



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY CRIMINAL DIVISION
SENTENCE RE-HEARING CAUSE NO. 32 OF 2016

THE REPUBLIC

- V

PETER MATEYU

Coram: Hon. Justice M L Kamwambe

Mtonga of counsel for the State

Magombo of counsel for the Convict

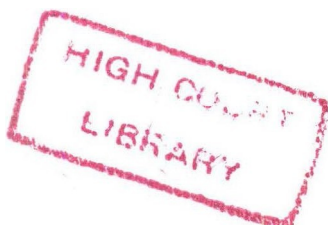
Amos ...Official Interpreter

JUDGMENT

Kamwambe J

The convict Peter Mateyu, was on 1st March, 2002 arrested for murder contrary to section 209 of the Penal Code and on 19th August, 2003 he was convicted and sentenced to suffer death. Upon a murder conviction, a death sentence was mandatory.

The case of Francis Kafantayeni and others -v- The Attorney General Constitutional Case No.12 of 2005 declared all mandatory



death sentences as unconstitutional as they did not accord fair trials to the accused who had to have recourse to a competent court to determine arguments on sentence, *inter alia*. All death row sentences were to be re-considered. This case was later supported by the Supreme Court judgment in **Mclemoce Yasin -v- The Republic** Criminal Appeal No. 29 of 2005 which said that convicts were entitled to a re-sentence hearing.

There is no case record and all endeavours to locate it have proved futile. Information gathered under section 321J of the Criminal Procedure and Evidence Code to assist the court to come to a fair sentence is that the deceased was a trouble maker in the family as he monopolised family land. The accused was nephew to the deceased based in Mozambique. He was asked to come home and mediate on land issues concerning the deceased behaviour. He came and tried to talk to the deceased who became uncompromising. The deceased got angry and went into his house where he fetched a spear and chased the accused. He struck the accused on the left arm and fearing further injuries he wrestled with the deceased who he struck with the same spear. This led to the death of the deceased.

When I heard this matter on the 18th day of November, 2016 I immediately released the accused by ordering a sentence that would result in his immediate release and I promised to bring a formal sentence later. This is the one.

The State had suggested that the accused be given a sentence that would result in his immediate release. I agreed with them after considering the circumstances of the case. First to consider is the fact that even if self-defence may fail as a defence, it may be considered

as a mitigating factor . The circumstances in this case are suitable and appropriate to apply self-defence as a mitigating factor.

In this case, the deceased suffered death at the hands of another, due to his own folly and unwarranted aggression and uncompromising attitude. In the main, he caused his own death.

Other mitigating factors are that he was a first offender, he has spent 14 years in prison already. He suffered pre-trial punishment for 2 years. Before his arrest he was a man of good conduct and so too in prison so much so that he may be considered capable of reform if not reformed already. As I have said in other cases, this case does not make him a criminal. He was placed in circumstances that caused him to commit this crime without having a criminal mind. He meant well when he set off to confront his uncle the deceased. He had no criminal intent to injure his uncle but merely to engage in meaningful discussions. What happened thereafter was completely unplanned and unexpected. It was spontaneous that he stabbed his uncle to death in the so called self-defence style. A delay of more than a year before one is prosecuted is unconstitutional and unreasonable length of time rendering the subsequent trial unfair. On sentencing, this factor should weigh heavily in favour of granting a lenient sentence. It should not be accepted that one should suffer long incarceration period before prosecution just because the State does not have adequate resources. It is the State's responsibility to find such resources at no cost to or sufferance by the accused. See sections 42 (2) (f) (i) (conviction) and 42(2) (f) (viii) (sentencing) of the Constitution and Article 7 (1) of the African Charter of Human and Peoples ' Rights. In the case of **R - v- Bisket Kunitumbu** (Sentence Re-hearing Cause No. 59 of 2015) the convict had been held on remand for six years prior to his trial. Justice Chirwa said that this was unconstitutional and it also contributed to his immediate release. In our present case the delay was only for one and a half years and this was not inordinate delay. In **Kigula and others** -

v- Attorney General [2009] UGCSC 6 at p. 63 the Supreme Court of Uganda held a delay of three years after pronouncing the death sentence and before execution of the death sentence was considered to be inordinately long and intolerable, and death sentence must be commuted to life

The court has also considered the violation of the convict's right to appeal in that the record has since missed. As Kapindu J said in the case of **Republic -v- Geoffrey Mponda Sentence Re- hearing Cause No. 68 of 2015** that the court must find an effective remedy and the only effective remedy is an order of immediate release, I agree with the reasoning of the judge. Apart from this we should take into consideration the appalling prison conditions in Malawi which are below recognised international standards. We have reiterated time and again that such debasing conditions in our prisons are a punishment on their own over and above a prisoner's seclusion from society. See **R -V - Chiliko Senti Sentence Re-hearing Cause No. 25 of 2015**.

I am compelled to mention further that the sentence rehearing taking place about eight years after the declaration of the unconstitutionality of the death sentence and the order thereof to rehear all such sentences is as unreasonable as it is in itself another abuse of the convict ' s right to speedy trial. There is no excuse for this disregard of the right to undergo a resentence hearing as also pronounced by the Supreme Court case of **Mclemence Yasin -v- The Republic MSCA Criminal Appeal No. 25 of 2005**

In the circumstances I maintain the sentence that I imposed on him, which is, a sentence that will result in his immediate release. I so order.

Pronounced in open Court this 12th day of December, 2016 at Chichiri, Blantyre.

M L Kamwambe
JUDGE