



REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY (SITTING AT CHIRADZULU)
CRIMINAL DIVISION
HOMICIDE CAUSE NO. 58 OF 2017

BETWEEN

THE REPUBLIC

-and-

MALIKO LAZALO

Coram: Honourable Mr. Justice J. M. Chirwa

Mr S. Chisanga, Senior State Advocate for the State.

Mrs S. Penama, Senior Legal Aid Advocate for the Accused.

Ms Mthunzi, Court Reporter

Mrs R. Chanonga, Official Court Interpreter.

SENTENCE

1.0 Background:-

Maliko Lazalo, the Convict herein, pleaded guilty to the charge of murder contrary to Section 209 of the Penal Code and was convicted of the said charge on his own plea of guilty on 6th day of August, 2021. The case was then adjourned to consider the appropriate sentence to be meted on him after considering the mitigating and aggravating factors.

2.0 Facts:-

The facts of the case are that the Convict on or about the 27th day of April, 2013 at PIM Trading Centre in the Chiradzulu District in the Republic of Malawi with malice aforethought caused the death of **Fosio Benito** (“the Deceased”).

3.0 Issue for determination:-

The issue for determination by this Court is what would be an appropriate sentence which would fit the Convict, the circumstances of the within offence and the offence of murder.

4.0 Determination:-

The question of sentencing has always been a matter within the discretion of the court save where the same is fixed by the law. This discretion, however, ought to be exercised judiciously after having regard to all the relevant factors regarding sentencing, such, as the revulsion by the majority of the citizenry.

In the instant case, this Court is in agreement with the contention of both the parties hereto that the mandatory requirement of the death penalty for the offence of murder which had been provided for in Section 210 of the Penal Code before its amendment in 2010 is no longer law in this country. It is now the position at law that Courts do have the discretion to impose either a death penalty if the same befits the circumstances or otherwise sentence the convict to a lesser sentence, say, imprisonment for a fixed term of years, see: **Francis Kafantayeni and Others v The Republic**, Constitutional Case Number 12 of 2005 (unreported) relied upon by both the parties hereto. Further, and as was held by **Skinner CJ** in the case of **Namate v Republic**

[1975-1977] 8 M.L.R., 132 the maximum sentences such as the death sentence in the offence of murder are reserved for the worst instances of the offenders. This is what the learned judge said at p.135:

"We respectfully agree with the principle laid down in the cases. The maximum sentence permitted by the legislature should be reserved for the worst instances of the offence and it is, indeed, a very grievous example of the crime which calls for the imposition of such a sentence on a person of previous good character. It is necessary for a court to compare the seriousness of the circumstances of the particular offence in relation to the worst type of circumstances which could attend contravention of the penal section."

This Court is also in agreement with the following sentiments of **Chipeta J** (as he then was) in the case of **Republic v Dalitso Mathuso** Criminal Case No. 27 of 2008 (unreported), cited by the State, that is to say:

"...it amounts to an affront against the value of human life to treat a person who has killed a fellow human being as good as the one who has just stolen property worthy, or amounting to a few hundred kwacha...."

It may be worthy adding to the sentiments of **Chipeta J** (as he then was) that courts have by the current sentencing trends, somehow, upheld offences less serious than the offence of murder and yet the right to life is one of the fundamental human rights guaranteed by Section 16 of the Constitution of the Republic of Malawi by prohibiting the arbitrarily deprivation of a person's life in a manner that the Convict did with the Deceased in this case. In the premises, a sentence of 10 years' imprisonment with hard labour proposed by Counsel for the Convict herein would very much be demeaning the gravity of the offence of murder.

This Court is also in agreement with the submission on behalf of the Convict herein that the present case is not the worst instance of the offence of murder so as to deserve a sentence of death or imprisonment for life because of the following mitigating factors obtaining in favour of the Convict herein. First, is the fact that the Convict is a first offender and thus deserves the leniency of the court when sentencing him and secondly, he pleaded guilty to the charge and did not thus waste the court's precious time and resources. This plea of guilty is somehow, a sign of remorse on his part.

Against the mitigating factors obtaining in favour of the Convict herein are the following aggravating factors, that is to say, (i) that the commission of the offence by the Convict herein had been pre-mediated as evidenced by the fact that the Convict herein had in his possession a knife which he used in the commission of the offence. It is difficult to comprehend why the Convict herein had to go to a drinking place with a knife as if he was going to a slaughterhouse, (ii) that the offence of murder is a serious offence as evidenced by the maximum sentences of death or imprisonment for life reserved therefor (vide Section 210 of the Penal Code), (iii) that the offences of murder are nowadays quite prevalent in society.

This Court finds the present case distinguishable with the case of **The Republic v Paul Bizwick Maulana**, Homicide Case Number 330 of 2010 (unreported) where a death sentence was imposed on the convict therein on account of Maulana's conduct before the commission of the offence by pretending to the deceased that they should go together to collect money from his debtor when in fact his intention was to kill the deceased who was simply seeking to recover his money from the convict, the despicable manner in which the offence was committed with the use of a metal bar resulting in the deceased's head being crashed to the extent that his relatives were able to identify him only by his toes which were similar to those of his brother and the jacket which he was wearing, the plea of not guilty made by the convict despite the overwhelming evidence against him, etcetera. Put simply, the offence in the **Maulana** case was committed in a very despicable manner that it cannot be compared with the offence in the present case.

This Court has also considered the sentencing trend in the following cases (i) **The Republic v Ganizani Thomasi**, Criminal Case Number 366 of 2010 (unreported) where sentences of imprisonment for life were imposed on the convict therein for each count of murder. In that case albeit the offences were committed in a gruesome manner and with the use of a weapon, the convict had pleaded guilty to the charges which demonstrated some remorse on his part and further, he was a first offender; (ii) **The Republic v Keyaford Malata**, Re –hearing case No. 32 of 2015 (unreported) where the Court found that the offence had been premeditated by the convict and a sentence of a term of 25 years' imprisonment with hard labour was imposed on the convict; (iii) **The Republic v Patrick Psyangu**, Criminal Case Number 9 of 2010 (unreported) where a sentence of a term of 25 years' imprisonment with hard labour was imposed on the convict and (iv) **The Republic v Paul Genti**, Criminal Case Number 53 of 2021(unreported) where the convict had pre-mediated the commission of the offence and used

a weapon in the commission of the same. A sentence of 25 years' imprisonment with hard labour was imposed on the convict therein. The sentencing trend in the above cited cases is a clear indication that courts have not treated the arbitrarily taking of a person's life lightly even in the cases where there were some mitigating factors obtaining in favour of the convict as is case herein.

As stated earlier in this judgment, the present case cannot, in this Court's view, be described as the worst instance of the offence of murder so as to deserve a sentence of death or imprisonment for life. On the contrary, the facts of this case are, somehow, similar to those in the cases of **Patrick Psyangu**, **Kayaford Malata** and **Paul Genti**, cited above where sentences of a term of years were imposed on the convicts therein. This Court, however, finds the fact that the Convict herein had intentionally gone to a place where people go to drink beer or to socialise equipped with a knife, a lethal or deadly weapon, more aggravating in the instant offence. It is on this premise that this Court believes that a sentence of a term of more than the 25 years imposed in the just cited cases would fit the Convict herein, the offence of murder and the circumstances of the said offence. It is the view of This Court finds a sentence of a term of 30 years to be adequate for the Convict herein.

5.0 Conclusion:-

In conclusion, this Court now proceeds to sentence the Convict herein to a term of 30 years' imprisonment with hard labour. However, considering the fact that the Convict herein had been remanded for a period of 4 years before his release on bail in 2017 this Court finds it to be in the interest justice to discount the said term by the number of years the Convict herein had remained on remand. Consequently, the Convict herein will only serve 26 years from the date of his conviction, that is to say, from the 6th day of August, 2021. It is so ordered.

The Convict is, however, reminded of his Constitutional right of appeal against this sentence should he be inclined so to do. It is further so ordered.

Delivered at Blantyre this Twelfth day of October, 2021.

CHIRWA J
JUDGE