as belonging to Ian. The body parts were then taken to Queen Elizabeth mortuary for storage.
50. PW13 said that prior to the discovery of the body parts, on 13 August 2021, Limbe police received a report that there was a body at a river in Kachere and that it was badly buried. He said that on 16 Aug 2021, the relatives of Ian together with Ashraf led the police to Kachere. A medical practitioner was also in their company. The body was taken out and washed. It had some gray hair. It had no arms or legs. It was a body of a person with albinism. The body was identified as that of Ian Muhama. The body was fresh.
51. PW13 stated that the medical practitioner stated that the cause of death was manual strangulation. The body was taken to Makina in Mulanje and buried. Investigations were instituted and sources were planted. Two witnesses were traced who stated that they had last seen Ian at Mvula at Kondowe's drinking place and that they saw the four accused putting Ian in a Toyota Hilux and drive away.

52. PW13 said there were five suspects, being the four accused and a fifth, one Richard, who was not yet arrested. He said that when he interviewed the accused on the charges, they categorically denied them. PW13 tendered the accused's caution statements.
53. As regards the first accused, Thom Kondowe, his caution statement stated that he is a welder and that he stays with his parents in Bangwe. He stated that after he knocks off from his welding, he goes to the family's bar to sell beer and that after that he leaves together with his father for home. Concerning the killing of Ian Muhama, he stated that he could only say that if he ever saw him, it was in 2019, when Ian would come to the bar, and that it was during daytime that he would come. He said since then he had not seen him again and that thus, he had nothing to say as regards the cause of his death.
54. The second accused, Francis Baluwa, he stated that he is from Neno and that on 11 August 2021, he and his friend Masautso had been communicating with their female relation, Nenani, that they were to meet in Bangwe, with the aim that they were to be staying at her home while they searched for piece works. He stated that when they came to Mvula, Nenani's phone could not be reached. Around 4 p.m. they asked for a place to sleep from the owner of Kondowe's bar. The following day, Mr Kondowe told them that he could employ them. Francis said he was employed to sell Chibuku on the outside bar—a place where he said, he was told, there used to be girls working there but that they had been dismissed. He said his friend Masautso was employed as one to supervise the pool table. He denied having taken part in the killing of Ian.
55. The third accused, Masautso Padzuwa, stated that his home is Neno, and that he remembers that he came to Blantyre with his friend, Francis Baluwa, to look for piece works. He states that Francis Baluwa had been communicating with his sister who lives in Bangwe. He stated that unfortunately, when they arrived in Limbe, Francis' sister's phone could not be reached. They thus got on a bus and dropped off at Mvula around 4 p.m. They had trouble finding lodging and so Francis got into Kondowe's bar and met Mr Kondowe. He stated that Francis came back to where he had left him at Mvula's stage and told him that he had found a lodging place at Kondowe's. They went together to Kondowe's bar where they were given a room to sleep in.

56. On 12 August 2021, they agreed to work for Mr Kondowe. Francis Baluwa was employed as the seller of Chibuku while he was employed as the one to supervise the pool table. He stated that in all the days he had worked for Mr Kondowe, he had never seen any person with albinism come to drink beer in the bar. He denied having taken part in the killing of Ian Muhama.
57. The fourth accused, Solomon Osman Kondowe, stated that he stays in Bangwe Mvula (Mbayani) and that he owns a bottlestore at Mvula known as Kondowe-Kondowe. He stated that he knows nothing about the killing of an albino called Ian Muhama. He said all he knows is that the deceased was staying close to where he was staying and that in the past, he had been coming to his bottlestore (bar) to ask for money from customers.
58. He stated that on 8 August 2021, he had gone to the bar just to look around since it was Thom who was the one running things there. He stated that he would not be able to know if that night Ian came to drink at the bar since he (the fourth accused) was not there. He also stated that it is a lie that his car a Toyota Hilux Reg No. TO2380 was used to ferry the deceased to where he was dumped in Kachere is false.

#### **N. PW14**

59. PW14 was Retired Senior Superintendent Dedricks Banda. He said that he was the Homicide-in-charge at the time of the investigation of this matter. He said that on 15 August 2021, he got a phone call from a fellow police officer telling him that human tissue had been found at Maone. On 16 August 2021, he was at Limbe Police Station. He said, while there, he learnt that the human tissue resembled a body of one with albinism. He said he led a team of officers to Kachere along Lunzu stream and that there was also a medical practitioner with them. They got the body which was partly buried and they washed it. He said that they confirmed that the body was really that of a person with albinism and that it was fresh.
60. PW14 stated that the people of the community were angry with the police because of the way they had handled the case and also for having buried the body. He said since some officers had carelessly handled the case, some were interdicted and some lost their ranks.

61. In cross examination, he said that the body had been mishandled since the earlier officers had not taken proper action with regard to it—the body was just abandoned—it was not buried but just hidden.

### **III. THE DEFENCE CASE**

#### **A. DW1**

62. DW1 was Thom Kondowe, the first accused. He testified that he stays with his parents and that he himself is a welder. He stated that his father, the fourth accused, owns a bar known as Kondowe wa Kondowe. He said he had been spending time at the bar since his father was sickly. He said, as for the second and third accused, these are his workers whom he employed on 12 August 2021—Francis being employed to sell Chibuku and Masautso to oversee the pool table.
63. He said that Francis had come to the fourth accused at the bar on 11 August 2021 and asked for a lodging place. He said he himself (the first accused) was inside the bar at the time when Francis came to the bar and that he was told these things by the third accused, Masautso. He said a friend of the fourth accused took the second and third accused to the Chairman of the village and that the Chairman advised the fourth accused to give the second and third accused a place to sleep. DW1 stated that himself and the fourth accused then gave the second and third accused a place to sleep.
64. He stated that having been given a place to sleep, the following day, the fourth accused asked the second and third accused to help in handing over the mixed concrete to the workmen who were building bathrooms and toilets at the bar. DW1 said that the fourth accused assigned to them this work in order that he could pay them some money towards duo's fare back to Neno. DW1 stated that it transpired that the money that the fourth accused paid them was not enough to take them to Neno. He said that the fourth accused asked them to try again their relation's number but that they reported that they still could not get through to her.
65. DW1 said that the second and third accused had told them that the aim of their coming to Blantyre was to seek employment and that they requested the fourth accused to employ them. He said this is how the two came to be employed at the bar on 13 August 2021 and that they worked until 30 August 2021.



- 66.DW1 stated that he would open the bar doors at 7:30 a.m. to bring out Chibuku beer and to hand it over to the second accused. He said he would also give tokens to the third accused. He then would go to his welding business at Blue Bird in Limbe. Around 4 p.m., after knocking off from his welding business, he would go again to the bar to open it. The bar would close at 8 p.m. because of the curfew that had been imposed because of the covid pandemic.
- 67.DW1 said that the bar was only selling Chibuku and Carlsberg and that nobody was allowed to bring in liquor from elsewhere. He said the women at the bar would watch out that this rule was followed and that they would report to him about any non-adherence. He said after closing the bar, he would move to a certain place to get a ride on a bicycle as a pillion passenger and head home. He said his father was sickly at the time and that he would just come round just to see how things were. He said that his father suffers from hypertension and diabetes and that he is also on ARV medication.
- 68.He said there was nothing he could say on the murder allegation as he does not know Ian Muhama and that he has never seen him before. He said on 8 August 2021, he was the one selling beer at the bar but that he did not see Ian. He said as of that day, the second and third accused had not yet started working at the bar. He also said, on that day his father, the fourth accused, was home and not at the bar.
- 69.He said he has never seen Nakoma and Manuel come to Kondowe bar. He said there is no stage at the maize mill for motorcycles to stop. He also said a guard also stays at the maize mill. He said the police wrote the caution statement by themselves and then forced him to sign it.

## **B. DW2**

- 70.DW2 was Francis Baluwa. He said some six CID officers came to Kondowe bar on 30 August 2021 and found him and Masautso Padzuwa. He stated that the police picked him and took him to their office where they questioned him. He stated that he explained to the police the same version he was telling in court, that his home is Neno and that he and Masautso had come to Blantyre because Nenani, a relation of his (the second accused's), had promised them that she would find work for them in Blantyre. He further said that indeed Nenani subsequently phoned them inviting them to Blantyre and stating that she had found work for them.

71. DW2 stated that since he did not have enough money for bus fare, he sold his phone and just jotted down Nenani's number; he did not memorise Nenani's number. He and Masautso travelled to Blantyre on 11 August 2021. He stated that they were able to communicate with Nenani via phone till they got to Limbe and that from then on, her number could not be reached. He stated that they were using the phone of the driver of the minibus that they had boarded to communicate with Nenani. He said that since Nenani had told him that from Limbe one has to catch Bangwe buses to get to Nenani's house, they did just as they had been told and they dropped off at Bangwe. DW2 said that even up to that point, they could not get through to Nenani's number.
72. He said he left Masautso at the stage with the bag of maize and the pots that they had carried, while he went about asking people to use their phones so that he could call Nenani. He then returned to the stage. He stated that they thought Nenani would find them at the stage but that they waited until they just decided to find a lodging place at Kondowe's bar. The second accused stated that he was the one who went into the bar.
73. DW2 said that he met the owner of the bar, the third accused, and that when he (the second accused) explained their circumstances to him and asked the third accused for lodging for himself and the fourth accused, the third accused declined to give them accommodation stating that they were strangers. He stated that the third accused told them that he would take them to the police but that the third accused discovered that he had no fuel in his car and thus he decided to take them to the Chairman.
74. He testified that when the third accused took him to the Chairman, they found only his wife. He stated that when he (the second accused) related to her their predicament, the Chairman's wife sympathised with their situation and the third accused reconsidered his decision and gave them a place to sleep. He stated that the third accused told them to continue trying Nenani's number and in the morning, when the third accused asked them if they had been able to reach Nenani, they responded in the negative. He stated that when the third accused asked them what was going to be their next move, they replied that they had no money for fare to go back to their village in Neno. He stated that they then asked for piece works to raise bus fare. The third accused directed them to where he was having a bathroom built and told the second and fourth accused to be assisting the builder by handing him mortar. DW2 said that they

were able to finish this piece work and were paid K2, 500 which proved insufficient to take them to their village. They then just asked to be employed by the third accused if peradventure there was an opening. On 12 August 2021, the third accused employed the second accused as the one to sell Chibuku and the fourth accused, to watch over the pool table.

75. He testified that the number 0,881,116,670 appearing on Ex D1 (a call log document) is his cell number and that the location shown with regard to the use of the number is Ligowe, an area in Neno. He testified that the earliest date in the call log is 5 January 2021 and the last date is 31 July 2021. He said 0,888,083,680 is the number indicated in his caution statement as his cell number and that this is the cell number he got having lost his earlier number and after he came to Blantyre.
76. In cross examination, he stated that the last date appearing in the call log is 31 July 2021—he said he was in Neno then. He said on 31 July 2021, his phone got damaged. He said he did not state this fact in his testimony-in-chief as he had forgotten to mention this. He said he sold his phone on 10 August 2021.

### **C. DW3**

77. DW3 was Solomon Osman Kondowe who said he owns a bar known as Kondowe wa Kondowe in Bangwe at Mvula. He said the second and fourth accused came to him at the bar on 11 August 2021 looking for a place to sleep. He stated that the second told him that they had come from Neno and were stranded since the person who had promised to put them up in Blantyre could not be reached on his number. The third accused states that he told his friend George Billiat that they should take the second and fourth accused to the police but that when they got into the car, they found out that it did not have enough fuel to take them to Limbe Police Station and back.
78. He stated that he took Francis and Masautso to the Chairman instead to inform him that he intended to keep these two for the night but that he did not want to do this without his knowledge. He stated that the Chairman responded to him that he could proceed to give the accused accommodation but that he was to report back to him in the morning concerning how the lodgers had fared. The third accused stated that he told the Chairman that he was not going to be the one to bring back the report since he was sick but that his friend George was the one to do it.

79. He stated that the following morning when they tried again Nenani's number and it still could not be reached, he offered the two accused piece work of helping out on the construction of a bathroom, with the aim that they could earn some money for their bus fare back to their village. He stated that the two accused told him that the builder had paid each one K2, 500 and that this was not enough to take them to Neno. He stated that the two accused then asked if he could employ them and that he took them to the first accused so that they could agree on the wages and the rest of the conditions. He stated that the first accused was the one running the bar at the time since he (the third accused) was sick.
80. He testified that in August 2021, they were opening the bar at 7:30 a.m. and were closing at 8 p.m. and that this was so because of the covid 19 pandemic and its restrictions.
81. He stated that he is still sick now, suffering from the same diseases that were ailing him then: diabetes, high blood pressure and HIV. He tendered in evidence his health passport. He stated that his health started failing in 2008 when he was diagnosed with HIV. He testified that on 11 July 2021, a Sunday, he fell unconscious and was taken to St. Joseph Hospital; he regained his consciousness on Tuesday. He said it was during this time that he was diagnosed with diabetes. He said he was discharged from hospital on 15 July 2021, not because he had recovered, but since the hospital needed to make space for the many covid 19 patients. He said he, however, was told to be going to the hospital weekly. He said after he got vaccinated for covid 19 on 27 July 2021, from that time, his sickness was aggravated.
82. DW3 said that when he went to Nguludi Hospital on 3 August 2021, his blood pressure and sugar levels were found to be very high and he was unable to walk. Again, when he went for health check on 17 August 2021, these vital signs were still very high and he still was unable to walk. They remained very high even up to 19 July 2021. He had to be hiring a vehicle when going to the hospital.
83. DW3 denied abducting or killing Ian Muhama or extracting human tissue from him stating that he was sick and at home during the suspected time of the killing. He denies knowing Ian Muhama. He stated that Yellowman is any light skinned person and that he does not know the real name of the

Yellowman he referred to in his caution statement as coming to the bar to ask for money.

84. In cross examination, he said that on 11 August 2021 when he was outside the bar, he was able to walk. He said he was not driving a car and that he walked with the second accused to the Chairman that day. When he was asked if the fourth accused had accompanied them to the Chairman since the second accused had testified that the fourth accused had not, the third accused responded that the fourth accused did not come along. He said he does not know Ian Muhama and that it was the police who told him (the third accused) where Ian used to stay. He said from 3 August 2021, he could not walk for two days and that he started walking on 5 August 2021. He said on 8 August 2021, he was again unable to walk. He said he was not at the bar on 8 August 2021. When shown his alleged cautioned statement that stated that he went to the bar on 8 August 2021 to see how things were, he replied that he was not the one who made that statement. He denied that any albino person is known as Yellowman. He said on 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> August 2021, he was at the bar as he was supervising the construction works at the bar and he had to buy cement. He said he was hiring vehicles for the purpose of buying things like cement. He denied knowing Nenani.

85. In re-examination, he said on 8 August 2021, he went to the bar to check if the cement was used up but that he was home that night. He said he was able to go to the bar on 8 August even though he was sick since he was going there to check on the progress of the business.

#### **D. DW4**

86. DW4 was Masautso Padzuwa, the fourth accused. He testified that he knows nothing about the crimes since on 8 August 2021, he was at his home in Neno. He denied knowing Ian Muhama. He testified that when he and Francis were about to leave Neno for Blantyre, they went to the village headman. He repeated the narration of the second accused of how the two accused found themselves working for the third accused.

#### **E. DW5**

87. DW5 was Edna Sitifano. She said Francis Baluwa is her son and that he and Masautso married sisters back home at Mlauli in Neno. She said on 11 August

2021, the two men bid farewell to her back home telling her that they were leaving the village on account of their poverty and that they were going to Blantyre in search of greener pasture.

88. In cross examination, she said Francis has a relation called Nenani who stays in Bangwe. She said her (DW5's) grandfather--father to her (DW5's) mother went away from their village and married again elsewhere. The grandfather then fathered Nenani's grandfather. She said Nenani's surname is Dowa. She said she had never communicated with Nenani since her son came to Blantyre. She said since her son, Francis, was born on 10 August 1995, she was able to remember the day that her son told her that he would be going to Blantyre, that the day her son told her this news was on 10 August 2021. She said her son indeed sold his phone to raise bus fare and that he sold it on 10 August 2021. She said her son used her phone on 10 August 2021 in order to communicate with Nenani.

#### **F. DW6**

89. DW6 said his name is Yohane Chiwayula and that he is also Village Headman Mlauli. He testified that the second accused comes from his village and that on 10 August 2021, he had bid him farewell stating that he was going to Blantyre to his cousin. He stated that he signed in the village roll concerning the going away of the second accused. He said this is the established practice in the village that one has to inform the village headman about one's going away and that the village headman records such.
90. In cross examination, he stated that one who does not bid farewell when he is going way from the village is fined to pay a chicken. He said he does not know the fourth accused.

#### **G. DW7**

91. DW7 was Mwaiwao Bizwick. She said she used to work for Mr Kondowe, the third accused, in 2021 but not any longer. She said at Kondowe wa Kondowe bar, her job was to sell beer. She said at the time when she was working there, the bar would open at 7 a.m. and close at 8 p.m. because of covid 19 restrictions.
92. She said when the second accused came to seek employment, she referred him to the owner of the bar. She said she then saw the second and fourth accused

in the days following come to do piecework and later become employed at the bar, one to sell Chibuku and the other to sell tokens. She said she had never seen an albino person at the bar.

93. In cross examination, she said it was Francis who was selling tokens and that Masautso was the one selling beer. She said she worked with the men for two weeks. She said the one in charge of the bar in 2021 was Thom Kondowe and that Solomon Kondowe was sick then. She said Solomon Kondowe was just coming round to see the workers. She said on 11 August 2021, Solomon Kondowe came to the bar and that he came by car. She said she did not see him at the bar on 12<sup>th</sup> or 13<sup>th</sup> August 2021. She said the second and fourth accused were employed on 13 August 2021 and that it was Thom who employed them.

#### **H. DW8**

94. DW8 was George Billiat. He testified that on 11 August 2021, the second accused came to Kondowe's bar at a time he was there drinking beer and chatting with the third accused. He said that the second accused told them that he (the second accused) and the fourth accused had come to Blantyre to work on invitation by a relation but that when they got to Blantyre, the relation's number could not be reached. He stated that the third accused and himself took the second accused to the DPP Party Chairman for their area, Mr Lupiya. He stated that they met the Chairman's wife who wrote down the second and fourth accused's names as well as where they hailed from. He stated that the Chairman's wife told the third accused that he could give the men a place to sleep.

#### **I. DW9**

95. DW9 was Grace Lupiya. She testified that on 11 August 2021, Solomoni Kondowe came with Francis and Masautso. Solomoni Kondowe told her that Francis and Masautso were looking for accommodation for the night and that he was ready to host them but that he needed someone else to be a witness to the arrangement of providing the two with lodging. DW9 said at the time that the three came to her house, her husband was out to work. She said she told Solomoni Kondowe to proceed with providing the two with accommodation.

**J. DW10**

96. DW10 was Nenani Dowa. He stated that Francis is her relation in that they share a grandfather. This grandfather had two wives. He married one wife from Nenani's village and the other one from Francis' village. DW10 stated that in July 2021, she, having gone from Blantyre to her village, she met Francis. Francis told her that life was hard in the village and that if possible, she was to help her find piece works in Blantyre.
97. She communicated with Francis on 10 August 2021, telling him that there was an opening for him to work as a garden boy if he was willing to take it up. Francis said he was ready to work as such.
98. On 11 August, Francis phoned her to tell her that he had started off from the village for Blantyre. She told him to board Bangwe-Mvula minibuses once he came to Limbe. DW10 was washing clothes on this day. She put her cellphone in between her breasts. While carrying a basin of water, the phone fell into the water. When she got it out, it was not functioning. She took out the sim card and put it in her neighbour's phone and called the number Francis had called her on. The one who answered on the other end said he was a minibus driver and also said that Francis had dropped from the minibus.
99. Around 11:30 am, the neighbour in whose phone Nenani had put her sim card, said she was going out, so Nenani had to remove her sim card from the neighbour's phone. She thus had no way of communicating with Francis.
100. In 2022, Francis' mother told her (Nenani's) sister that Francis had been arrested and that she (Francis' mother) wanted to meet Nenani.
101. In cross examination, she said she had agreed to meet Francis at Mvula. She said she did wait at the stage up till 4 p.m. and then she left. She said she did not meet Francis on 11 August.

**K. DW11**

102. DW11 was Blessings Dave Kondowe. He said Thom Kondowe is his cousin and that Solomoni Kondowe is the elder brother to his father. He said after the accused persons in this matter were arrested, he downloaded a picture of a random albino from the internet, which in court was marked as Ex D12.
103. In cross examination, he said he does not know Ian Muhama nor what he looks like. He said he would not know if the downloaded picture looks like that of Ian Muhama or not.



104. DW12 was Adams Kapito. He works for TnM as Customer Service Assistant and also Search Warrant Officer. Acting on a search warrant from the court to produce call logs for the phone number 0881116670 between 1 May 2021 and 31 August 2021. He stated that he produced call logs from 1 May 2021 to 31 July 2021 for there was no activity concerning the number after 31 July 2021. He said the number was operating from Neno (in Mlongolola and Ligowe) and Mwanza.

#### IV. ANALYSIS

105. As can be noted, the evidence linking the accused to the case is that they had carried the deceased on the material night and that this was the last time the deceased was seen alive. There are two witnesses, Nakoma and Manuel, who said they saw the accused ferry the deceased in the fourth accused's car. These two witnesses said they knew the deceased—he was someone they used to chat with when they would go beer drinking. They had seen the deceased on a number of occasions. These witnesses identified Ex D12 as the picture of Ian Muhama. Ashraf who said he is the deceased's cousin said that this was not the picture of Ian Muhama. Ashraf had said that he grew up with the deceased. He said he also identified the deceased's body at Kachere stating that the face was still identifiable at the time. He pointed out the identifying features of Ian as the albino skin, the long nose, the Mohawk hairstyle and the youngish beard. DW11 said he just downloaded a random picture from the internet. Thus the evidence of DW11 is in support of Ashraf's evidence.
106. I find it more believable that Ashraf would know his cousin, the deceased, not only because that was his cousin but also because the two grew up together. Ashraf also was able to pinpoint the features of the deceased. Save for the albino skin, the features described by Ashraf are not present in the one in the picture (Ex D12). Thus the crucial issue becomes whether the said prosecution witnesses, Nakoma and Manuel, really knew Ian and it appears they may not have known him, and yet these are the key witnesses for the prosecution.
107. Secondly, the evidence of these two prosecution witnesses is circumstantial evidence, that the accused carried Ian Muhama on that night and that the deceased was last seen alive with them. Assuming that the accused

indeed had carried Ian Muhama, this circumstantial evidence without more becomes problematic to establish as a fact that the deceased really remained with the accused up to the point of his death. This would not be proof beyond reasonable doubt.

108. Considering these two points, I find it hard to convict the accused of the offences charged and I thus acquit them. I just add that this is one classic example of a case that was shoddily investigated by the police.

**Pronounced in open court this 9<sup>th</sup> day of July 2025**

  
**Justice Vikochi Chima**