

LAB

# IN THE HIGH COURT OF MALAWI

LILONGWE REGISTRY

SITTING AT SALIMA

CRIMINAL CASE NUMBER 61 OF 2018

REPUBLIC

VS

LUKA RAPHAEL MULENGA

MAJOMEKA BIZALE

**CORAM: HON. JUSTICE ESME CHOMBO**

Banda, Counsel for the State

Mwenefumbo, for the 1<sup>st</sup> Accused

Kalua, Counsel for the 2<sup>nd</sup> Accused

Mbewe, Court Reporter

Ng'ambi, Court Interpreter

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## JUDGMENT

Two accused persons, one adult and one minor, were charged with causing the death of Samuel Lyton, contrary to section 208 of the Penal Code. The death occurred in Sanyama Village T/A Maganga in Salima District on 25<sup>th</sup> April 2016.

It was reported that the deceased, his father and another relative went to drink some locally brewed potent beer called 'mtonjani'. The deceased separated himself from his father and relative and the next the father heard was that his son was dead. He did not know who or how death was caused.

PW1 went to see the two accused herein to hire an ox-cart to ferry her maize. While she was waiting she witnessed the deceased, in a drunken 'stupor', trying to obstruct the ox-cart. Then she noticed that first it was the 1<sup>st</sup> accused who first assaulted the deceased with a stick/whip used to drive cattle on the ox-cart. The 2<sup>nd</sup> accused stopped him. As the deceased continued obstructing the ox-cart she

then noticed that the 2<sup>nd</sup> accused took over the stick/whip and assaulted the deceased with it but the deceased continued his acts of obstruction. The 2<sup>nd</sup> accused then got off the ox-cart and slapped the deceased several times with hands on his face, the deceased fell down and the 2<sup>nd</sup> deceased got back onto the ox-cart and the two drove off. When the deceased was taken to the hospital it was established that the deceased had died. A postmortem reported revealed that the accused had blood clots in his mouth, a clear indication of an assault on the back of the head.

The two accused were arrested and in their statements under caution they revealed that they had bot assaulted the deceased but they kept shifting the blame to each other.

The two accused, once a finding of case to answer was made by the court, chose to exercise their right to silence and not to call any witnesses.

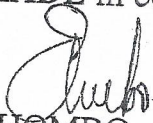
'd a man die? No doubt about it. Did the two accused persons cause the death of the deceased? The same has not been proved beyond reasonable doubt. The postmortem results indicate that cause of death is blood clots in the mouth. According to the medical expert evidence, such a death is evidence of assault on the back of the head. PW1, the only eye witness of the assault, stated that the accused assaulted the deceased with a stick/whip as small as her finger. This is a smallish lady of about 30 years of age. Could this stick have caused such untold fatal results? In her evidence she further stated that the 2<sup>nd</sup> accused, slapped the deceased a few times on his face. Is this consistent with the post-mortem examination results that blood clots in the mouth are a result of head injuries? How these blood clots came to be in the mouth has not been shown to be the result of the assault by the two accused, a fall causing injury to the head, consumption of the highly potent locally brewed *mtanjani* or a combination of all these factors? I find that the post-mortem examination should have gone beyond the issues that have been raised to exclude any other cause of death but one so as to help the court ascertain the cause of death and so put the claim on the proper head or persons.

Section 187(1) of the Criminal Procedure and Evidence Code puts the burden of proving every element of the offence to the requisite standard of proof beyond reasonable doubt on the prosecution. Where there is any doubt in the evidence of the prosecution that doubt must be exercised to the benefit of the accused persons. I find in this case that Prosecution has not proved the cause of death to the requisite standard and I must therefore find that the charge has not proved against the two



accused persons. In the circumstances I must acquit the two accused persons and order that they be released with immediate effect unless there are other lawful grounds for holding them.

MADE in court this day of the Lord 11<sup>th</sup> June 2018 in Salima

  
CHOMBO

JUDGE