



IN THE HIGH COURT OF MALAWI  
CRIMINAL DIVISION LILONGWE REGISTRY  
SITTING AT DEDZA  
CRIMINAL CASE NO. 69 OF 2018

BETWEEN:

THE STATE  
-V-  
SELINA CHINGAIPE FINIASI

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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

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SENTENCE

On 22<sup>nd</sup> May 2018 this court convicted *Selina Chingaipe Finiasi* for unlawfully causing the death of her husband *Mabvuto Finiasi* on 14<sup>th</sup> April 2017. *Selina Chingaipe Finiasi* was the first wife to the deceased; sometime the previous year her husband took a second wife. In that same year *Mabvuto* and *Selina* had planted a garden of Irish potato as a couple; to *Selina's* annoyance however when the time for harvesting the crop came, she discovered that *Mabvuto* had gone behind her back to dig up the potatoes with his second wife.

When her husband came home on the 14<sup>th</sup> April 2017 *Selina* tried to discuss the unsatisfactory development with him. However *Mabvuto* was uncooperative and simply told *Selina* to mind her own business. An argument ensued which later culminated into a fight; according to *Selina* in the course of the fight the deceased fell against their bed and was fatally injured. *Selina* then decided to conceal his corpse by burying him somewhere near their garden. When the corpse was discovered *Selina* was apprehended on suspicion of homicide to which she

confessed at the Police Station. In court she admitted the charge of manslaughter which the state levelled at her.

In mitigation it has been pointed out that *Selina* is a first time offender who has shown remorse for her crime by admitting the charge in court. It has further been proposed that as a victim of domestic violence, the court should consider the impact of her abuse on her conduct in order to determine a more appropriate sanction against her. The state has presented quite an elaborate list of decisions from the High Court in respect of homicide sentences. The best judicial commentary on the majority of those sentencing decisions for present purposes should be the observations of *Chipeta, J* (as he then was) in **Rep-v-Leonard Chinguwo**, Criminal Case No. 53 of 2008 (unreported):

“It beats me how in exercising leniency in a manslaughter matter, where life is lost for good, a Court can go so overboard and punish the offender with a penalty going below a penalty it gives for offences where no loss of life is involved...”

In so far as judicial outcomes are concerned it might be fair to suggest that (once conviction has been entered) the sentencing discretion represents the most significant aspect of the entire criminal trial process. The legal authority to impose a sanction for proven criminality manifests the effective application of the criminal law to the specific offender in light of the wrongful conduct for which he has been found responsible. Thus courts wield considerable responsibility to ensure that justice prevails in a given scenario; in discharging that function courts are obliged to ensure that the sentence imposed adequately reflects the revulsion felt by the great majority of citizens towards the proscribed conduct, see **Steven Mbewe-v-Rep**, Criminal Appeal Case No. 48 of 2006 (unreported).

*Selina Chingaipe Finiasi* was clearly unhappy with her husband's decision to take a second wife; as if that was not enough he continued to treat her with such disrespect that her animosity towards him must have only grown considerably. The cold-blooded manner in which she attempted to conceal her husband's death suggests that her conduct was unlikely unplanned. This seems to be a case of a bitter first wife trying to settle a score with her disdainful husband.



The fact that *Mabvuto* had used her to provide labour in the garden to cultivate crops whose yield he was in turn enjoying with someone else *Selina* considered a rival for the affections of her man would have only aggravated matters. In the considered opinion of this court it would not be acceptable to somehow excuse *Selina's* conduct on the basis of her alleged suffering at the hands of the deceased. Rather, this case represents yet another sad example of the worrying rise of gratuitous violence which seems to have taken this jurisdiction captive.

The several homicide assizes this court has conducted in recent years in this district disclose one rather shocking fact: there is quite a low level of regard for human life which is evident in the frivolousness of the circumstances which are yielding so many needless homicides. There is a worrying trend of very trivial misunderstandings (especially at home or a drinking place) culminating into inexplicable fatal stabbings or such other violent assaults which occasion mortal injuries of varying forms and degrees.

This social context of the crime imposes a duty upon my court to ensure that the sanction imposed underscores the principle that the right to life is sacrosanct under our laws; those who treat such life with indifference or outright disdain must be liable to the sternest sanctions if we hope to preserve the fragile social fabric which makes human society a possibility. According to the Supreme Court of Appeal decision of **Winston Ngulube and another-v-Rep**, Criminal Appeal No. 35 of 2006 it was emphasized that in determining the appropriate sentence the court takes into account the manner in which the offence was committed: whether the crime was planned, whether a weapon was used or indeed whether the offender was labouring under intoxication at the material time.

In the premises, **the court hereby condemns you *Selina Chingaipe Finiasi* to 25 years imprisonment** with hard labour effective from 15<sup>th</sup> April 2017.

Order accordingly.

Made in open court this.....day of <sup>14th</sup> ~~July~~ <sup>August</sup> 2018 at Dedza

  
C.J. Machale, PhD

JUDGE