

REPUBLIC OF MALAWI  
MALAWI JUDICIARY  
IN THE HIGH COURT OF MALAWI  
MZUZU REGISTRY  
CRIMINAL DIVISION  
CRIMINAL CAUSE NO. 02 OF 2015

THE STATE

Vs

SAMSON KAUMBA

Coram : Honorable Mr. Justice D.T.K. Madise  
Mr. D. Malunda/Chisiza Counsel for the State  
Mr. C. Chithope-Mwale Counsel for the Accused  
Mr. I.Z. Bondo Official Interpreter  
Mrs. V. Gondwe/Mrs. E. Msimuko Court Reporters

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Madise, J

SENTENCE

1. When passing a sentence a court must look at the objective to be achieved. Whether deterrence, public protection or reformation is the objective, courts must first of all have regard to the nature and circumstances of the offence, the offender, the victim and the public interest. In simple terms, courts look at the aggravating and the mitigating factors of the offence as well of the offender. The sentencing court must therefore weigh the two and come to an informed conclusion as to the type of sentence to be imposed.
2. It is important to note right at the outset that the policy of the law is not to imprison first and young offenders unless circumstances dictate otherwise. The law as provided for under section 340 (1) Criminal Procedure and Evidence Code generally does not promote the imprisonment of first offenders unless otherwise stated by law or precedent. Where a court intends to forego the provisions of section 340 (1) CP&EC good reasons must be given as to why a non custodial sentence was inappropriate.
3. The policy of the law is that courts should pass what is considered the usual sentence in similar cases before courts of similar jurisdictions. A sentence must fit the crime, the offender, the victim and society should be satisfied that justice has been done. A sentence must not be too harsh or too lenient. A sentence must reflect the feelings of society at any given time.

4. The independence of the judiciary does not mean that courts should ignore the views and feelings of society where a certain crime is prevalent. The judicature is also part of government and it owes a duty of care to the other branches. This however does not mean that courts should be swayed anyhow by the feelings of society. There is need for a balancing act.

5. The rights of the offender to a fair trial must also be respected. A court must therefore weigh the mitigating and the aggravating factors and come to an informed conclusion as to the type of sentence to be meted out.

6. Sentences are based on discretion which must be used judiciously. In my considered view, a sentence which purports to remove the discretion of the court is in itself illegal on the face of it.

7. The State in this matter has submitted the aggravating factors and they have prayed for a maximum sentence of life imprisonment. They have cited several authorities in aid of their case that the offender, the victim and society must feel that justice has been done.

8. The defence on the other hand has submitted that the convict is a first offender who is not a worst offender and that the offence committed was a mere attempt. They have cited several authorities

in which this Court has shown mercy on more serious offences where a life was lost. The defence prays to this court to treat this case like any other on the principle of equality before the law. They pray for 6 years imprisonment.

9. It is a fact that the convict is a first offender and is a sick man. He has HIV and was only 32 when he committed this offence. However there are serious aggravating factors. The young boy Morton Juma trusted him as someone he knew. He used to call the convict Mjomba. He used to visit their house selling charcoal. He followed Sam to collect some chickens without hesitation knowing Sam will not harm him.

10. While at the forest the Sam the convict together with two other unknown persons without mercy produced a sharp object and started cutting the boy's neck. I was shown the pictures of the fresh wounds and the horrible scars on Morton's neck and arm. The manner in which the convict committed this crime was as if he was slaughtering a chicken or goat. Morton is lucky to have survived.

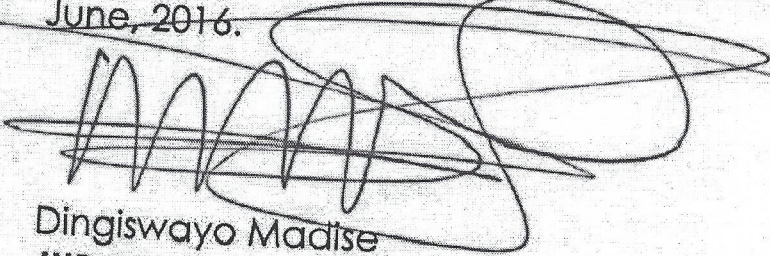
11. When people kill each other the dead body is buried in the ground and remains there for eternity. I take judicial notice that when criminals kill albinos they harvest their body parts for sale and for rituals. The convict wanted to kill the boy to harvest his parts for gain. This evil practice must come to stop. It is time.

12. The myth that the worst offender is yet to be born has been broken today. I'm of the view that the worst offender has finally arrived and I agree with the State that the offender deserves a meaningful sentence one which will send word to him, the victim and society at large. I have been on the bench for some time and I have not met a heartless person like Sam kaumba.

13. The *mens rea* (guilty mind) for attempted murder is the same with that of murder. The only difference is that the *actus reus* (guilty act) is incomplete in an attempted murder. I therefore order Sam Kaumba to spend the rest of his natural life in prison without possibility of pardon. This sentence will serve as a lesson to the offender, would be hunters and killers of albino people and a warning to society in general that Courts in this Republic will not rest until this vice comes to an end.

I so Order

Pronounced in Open Court at Mzuzu in the Republic this 15<sup>th</sup> day of June, 2016.

  
Dingiswayo Madise  
**JUDGE**