

REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
HOMICIDE CASE NUMBER 8 OF 2021
BETWEEN
THE REPUBLIC

AND
PATRICK THOMSON MUHEVURE

Coram: Honourable Justice Violet Palikena-Chipao
Mr. A. Salamba/Mr. A. Mphepo, Counsel for the State
Mr. N. Mdazizira/Mr. R. Makanje/Ms. K. Chingeni, Counsel for the Accused Persons
Accused persons Present
Ms. A. Kazembe, Official Interpreter and Court Clerk
Ms. L. Mboga, Court Reporter

SENTENCE

The matter comes for sentencing following the conviction of Patrick Thomson Muhevure. Patrick Thomson Muhevure was on the 7th April 2022, convicted of three counts namely; murder contrary to section 209 of the Penal Code; extraction of human tissue contrary to section 224A(ii) of the Penal Code and trafficking in persons contrary to section 14(1) of the Traffic in Persons Act. The offender was convicted after full trial.

The three offences which the offender was convicted of are very serious offences as reflected by the sentences imposed by the law. The offence of murder attracts a sentence of death or life imprisonment. The offence of extraction of human tissue attracts a sentence of life imprisonment. The offence of trafficking in person as charged under section 14 of the TIPPA attracts a sentence of 14 years without the option of a fine. However according to section 16 of the TIPPA, where the offence of trafficking in persons is committed in aggravated circumstances as listed in the section, then the punishment for the offence becomes life imprisonment. Such aggravating circumstances include the following;

- Where the accused is a relative of the trafficked person
- Where the offence is committed for purposes of removal of body parts or tissue extraction
- Where the trafficked person dies on the occasion of the commission of the offence.

From the evidence in this case, it is clear that the purpose of trafficking the deceased, Yosefe Muyaya, was the extraction of body parts which were intended to be sold for money. Yosefe Muyaya was actually murdered after being trafficked and then had his body mutilated and dismembered. The circumstances of the offence fall within the aggravated forms of trafficking in persons as such the maximum punishment for the offence of trafficking in persons in the present offence is life imprisonment

The court is mindful that under sections 260 and 321J of the Criminal Procedure and Evidence Code the Court may receive evidence or information from the Prosecution, the Convict, or victim for purposes of assisting the court in arriving at a proper sentence. In this case, both the State and the Defence asked the court to make presentations by way of written submissions on what sentence would be appropriate in the circumstances of the case. As such both parties filed written submissions addressing the court on what sentences they consider appropriate. The court is grateful to both the Prosecution and the Defence for their elaborate submissions on the sentencing.

The sentences indicated above are the maximum sentences provided for by the law for the commission of the offences at hand. Being maximum sentences, the discretion is left with the court to determine what sentence would be appropriate for each of the three offences bearing in mind factors aggravating the offences which include the seriousness of the offences and the circumstances of the offences; factors mitigating the offence and the offender. I am mindful that a sentence must fit the offence as well as the offender. I call to mind the sentiments of the court in the case of *State v Kumalo (1973)(3) S.A 697* where at p. 698 the court had this to say;

“Punishment must fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances..... The last of these four elements of justice is sometimes overlooked. ”

These words were cited with approval in the case of *Rep v Shauti [1975-77] 8 MLR 69* at p.71. In the case of *Daniel Mzembe & 2 Others vs. Republic Criminal Appeal No. 42/2006*, the court had this to say;

In the criminal matters when it comes to the part of sentencing the court is challenged with the issue of balancing the interests of the offenders and victims as well as the public. More so in this era where we talk of these human rights. Human rights or no human rights, the principles of sentencing include that the sentence has to fit the offence, the offender, the victim and the public.

The sentence of death is the maximum sentence for the offence of murder just as life imprisonment is the maximum sentence for the offences of extracting human tissue and trafficking in persons. It is noted from the submissions of the Prosecution that they are calling upon the court to impose the maximum sentences in respect of each of the offences; that is to say death for the murder charge and life imprisonment for the other two charges of extraction of human tissue and trafficking in persons. The Defence on their part are of the view that the maximum sentences are not deserved in the present case arguing that the convict is not a worst offender. In particular, in relation to the offence of murder, the defence in submitting against death penalty, argued that the test for categories befitting the maximum sentence of death is one of being the rarest of rare cases and that it is a very high test. It was argued on the basis of the cases of *Republic v. Jamuson White and Republic vs. Kenneth Moses & 10 Others* that for the sentence of death to be imposed,

1. The murder must not just be heinous but extremely heinous analogous to deliberate mass murders and serial killers
2. That there must be proof that the convict is likely to reoffend

The Defence's argument is that there is no evidence that the murder was extremely heinous-analogous to mass murders and serial killers and that there is no evidence that the convict is among the people perpetrating the acts of killing people with albinism or that the convict was involved in any other homicide case apart from the present case. It was further argued that there is no evidence that the convict would reoffend.

It is noted from the submissions of both parties that they both agree that maximum sentences should be reserved for worst offenders. They have both relied on the case of *Jamusoni and Francis Payenda*. This court agrees that indeed maximum sentences should be reserved for worst offenders. But as was stated in the case of *Francis Payenda*, the test for worst offenders must be not be of a fictitious individual test of a worst offender who is not yet born objective test but a subjective test. It has to be assessed by the court based on the factors before the court at a particular time to determine whether in the circumstances a death sentence is merited.

The issue for the court's determination therefore is whether the circumstances in the present case qualify for the worst offender to justify the imposition of death penalty in respect of the offence of murder. In the event that the court finds that death is not warranted the question becomes what is

the appropriate sentence? This is also the question that the court must determine in respect of the other two offences which the offender was convicted of.

In considering the appropriate sentence, I am mindful that a sentence must fit the offence, the offender, the victim and the public. The State put forward a number of factors for court's consideration and which according to the State justify an imposition of maximum sentences for each offence. The State also indicated in their submissions that they rely on the evidence on the court record which includes the circumstances of the offence and individual conduct of the convict. On specific factors for consideration, the State argued that the offences involved planning in that the convict and his accomplices met and planned to kill, mutilate and remove body tissue from the victim for purposes of selling the body parts and making money. The State further argued that the victim is not an ordinary person but a person who had double vulnerability in that he was a child (as he was only aged 14) and was a child with albinism. The State also found it aggravating that an uncle of the victim was involved in the commission of the offences and that instead of the victim finding protection from his relations and his village folks, he was killed. The State further argued that people with albinism should not be considered as market commodities but must be protected. It was the state's argument that the fact that the victim was a person with albinism was an aggravating factor on its own and that such offences should not earn the court's mercy because of the perpetrators misinformed beliefs and laziness to find honest means of earning a living.

The victim in the present case is a young boy of 14 years whose only sin was being born with albinism. He trusted his Uncle James Namauzongo whom his mother entrusted to care for him. He went about as usual not knowing what lied ahead of him. His uncle and his accomplices planned to have him murdered for purposes of mutilating his body and removing body tissues which were meant to be sold. In furtherance of that plan, the unsuspecting victim was fraudulently taken out of the house where he was staying by his uncle by lying that he was being taken to Lilongwe for studies through the welfare office only to be murdered and have his body mutilated and body parts cut. From the convict's own confession, the victim was brutally murdered at Nyambwe River where his body was mutilated and body parts like legs and hands cut out. Part of his body was buried and the cut parts were taken away. Some were thrown into the toilet of one of the suspects of the crime (one Zione Mukhala who confessed to have committed the offence but unfortunately died before the conclusion of the case). Some of the parts were believed to have been sold to a lady from Lilongwe who at the time of the trial was at large. One cannot imagine the horror that the deceased went through at the hands of the convict and his accomplices. From the circumstances of the case, it comes clear that this was an offence that was well planned and executed by a group of people to which the convict belonged. The convict participated in the crime without any duress but with the hope of earning money.

The family of deceased suffered greatly as a result of the offence. The trauma of the mother of the victim could be felt by the court. Apart from telling the court her name and that of the deceased, the mother was unable to speak anything in relation to the case such that the state had to cut short

her testimony. This speaks volumes as to the impact of the crime on the victims. She lost a son in such horrible circumstances at the hands of her brother whom she trusted to take care of her son. The appeared to still leave in shock of the news of the loss of her son despite the passage of two years after her son was reported missing.

Such barbaric, outrageous and inhuman conduct as displayed by the convict and his accomplices must be condemned in the strongest terms. Such is the conduct where the fact that one is a first offender, or young offender or that he pleaded guilty should have little or significant effect. It is very saddening that there are people out there who hold not just misinformed but outrageous view that parts of a human being can be used for making money to the point of killing another person for purposes of removing their body parts to earn money. People with albinism deserve to leave in peace and safety just like any other being. They should not always leave in fear of being killed and more so where the ones orchestrating the offence are their relations.

It was argued in favour of the offender that he is a first offender who has lived the past 37 years without offending the law; that he lived a sociable and community beneficial life being a builder; that he cooperated with the criminal justice system in that he did not escape after committing the offence, that he confessed the offence at police and led the police to Nyambwe river where the victim was murdered. It was also argued that the convict's level of participation in the crime was lower in that he was merely a piece worker and was not part of the whole plan to kill, remove the body parts and sale the same.

As already stated above the fact of the previous good record in view of the nature of the offence and how it was committed would not count much or anything at all. The convict and his accomplices were so cruel had had no regard for the life of the victim. They mercilessly led the innocent and unsuspecting victim to the river where they brutally killed him for body parts. The convict cannot even use the fact that his services of being a builder were beneficial to his community as a basis for seeking leniency. In fact as someone who already had a means of earning a living through building, he should not have been involved in this offence in the first place. But his conduct shows greed and the desire to make easy or quick money. Again, he argued that his role was that of merely a piece worker. Whilst it is true that he was not the master minder of the offence, his role cannot be considered any lesser serious as he argues. When he was told the plan to kill, extract body parts and sell the same and that he would as a consequence receive K300, 000, he did not hesitate but accept and took part in the deplorable conduct. He cannot be said to be a mere piece worker. If anything, he shows that he is the kind of man who is willing to be engaged in any kind of work including killing people as long as there is a monetary benefit attached. Just as the master minder of the offence, he shows that he too does not have regard for human life. His conduct must be condemned in the strongest terms. In condemning his conduct, this court is mindful of the words of Kamwambe J in *Republic -vs- Willard Mikaele, Homicide Case No. 238* of 2018 that

We are not here talking about this person with albinism alone, since this practice has degenerated into an epidemic without any tangible solution yet. It would be a mockery in such cases for one to even think of a short sentence... This case would not attract leniency on the ground that the convict is a first and young offender due to its special and hideous facts

Whilst it may be true that the prison conditions are not good, the court can only hope that the state will take its rightful responsibility as directed in the Masangano case to ensure that prison conditions are in line with human rights standards. However a sentence for such serious crimes like the present and committed in such heinous circumstances cannot be reduced simply because the prison conditions are poor. As for his young children and family, It is sad that they will suffer because of his incarceration but that is an inevitable consequence of criminality. Every criminal and in particular those who engage in the murder of people with albinism for purposes of making money out of the same must know that their conduct will put their family into hardship and will not attract mercy.

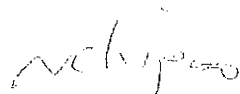
The court is mindful of the case of *Republic -vs- Willard Mikaele in 2019* where death sentence was meted out for the offence of murder of a person with albinism. In that case the convict lured the victim with banana fritters into his house where he murdered him for and buried him in his house to get rich as he was advised by a herbalist from Mozambique. I have also considered the case of *Kenneth Moses* where a person with albinism was killed for body parts and the court imposed a sentence of life imprisonment. In the case of *Republic v. Sam Kaumba* sentence of life imprisonment was imposed for the offence of attempted murder where the victim was a boy with albinism . The court has also considered the cases cited by the Defence and notice that in most of those offences sentences imposed for murder ranged from 15-30 years. It is however noted that in most of those offences although the circumstances were said to be aggravating, the cases did not deal with the peculiar case of people with albinism. In one case, murder was committed in the course of a robbery. What would come close is the case of *Manje Silumbu* where the reason for killing was for some unspecified witchcraft ritual.

The court however considering that the convict was not a master minder of the offence, and that although he participated in the killing of the victim and dismembering of his body, he cannot be said to fall within the category of worst offenders as envisaged in the case of *Republic v. Jamusoni*. This is so also considering that he has no previous record of murder or indeed any serious violent crime. It does not appear to the court that this is a case where the society would without thinking twice say that he should be eliminated from the earth. It is therefore this court's view that his conduct though it warrants a stiffer penalty, does not warrant a death sentence. The court instead finds a sentence of life imprisonment appropriate and therefore sentences the offender to life imprisonment for the offence of murder.

The other two offences both attract the maximum sentence of life imprisonment. As observed by the State, the offence of extracting human tissue in this offence is unique in that it relates to a person with albinism. The same is true with the offence of trafficking in persons. The victim was trafficked particularly on account of his being a person with albinism with the purpose of extracting his body organs for sale. The seriousness of the two offences cannot be over emphasised. In addition when we consider how these offences were committed, the involvement of the uncle whom the victim trusted, the court finds the proposed sentences of not exceeding 10 years for extracting human tissue and not exceeding 3 years for trafficking in persons to be on the lower side. The State cited the case of *Gerald Phiri* where it is argued that a sentence of life imprisonment was imposed in respect of offences of extracting human tissue and trafficking in persons involving a person with albinism. Unfortunately, I did not have manage to access this case to appreciate the circumstances of the case and the offender in that case in order to appreciate its applicability to the present case. Besides as it has already been stated above that the convict does not fall into the category of worst offenders, imposition of life imprisonment sentence which is the maximum for each of the two offences would not be justified. I therefore desist from sentencing the offender to life imprisonment for the offences of extracting human tissue and trafficking in persons. Instead, considering that death was occasioned to the victim for purposes of effecting these two other offences, I proceed to sentence the offenders to 25 years imprisonment for each of these two offences. These sentences will run effective from the date of arrest.

The convict has the liberty to appeal to the Supreme Court against his conviction and sentence.

Pronounced in Open Court this 28th Day of April, 2022 at Phalombe.



Violet Palikena-Chipao

JUDGE