



IN THE HIGH COURT OF MALAWI

MZUZU REGISTRY

MURDER CASE NO. 116 OF 2018

THE STATE

VERSUS

EDWARD LONGWE

CORAM: HON. JUSTICE T.R. LIGOWE

W. Nkosi of Counsel for the State

W. Chirwa of Counsel for the Convict

C. Chawinga, Official Interpreter

R. Luhanga, Court Reporter

SENTENCE

Ligowe J

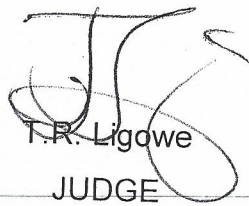
- 1 This is a case whose first impression is of an aggravated murder. The deceased, Rueben Longwe had not been seen in the community from 24th March 2017. Three days later, his relatives found him dead at his house with the private parts removed. In view of media stories about removal of peoples' private parts these days, one would think that was the aim of the offender in this case. That is not the case from the facts afforded to this court.
- 2 The state amended the charge against Edward Longwe to manslaughter under s. 208 of the Penal Code. He pleaded guilty and this court convicted

convict should have dropped the private parts in the bedroom. But it appears the private parts were not found anywhere. This in my view is an aggravating factor.

- 7 Defence counsel submitted that the court should consider that the convict pleaded guilty, he is a first offender, at the age of 26 he is relatively young and death occurred as a result of self-defence.
- 8 In reply on the issue of self-defence, State Counsel argued that the force used was not proportional, as he removed both the penis and the scrotum and after that punched the deceased.
- 9 I agree this court has to consider the plea of guilty, the age of the convict and that he is a first offender in mitigation of the offence Edward Longwe committed. As regards self-defence the same is determined according to principles of common law under section 17 of the Pena Code. And at common law, the test to be applied is that a person may use such force as is reasonable in the circumstances as he honestly believes them to be in the defence of himself or another. *Beckford v. The Queen* [1988] AC 130. Because the convict had actually been invited to his uncle's house where he met this fate, he was expected to use reasonable force as to enable him to escape. That he removed his penis and scrotum and the punched him was indeed disproportionate. That is talking of self- defence as a defence to the offence. I am however persuaded to consider it in mitigation despite the disproportionality of the force used, as there would not have been this reaction without the uncle wanting to strangle him with the rope. Self-defence was also considered in mitigation in *Rep v. Peter Jumbe*, Criminal Case No. 20 of 2012 (Principal Registry) (unreported).
- 10 *Peter Jumbe* was a first offender, he used a knife to stab the deceased and he was sentenced to nine years of imprisonment after a full trial. Defence

12 As a first offender the convict is eligible for suspended sentence under sections 339 and 340 of the Criminal Procedure and Evidence Code but that would not be the appropriate means of dealing with him in the circumstances of this case. He has to serve his term of imprisonment in custody.

13 Delivered in open court this 10th day of May 2018.


T.R. Ligowe
JUDGE