



IN THE HIGH COURT OF MALAWI
CRIMINAL DIVISION LILONGWE REGISTRY
SITTING AT DEDZA
CRIMINAL CASE NO. 74 OF 2018

BETWEEN:

THE STATE
-v-
SOLOFINA KAMPHANI

CORAM: HON. JUSTICE Dr. C.J. KACHALE, *Judge*

E. Ndingo, Senior State Advocate for the State

Mwenefumbo, Senior Legal Aid Advocate of Defence Counsel

Namagonya, Court Reporter

Zulu, Court Clerk and Official Interpreter

SENTENCE

On 21st November 2013 *Solofina Kamphani* was apprehended for causing the death of one *Madzinja Mikisoni*. In the early morning hours the deceased had gone to the house of the offender to purchase some look brew. However, *Ms. Kamphani* knowing the rowdy behaviour of *Mr. Mikisoni* when he is drunk, refused to sell him her brew. He in turn went off to drink somewhere else; he came back to the house of *Ms. Kamphani* at around 11am, drunk and started causing trouble by assaulting and insulting the offender; in retaliation *Ms. Kamphani* stepped on his belly with both her legs and later grabbed a stick which she used to beat him on his back. As *Mr. Mikisoni* tried to flee he ran straight into a tree and fell down.

The offender arranged to take the *Mr. Mikisoni* to Chimoto Health Centre clinic where he died within five minutes of the clinician attempting to resuscitate him. According to the post mortem report death was a result of internal bleeding and ruptured urinary bladder secondary to trauma.

In her mitigation submissions, *Ms. Kamphani* claims that she acted in self-defence as a result of the provocation of the deceased. The court has further been urged to consider her actions as soon as the victim fainted i.e. she took all efforts to resuscitate him and immediately rushed him to the nearest clinic as soon as possible. Besides, her admission of the charges both at the police and in court should likewise be credited to her remorsefulness over the whole incident.

For the state it has been proposed that one is taken to have intended the natural consequences of one's action, see **Rep-v-Saimon** [1961-63] ALR (M) 198. Thus the court has been asked to treat the offender as having intended the harm which resulted in the death of *Mr. Mikisoni*. In addition, the state has submitted that the response of *Ms. Kamphani* was out of proportion to the alleged provocation, considering that the alleged aggressor was in fact drunk at the material time, see the Supreme Court decision of **Nankondwa-v-Rep** 4 ALR (M) 388. Thus on the authority of **Mbaila-v-Rep** 4 ALR (M) 446 it has been submitted that the fact that offender used a weapon against a person who could have otherwise been overpowered renders her submission of provocation untenable. In the opinion of this court the relevance of these cases is rather limited for purposes of sentencing since in reality they all relate to question of actual guilt or responsibility for the actual killing (which does not arise herein due to *Ms. Kamphani's* plea of guilty).

In determining what is the appropriate sentence my court is reminded that we are concerned with a case of homicide i.e. a human life was lost under unlawful circumstances. The facts which have been established show clearly that whilst *Mr. Mikisoni* behaved inappropriately in going to insult and assault *Ms. Kamphani* at her home because she had refused to sell him her brew, the violence which she used in retaliation was somewhat disproportionate to the occasion. Even so, it must further be highlighted that her caution statement suggests that the deceased also ran into a tree as he fled (which resulted in the swollen head and

nasal bleeding). However, the damage to the urinary bladder would most likely be attributed to her stomping onto the deceased's belly using both her feet (which is clearly quite a serious and devastating act).

As my court noted in the recent case of **Rep-v-Gladys Manyera**, Criminal Case No. 54 of 2018 (unreported) there seems to be a very alarming pattern of insatiable and unjustifiable resort to violence prevalent within this district. To imagine that a person could lose his life in the circumstances discussed in the present case leaves one in great distress about the lack of respect for human life evidenced by such callous resort to wanton violence both from the victim as well as the offender. As a matter of justice, therefore, the court must mete out such a sentence as would reflect the legal and moral opprobrium attaching to the behaviour of the offender in this given situation; it is to be hoped that such an order would drive home to her the inexcusable reality of her conduct.

On these premises, therefore, **this court will sentence you Solofina Kamphani to 18 years imprisonment with hard labour effective from 21st November 2013**, the date of arrest.

Order accordingly.

Made in open court this ^{14th} day of ^{August} ~~July~~ 2018 at Dedza.


C.J. Kachale, PhD
JUDGE