



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION  
HOMICIDE CASE NO. 27 OF 2018**

**BETWEEN:**

**THE REPUBLIC .....APPLICANT**

**V**

**DUNCAN GOLASI.....DEFENDANT**

**CORAM: Hon Justice M L Kamwambe**

Salamba of counsel for the State

Chimwanza and Phiri of counsel for the Defendant

Ngoma....Official Interpreter

Chiusiwa....Court Reporter

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**JUDGMENT**

Kamwambe J

On 20<sup>th</sup> April, 2018 Duncan Golasi stood trial charged with the offence of murder contrary to section 209 of the Penal Code for causing the death of Divason January with malice aforethought on the 8<sup>th</sup> November, 2011 at Mchotseni village, T/A Nthache in Mwanza district. He pleaded guilty to the charge He admitted to have caused the death of Divason January. In accordance with proviso to section 251 (2) of the Criminal Procedure and Evidence Code he told the court that he understood the nature and

consequences of pleading guilty to the charge of murder, that he would be imprisoned for a long time. He was then convicted accordingly upon admitting the facts narrated by the State to be correct.

The facts were that on 6<sup>th</sup> November, 2011 Mr Howard Mazonde brewed local beer at his house which was patronised by many people including the convict who was insulting people at the drinking place targeting Wilson William in particular. They fought and people separated them. The convict went to his house which was about 250 metres away. People advised Wilson William to go home which he did. Later, the convict went back to the beer place when Divason January, the deceased, confronted the convict why he was insulting people which was not appropriate conduct, touching him with a stick. This made the convict angry and he produced a knife he carried and he stabbed the deceased in the stomach. The deceased was rushed to Queen Elizabeth Central Hospital where three days later, on 8<sup>th</sup> November, 2011 he died of the stab injury.

Section 210 of the **Penal Code** as amended in 2011 of the Penal Code sets the maximum sentence for murder at death sentence or life imprisonment. Death sentence is no longer mandatory in murder convictions. The court enjoys the discretion to impose any lesser offence than death sentence such that term sentences are not unusual. This situation justifies the case of **Twoboy Jacob v Republic** MSCA Criminal Appeal No. 18 of 2006 (unreported) in which the Supreme Court observed that offences of murder indeed differ and that they will always differ so greatly from each other such that it would be wrong and unjust that they should attract the same penalty.

Section 260 of the **Criminal Procedure and Evidence Code** provides that where a verdict of guilty is recorded, the High Court may, after judgment but before passing sentence, receive such



information or evidence as it thinks fit, in order to inform itself as to the proper sentence to be passed. The information and evidence that the court may receive may, in addition to the evidence of the accused or the prosecution, include information or evidence by or on behalf of the victim of the offence and any relevant reports to enable the court assess the gravity of the offence.

I have observed at diverse occasions that not enough information or evidence is brought to the court to enable the court pass an appropriate sentence. Counsel for the convict, did not bring out much information from the circumstances of the crime. For instant, counsel in his submissions did not mention the fact that the accused was drunk and that that may have affected his conduct at the material time. Counsel did not expose anything relating to past conduct of the accused person. I had to sieve information by reading the whole record to see what information would be relevant in mitigation that is left out by counsel. If I depended only on counsel's submissions, valuable information would have been left out and thereby a skewed decision on sentence would be inevitable.

The court should have been given the opportunity to know if the accused person was always pugnacious and quarrelsome so much so that his conduct on the material day was not a one off incident. There is complete absence of information or evidence on this. Some people are known in the community to be troublesome in many ways and as such do not qualify as good citizens. It is possible the accused person was not such. Absence of relevant information deprives the court of important tools to proper sentencing.

When sentencing, the court must consider mitigating and aggravating circumstances. Mitigating factors speak well for the accused person and will often lead to the court exercising lenience on him. Aggravating factors speak against the accused person

and will lead the court to pass a more severe sentence from what normally it would be. Penal sections in Malawi provide for maximum sentences. Sentencing practice is clear that only worst offenders deserve maximum sentences. Ordinarily, imposition of a sentence more than half of the prescribed maximum sentence is not usual. However, in deserving situations, courts may sentence one beyond half the maximum sentence. This must be explained by the court.

In **Ayami v Rep** [1990] 13 MLR 19 the court stated that in considering the appropriateness of the sentence, it is imperative to evaluate the extent of the crime, the effect on the victim (or victims) and the circumstances in which it was committed, and come up with a sentence which is appropriate in that particular case. Sentence must also befit the offender in that it should not be manifestly on the lower or higher side, and that the court should take into consideration the mitigating factors that may avail the offender. See **Republic v Samson Matimati** Criminal Case No. 18 of 2007 HC (unreported). The court should take into consideration the personal and individual circumstance of the convict as well as possibility of reform and re-adaptation. **Republic v Samson Matimati** (*supra*).

The law favours the young and the old. The young are those between 18 and 25 years, and the old are those over 60 years. These persons deserve some lenience in sentencing because of their tender and old ages. See **R v Ng'ambi** [1971-1972] ALR Mal 457. They should be saved from serving long custodial sentences. Consideration should also be given to first offenders although in very serious crimes as murder, depending on the circumstances of the case, lenience may not be exercised. A custodial sentence is justified in serious offences committed in grave and heinous circumstances. In **Domingo Juwawo v Republic** Confirmation Case No. 1029 of 1996, the accused person though he was young when he committed the offence, had his sentence enhanced of the manner in which the offence was committed.



Further, that one pleaded guilty will win him reduction of sentence up to one third of the normal sentence. It is in the discretion of the court to determine by how much the reduction should be, up to one third of the sentence.

The court will take into consideration the manner in which the offence was committed, especially, whether an offensive weapon was used or not. See **Winston Ngulube & others v The Republic** MSCA Criminal Appeal No. 35 of 2006 (unreported).

The convict lost the first fight with Wilson William and he went home unhappy and frustrated. His anger had not subsided so, he collected a knife and put it into his pocket. After about twenty minutes in changed clothes he was back at the beer party where he looked around for William but did not find him. He bought some beers and sat under a mango tree. When he was confronted by the deceased why he was causing trouble to merry making people, he was not pleased and another fight ensued with the deceased and he stabbed the deceased person in the stomach who died three days later at Queens Elizabeth Central Hospital where he was referred from Mwanza Hospital.

I agree with the State that the offence was planned and premeditated and that his actions were inconsistent of a drunken person. He knew what he was doing and what he wanted to achieve. He carried the knife for revenge on William who he did not find but opportunity to vent his anger arose when the deceased person confronted him. It cannot be said that his actions were as a result of provocation or drunkenness but out of malice. He used the knife the way he intended it to be used and he fled from the place. He was chased and arrested. We was not remorseful hence, he fled without attending to the person in agony. The circumstances of this case were really serious.

Despite the serious circumstances in which the crime was committed, the case does not fall in the ambit of the rarest of the rare circumstances of murder warranting the imposition of the death sentence. In the case of **Republic v Alex Jordan** Criminal Case NO. 58 of 2008 convict intentionally insisted that the wife should leave the one year nine months old child as she was going to draw water from a tap nearby. The convict killed the stepchild and on her return she found the child dead. A life sentence was imposed despite the court observing that the convict had no history of being a violent and dangerous person to society, and that it was usual in our local circumstances that step-fathers don't like the presence of step-children. They love mothers of the children and not the children.

In the case of **Republic v Sinos Pasipanadya** Criminal Case No. 41 of 2008 the convict cut the child on the finger and as the child was crying his wife reprimanded him for what he did. The convict's wife went to report to her mother what her husband had done to the child. She had left the child with the convict husband. When she came back home she discovered that the husband was not with the child. He had buried the child in the sand at a river bank. In both these cases the court imposed a life sentence.

As mentioned above, there is no adverse information or evidence as to his past conduct. I will take it that he was a good person before the commission of the crime. He was a young adult then being 29 years of age. He was a first offender who pleaded guilty. It is a mitigating factor that he may have been influenced by some intoxication to act the way he did, though his actions were premeditated. He deserves to be punished for acting foolishly without regard of the welfare of the victim but, he deserves some lenience for the mitigating factors stated above. Ordinarily I would sentence him to 36 years imprisonment but, with the mitigating

factors playing a major role, such as the guilty plea, I pass a sentence of 24 years imprisonment.

**Pronounced in open court this 28<sup>th</sup> day of August, 2018 at**  
Chichiri, Blantyre.

  
M L Kamwambe  
**JUDGE**